

Law and Ethics: A Necessary Complementarity to Increase Women's Presence in Business Managerial Positions

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ABSTRACT

Development of women's leadership in the economic sphere involves the necessary inclusion of women in senior management positions. In line with this, we can argue that the better gender equality is implemented in companies, the more likely women will be allowed to occupy these positions. Therefore, we highlight two principal ways of achieving egalitarian companies that provide equal work opportunities for both women and men: law and ethics.

The present paper is structured in three parts. Firstly, we approach concepts of law, ethics and morality by identifying their main features and differences. Secondly, we discuss the most important actions that the European Union and the Spanish State are undertaking to promote women's presence in senior management positions. Thirdly, we focus on dialogue-based business ethics because it provides the basis for the equal promotion of women and men in companies. It also recognises companies as permeable organisations, which are responsible for dealing with social problems. Consequently, our main task is to reflect on the relationship between law and ethics to build more egalitarian companies. We argue that the law and its external penalties need to be complemented by an institution's business ethics, initiated from within an institution to form positive behaviour that is part of companies' *ethos*. Hence, the methodology we use is based on a gender perspective approach in the company from a philosophical viewpoint, and we focus on dialogue-based business ethics from the Discourse Ethics of Jürgen Habermas and Karl Otto Apel.

INTRODUCTION

The possibility of women becoming public and economic leaders, pushing the boundaries of home, was still remote in the late twentieth century. However, professional women are increasingly reaching power positions. Nowadays, they deal with the symbolic and material limits that perpetuate the "glass ceiling" in the business world (Segerman-Peck 1991). Both gender stereotypes and the public-private dichotomy make women's career difficult, despite their widespread incorporation into university education (Ramos 2005, 18). Thus gender equality is a vital issue for our societies and, for this reason, we reflect on the role of supranational associations, states and business organisations to promote equality between women and men. As economic and social spheres are not different spaces because "a neutral criterion of economic rationality does not exist in the social world" (García-

Marzá 2000, 240), economic activity must contribute to promote universal values, such as equality and justice.

In this paper, we focus on one reflection: the question if the legal dimension is sufficient to increase gender equality in the business world or if ethics has the true potential to achieve gender equality in companies. An external sanction is not the same as an internal sanction, just as rightness and legality are not the same. All behaviour that responds to laws or regulations is legal, while the term “rightness” refers to the goodness or badness of behaviour, not legislated in that particular place or time (Fernández 2001, 28). Although law (legality) and ethics (moral) are intertwined to regulate societies fairly, the former refers to an external sanction made by the state, while the latter refers to what is moral, what we consider valuable. For example, it could be that equality’s social demand cannot be or is not formalised in legislation. In this case, the company, as a social institution, must act ethically to incorporate it, even though the state does not demand it to take this action. The gender equality demand needs to form part of the “to be” reality. In this sense, ethics refers to the “ought to be” dimension and shows us the ethical horizons of meaning upon which we make our lives (García-Marzá 1999, 2). In conclusion, law plays a significant role by attending social demands through laws, regulations and plans. However, we herein attempt to show how applied ethics or business ethics allows the company to recognise its moral nature and to incorporate gender equality into its culture by itself.

LINKS BETWEEN LAW AND ETHICS: RECOGNISING THE COMPANY’S MORAL STRUCTURE

Following law philosopher Ralf Dreier, we start by distinguishing positive law from the natural/rational law. The former is treated as the current body of law that is valid in a particular nation-state, which acts by sanctioning through institutions such as courts. The latter reminds us of what “should be” according to the moral principles of a particular society (Dreier 1985, 71). This is ethics, which is based on the moral of citizens who direct their actions by the values, meanings and moral beliefs that they consider valuable. The distinction between these two concepts lays the basis for us to introduce a disjunction between law and ethics. Following the contribution made by philosopher Adela Cortina, we highlight that “ethics, rather than fear of judicial sentencing, addresses the habits and

beliefs of people, organisations and institutions that are willing to act according to their own activity” (Cortina 1997a, 16). In line with the Kantian Theory, legislation refers to the external behaviour of actors, while ethics denotes their internal behaviour. From this perspective, legal duties require legality, while moral obligations require values and beliefs that shape our character as human beings (Dreier 1985, 79). Therefore, on the one hand, we can talk about two different types of sanctions; the law establishes external sanctions to individuals and organisations in the form of monetary fines or being deprived of freedom. On the other hand, ethics punishes internally when our actions contradict the beliefs and values that we consider valuable; when we deviate from our aim, we are sanctioned by the immorality of our actions, and we will avoid repeating this in the future.

