

Debate

Criminalizing Business

ISSUE: Is overcriminalization of businesses harming society?

Since the year 2000, there have been 2,163 convictions and guilty pleas involving actions of the federal government against businesses. Because the first decade of the twenty-first century were filled with examples of corporate misconduct, from Enron and Arthur Andersen to Countrywide Financial and Lehman Brothers, it makes sense that penalties against companies have increased. However, recently there has been controversy over whether criminalizing businesses are going too far. Critics have begun accusing prosecutors and governmental authorities of abusing their powers to bully businesses into settling allegations whether or not they are guilty. Indeed, many companies choose to settle because if tried and found guilty, the penalties could be much worse. In many cases, businesses find it easier to cut their losses, pay out fines, and move on.

The problem with this mentality is not only an issue of justice concerning the guilt of the company, but also the impact it has on businesses and society as a whole. Regulatory actions have major impact on businesses regarding reputation, monetary losses, and the time and costs of implementing compliance programs to satisfy government regulators. These in turn have a negative impact on productivity, innovation, and employee morale—all leading to a decrease in business. Serious penalties could cripple or even destroy a company, which occurred at Arthur Anderson during the Enron and WorldCom scandals. This results in significant unemployment and the loss of valuable services, causing negative societal effects.

Despite the negative impact regulatory actions can have, most people will agree that business regulation is necessary to ensure that businesses follow applicable laws. Although punishing a business for misconduct might lead to some negative consequences, refusing to punish a firm for misconduct could create a ripple effect that leads other firms to believe they can get away with misconduct. The question is not so much whether regulatory actions should be taken against questionable businesses, but rather whether regulators are abusing their powers to coerce businesses into paying money to the government in fines. Overcriminalization nullifies the good effects that punishment can have on the business industry regarding misconduct; instead, it dissuades business activities, harms innovation, and has a detrimental effect on society.

Critics of recent regulatory actions against companies have accused regulators of targeting businesses to fill up their coffers. They support their argument by pointing out that many of the settlements against companies are for ambiguous claims not sufficiently supported by evidence. For instance, Citigroup paid \$2.5 million in “consumer relief” to avoid being prosecuted for other allegations. “Consumer relief” is a term that is ambiguous to many stakeholders. Toyota paid \$1.2 billion to settle a wire-charge fraud case even though the evidence involved has been debated. These might not seem too bad for large companies that can absorb the costs of penalties, but what about smaller organizations? Gibson Guitars found itself the subject of a federal raid and investigation for unlawfully importing ebony wood from Madagascar. The Gibson Guitar CEO said the issue was not the wood itself, but involved tariff codes and the thickness of the wood. He claims that the company complied to the laws with the best of its ability, and that India and Madagascar, where the wood was imported from, claimed the company acted legally by doing everything it could to comply with their laws.

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Another criticism levied against regulators is their criminalization of companies instead of individuals involved in the misconduct. Many consumers were outraged that executives of Wall Street firms that were indicated in misconduct did not receive jail time. Many believe that instead of punishing shareholders by levying fines against major companies, prosecutors should focus more on punishing those individuals who actually committed misconduct.

On the other hand, supporters of regulatory action against companies believe critics are taking too narrow of a view. Research has regularly demonstrated that company misconduct failures are often not a result of the actions of one or two rogue employees; rather, the corporate culture of the firm tends to provide incentives for employees to act unethically. For instance, although regulators have charged Countrywide founder and former CEO Angelo Mozilo with wrongdoing, the corporate culture of Countrywide Financial incentivized employees to loan to borrowers even if it meant turning a blind eye to falsified information. In this class, the culture of the company was clearly at fault. Additionally, one of the major reasons for fines and penalties is to try to compensate victims of the misconduct. Often companies have more assets available to compensate victims with than individual people.

Government regulators also argue that they reward companies for strong ethics and compliance programs even if misconduct does take place. When Ralph Lauren found that bribery had occurred in its Argentine operations, it reported it to the government and launched a full-scale investigation. Because of Ralph Lauren's cooperation, the company received praise from regulators and was able to resolve the charges and enter into a non-prosecution agreement. Finally, it is also worth noting that in spite of the excessive risk taking, the actions of organizations contributing to the financial crisis were legal. Although illegal activities were certainly committed, it was difficult to track them to any one person. Therefore, while the federal government could determine whether companies themselves committed actions deserving of fines, it was harder to find evidence sufficient enough to prosecute individual executives.

There are two sides to every issue:

1. The government is overcriminalizing businesses and abusing its authority in a way that is harming society.
 2. The government is justified in penalizing businesses and is not abusing its authority.
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Sources:

Economist staff, "The Criminalisation of American Business," *Economist*, August 30-September 5, 2014, pp. 21-24.

Peter Lattman, "Ralph Lauren Corp Agrees to Pay Fine in Bribery Case," *The New York Times*, April 22, 2013,

<http://dealbook.nytimes.com/2013/04/22/ralph-lauren-pays-1-6-million-to-resolve-bribery-case/> (accessed October 22, 2014).

Christian Broadcasting Network, "Gibson's Blues: Endless Laws Criminalizing Business," *CBN*, 2012, <http://www.cbn.com/tv/1580204017001> (accessed October 22, 2014).

James Surowiecki, "Punish the Executives, Not Just the Banks," *The New Yorker*, July 15, 2014,

<http://www.newyorker.com/business/currency/punish-the-executives-not-just-the-banks> (accessed October 22, 2014).

"Gibson Creates 'Government Series' Guitars Out Of Wood Seized in Raids," *Fox News*, February 4, 2014,

<http://insider.foxnews.com/2014/02/04/gibson-creates-government-series-guitars-out-wood-seized-2011-raids> (accessed October 22, 2014).