Obviously, we cannot give up the close relationship that ties law and ethics, insomuch as the law of each country is the product of its citizenship’s morals. We live in pluralistic societies where different worldviews co-exist; we should consider which moral ideas should be transformed into positive law. Adela Cortina highlights the need to find a moral minimum shared by different conceptions of the good life, or “ethical highs” (Cortina 1993, 202), to be applied in the legal corpus of each particular nation-state. From a philosophical viewpoint, we highlight that gender equality should be a minimum to respect because it is one of the key bases of democratic societies, and it is also an issue of vital importance for developing women’s leadership.

For this reason, when society demands gender equality, the State must act to achieve this aim and, in many cases, this demand turns into law. Nevertheless, in globalised and pluralistic societies, with a progressive loss of the State’s power, companies acquire a new position that awards them for acting against social problems, such as gender inequality. This implies having to start talking about ethics in the business world, and we must recognise the company as a moral institution. Following the “estructurista” (from the structure) philosophical tradition initiated by Spanish philosophers Xavier Zubiri and José Luis Aranguren, we agree that human beings are constitutively moral beings because they have a moral structure, which urges them to choose a moral or immoral content (Zubiri 1986; Aranguren 1994). Because companies are intelligent systems composed of human beings, we understand that

decision making is made by the company as a person, and not by each of its workers. Consequently, the company will also feature such a moral structure because “an organisation is, by definition, *organised*; it is not a group or a shapeless mass of people but has a structure that allows it to make *collective decisions*, which is not reducible to individuals or aggregates of individuals” (Cortina 1997a, 24). Therefore, renouncing companies’ morality implies denying their decision-making capacity and the fact that their results will affect others.

However, we cannot leave everything in the company’s hands because, in this case, there will be many companies that could boast the *homo oeconomicus* spirit, based on a utilitarian view of the economy (Calvo 2010), to undertake harmful actions, which will not boost gender equality. Therefore, the real need lies in companies’ change of mind, and in a critical reflection of institutions in economic and business dimensions (González-Esteban and García-Marzá 2006, 158). For this reason, if we complement law and ethics, what the company has not internalised in its character will be stopped by law and by external sanctions. As the presence of law is essential to protect, for example, employment rights, but is not enough to define the role of business in society, “for this reason, business ethics, as a civic and ethical application in the business world, care for the moralisation of the company from itself, and not from external impositions” (Cortina 1997b, 17).

WOMEN’S LEADERSHIP IN THE POLITICAL AND ECONOMIC AGENDA OF THE EUROPEAN UNION

The main subject of our paper is women’s leadership in the business world, a reality that can be developed only when gender equality forms part of the company’s structure. It is a task in which supranational organisations and governments play a central role. We start by recognising women’s under-representation in leadership positions in Spanish and other European companies. The well-known “glass ceiling” concept (Segerman-Peck 1991) attempts to make this situation visible through a metaphorical allusion to invisible obstacles that make professional women’s climbing to leadership positions difficult. The complexity of these barriers has received the name “crystal crossroad” (Berenguer, 1999). Thus, gender inequality in the business domain is a structural and multidimensional problem based on sex-gender exclusion. Given this reality, we can state that the obstacles that women face

when climbing business organisations are harder than those that men face (Ryan and Haslam 2005) because the female stereotype presupposes them skills relating to housework, which are devalued in the public domain.

In this sense, philosopher Amelia Valcárcel highlights the existence of the “cooption system” (Valcárcel 1997, 98), which reveals that the main obstacles to women’s leadership are the selection system. The selector forms part of an ideological framework that belittles women’s merits by ignoring their curriculum adjustment by the job profile. So ideological prejudices based on gender stereotypes become the central core of selection; it is not an expert selection criterion, but a contaminated ideological element that overlooks the merits of an adequate candidate profile. Unfortunately, this is a widespread reality in Europe and Spain, where the limited presence of women in power positions prevents their access to the Management Board. This limited presence furthermore discourages women from taking leadership positions, perpetuating the vicious cycle. In many cases, a lack of women leaders’ models prevents access for new generations. It is precisely at this stage that it becomes the starting point: there are very few women executives. (Gabaldón 2013, 33). This is a global problem that prevents women who work in a company to be part of the Management Board, even though they have a brilliant career. The claim of an egalitarian society means having to achieve an equal company. For this reason, businesses and governments should listen to citizens’ complaints by adding that demand and by establishing different measures.

Indeed the European Commission (EC) has recognised two needs: to incorporate the gender perspective and gender mainstreaming into the European decision-making process (Lombardo 2005; 2006; 2008); to increase women’s presence in management positions as an urgent issue because such job discrimination is a waste of professional skills, which could contribute to Europe’s economic development. As we can see in the *Women in economic decision-making in the EU: Progress Report* (EC 2012a), not taking advantage of highly qualified women skills’ is a waste of talent and loss of economic growth potential. In line with this, it is logical to think that companies in which women are better represented and where more gender equality is

found better deliver organisational and financial performance. In line with this issue, the need that moves this institution to draught guidelines for effective gender equality in companies focuses on “women’s talent” as a potential element to increase European competitiveness.

With this in mind, equality in the European Union (EU) should be placed within a broader framework: business ethics. This institution has spent years building its speech on Corporate Social Responsibility (González-Esteban and García-Marzá 2006) in an attempt to promote responsible behaviour in European companies, as we stated in the *GREEN PAPER: Promoting a European framework for Corporate Social Responsibility* (EC 2001). This effort centres on defining a responsible framework for European economic activity based on human values, such as equality, which can bring an economy to generate “social value.” Hence, such responsibility is understood as “the voluntary integration of social and environmental concerns by businesses into their business operations, and also into their interaction with stakeholders” (EC 2001, 7). This voluntarism makes us witnesses of ethics, which as we have seen before, cannot be imposed externally by individuals or organisations. Therefore, companies should be aware that their purpose “is a social order because every organisation is created to provide society with *belongings*, with which their existence to society is legitimised” (Cortina 1994, 22).

Community interest in gender equality in management positions can be appreciated in the policies and plans developed by the EU. The *Strategy for equality between women and men 2010-2015* (EC 2011) is one of the most recent strategies that encompass the principles of the *Women’s Charter* (EC 2010a). Among the actions to implement this strategy, we find a specific section of equality in decision making (EC 2011, 19). The Europe 2020 strategy also seeks to achieve improvements in the workplace by promoting “new forms of work-life balance and active ageing policies and increasing gender equality” (EC 2010b, 17). To harness professionals’ talent, it has developed the *Directive Of The European Parliament And Of The Council On Improving Gender Balance Among Non-Executive Directors Of Companies Listed On Stock Exchanges And Related Measures* (EC 2012b). Its goal is to promote equality on

Boards of Directors of European companies with 250 employees or more, and whose annual turnover exceeds 50 million euros. This proposal advocates a minimum share of 40% representation of each gender on Management Boards. Thus, we must clarify that EU directives set targets to be achieved by the Member States (MS), whereby each MS shall adjust its legislation, according to national law, to the objectives of the directive on the fixed date. The actual potential of these directives lies in harmonising national laws on gender equality.

One of the measures taken by the Spanish State to comply with this directive is the *Ley Orgánica 3/2007 para la Igualdad de Mujeres y Hombres (Law 3/2007 for the Equality of Women and Men)* (Gobierno de España 2007). This provides the basis for different plans and actions, such as *Plan Estratégico de Igualdad de Oportunidades 2014-2016 (Strategic Plan for Equal Opportunities)* (Instituto de la Mujer 2014). These biannual plans set actions to end gender inequality in working life; one of the aims is to increase the number of women in power positions on Management Boards by following the same requirements of the directive above. Nowadays, it is a recommendation and no penalties exist; nevertheless, at the end of the deadline (2015), to implement new measures, a decision will be made as to whether to change the voluntary principle of law. Since the beginning of this law, “the number of women has increased in absolute and relative terms, but it is still far from being an equal representation in relation to men on Management Boards. It would take at least another 30 years to reach 40%” (Gabaldón 2013, 3). The claim formalised in law has not yet been realised. Women still have higher unemployment rates than men; their salary is 22.9% lower than men’s (even when they do the same work). Only 16% of Management Board members in IBEX 35 are women, and conciliation remains an unresolved matter (Instituto de la Mujer 2014).

Notwithstanding, we need to recognise that the homogeneity promoted by the minimum European standard has done a great deal for MS to establish business gender equality measures. There is still one real problem: lack of companies’ awareness of their role as social and moral institutions. We wish to highlight that beyond external imposition, companies themselves should also have the initiative to promote Gender

Equality plans to exercise their role in society, and in the sense in which ethics has a wide scope than the law. “In this sense, Law seeks to prevent the deviant behaviour, and to communicate, which society consider correct; but ethics is about the *ethos*, incorporating into people’s and organisations’ character those habits that can lead to fair decisions” (Cortina 2003, 19). Universal moral principles can also cross national borders while legislation is valid only in specific territories.

In conclusion, directives, plans and laws make it clear that women’s leadership is a central issue in Europe’s political and economic agenda. However, beyond laws and EU requirements, companies must be known to be characteristic of the social space by leaning right and implementing socially valid actions. For this reason, we emphasise the potential of dialogue-based business ethics to incorporate a gender perspective into business organisations by collecting the demands of social equality and acting to achieve a more ethical workplace.

DIALOGUE-BASED BUSINESS ETHICS: A VOLUNTARY PROMOTION OF WOMEN’S LEADERSHIP IN THE BUSINESS WORLD

The business ethics requirement has become indisputable in a globalised economic context where, for example, a single decision made by an executive or manager in a very short time affects thousands of people who work far away. Globalised economy, gradual loss of the authority of national states and more possibilities of citizens’ political participation through the new communication media (Feenstra 2012; 2013) quite clearly render the need to integrate ethics and economics (Conill 2004). According to Jesús Conill, “an economics theory is necessary for an ethics sense, as is appropriate business ethics at the technical development level of the current economy, to articulate a new moral economy that is appropriate for our age” (Conill 2003, 12). Thus, ethics becomes the ideal tool to provide solutions to conflicts that might arise in the company’s operational territories because it suggests a way to universalise good actions in globalised societies. When “societies and environments are more complex and changing, legal measures become less effective, and ethical mechanisms become more profitable to solve disputes fairly” (Cortina 2003, 29).

To show that companies form part of civil society and have a moral character, it is essential to indicate that the business ethics model we propose herein focuses on

the Discourse Ethics of Habermas (1991; 1998; 2000) and K. O. Apel, which has been developed in recent years by researchers of the Universitat de València and the Universitat Jaume I (both in east Spain). We prefer this approach because it is based on the principle of universality, by which “the moral point of view focuses on the reciprocal recognition of all concerned by the rule’s or institution’s effects” (García-Marzá 2004, 103). It also requires an agreement should be reached by all the parties involved through a discussion without coercion in inclusive dialogues. Thus promoting ethics management is impossible, “while the institutional design remains under the *homo oeconomicus* influence” (Calvo 2013, 66). For this reason, to start building dialogue-based business ethics, we have to move beyond the traditional autism company as a neutral institution and to recognise that more than one economic agent conception exists (Calvo 2010). The proposed model is also integrative, which means that economics and ethics are not two different logics, but remain together in a social sphere (García-Marzá 2004, 124). Otherwise, it would be impossible to talk about ethics applied to the economic sphere.

The starting point lies in recognising what is the internal good of business companies, because “companies are not «natural» institutions as they cannot survive independently of the goals for which they were created. There are organisations created by people for specific purposes; goals or goods that are always social” (García-Marzá 2007, 189). When a company stops acting according to its internal aim to satisfy human needs with quality through profit (Cortina 1997a, 29), its activity is delegitimised. This statement implies recognising the company’s moral responsibility, its plural character and its free decision making. The legitimacy of the trust placed in it has been generated, and proportionally to its ability to justify. As a result, we can state with Cortina that “the alleged amorality of business, like the alleged economy’s amorality, is an unacceptable excuse for acting against moral content, and requires the moral conscience of a society like ours” (Cortina 1997a, 29).

Business activity involves long-term strategies and decisions; in this case, ethics serves to create a nature that can facilitate future decision making because it consists of the integration of values and ethical standards that will govern activity to

form the corporate culture. At the same time, we should know that this operation is framed within a specific social value system, where we should find gender equality a valuable end in itself. Thus “business activity implies a set of expectations in the internal and external groups involved in and affected by it. These expectations are related to their corporate project, the activity undertaken and how it created this activity” (García-Marzá 2007, 190). We see that the company has its obligations to society, and depending on the extent to which it fulfils these obligations. According to Garcia-Marzá “a rational agreement between all the parties involved and/or affected by the business activity” (García-Marzá 2004, 160), breaks the individualism of the social contract that focuses on factual agreements. This allows the company to maintain its position by basing its relationships on recognising the autonomy of the groups with which it is interconnected. Such recognition is the need to promote real dialogue, which turns the organisation into something plural that remains open to critics. The company must establish a dialogue to give universal reasons for its actions, on moral grounds.

A dialogic approach to business ethics creates Universalist ethics, and through dialogue, we can identify the universal moral assumptions relating to the rules’ validity, as well as the inclusion in the dialogue of all those affected by these rules. In this sense, “a rule can only aspire to be valid when all the people affected by it agree (or may agree) about this rule being valid, as participants in a practical discourse” (Habermas 1991, 86). The usefulness of this understanding allows us to recognise that existing rules in society need to be valid; dialogue allows us to know when a rule expresses generalisable interests. This statement refers to the company as a dynamic institution, which must adapt to changes, and this confers us the space to integrate gender equality into organisations because it is a social demand for effective and moral validity. Consequently, the key lies in recognising “the moral value of dialogue as a path through which the agreement is reached, and where a consensus is needed to establish, maintain and develop the company’s legitimacy” (García-Marzá 2004, 236).

Following this pluralist conception of the company, the Stakeholders Theory (Freeman 1984; Donaldson and Preston 1995) allows us to build a bridge between

theory and practice by approaching dialogue with stakeholders. From it, we understand Stakeholder “as not only any group or individual which/who can affect, or be affected by, the achievement of business objectives, but also as interlocutors [...] in an attempt to influence the company’s decisions and activities” (González-Esteban 2007, 210). By this theory, we can identify the groups without which, in Freeman’s words, the company would cease to exist. So we need to bear in mind that it depends on the organisation, its conditions and context, as these groups will change, and that not all claims are legitimate. The criterion to discern legitimacy lies in understanding that legitimate interest is a justified demand of a group or individual when faced with the company’s actions, policies, or procedures (Morgan 1990).

It should be noted that the principle of dialogue that seeks agreement does not describe a social contract, but a moral contract based on the absence of coercion. These dialogues allow us the possibility of communication, and it must abide by four basic principles (Habermas 2000): interlocutors’ sincerity; inclusion of all those affected or their potential representatives, both present and future, in resolving conflicts; reciprocity between participants; symmetry between all the interests involved. This means that anyone who could make a significant contribution to dialogue cannot be excluded; it presupposes complete equality and symmetry under participation conditions, and that all interests should be considered equally and be subjected to an argumentative review (García-Marzá 2000, 163). Thus the company must conduct communicative moral resources management, and not focus its activity on a mere strategy because it will allow it to take responsibility for its actions and to recognise that others’ interests must be integrated into business practice, a fact that merely causes you to engage with citizens.

Upon recognition of companies’ ties with social groups, it is easier to incorporate the gender perspective into business management because companies may recognise from dialogue with stakeholders that equality is an expectation that they place. Thus, it becomes a legitimate obligation. With such recognition, the company goes beyond the legal obligation and enters into a realm of morality as it recognises that gender inequality is not a problem beyond the economic sphere, something

externally required by legal regulations, but it forms an inseparable part of business practice and should be incorporated as an internal matter of such practice. Thus “leaving the company’s participation in the law’s hands would confuse public responsibility with the State’s” (García-Marzá 2004, 270).

Although the set of plans, policies and measures contributes to solving the inequality problem, this task needs to be recognised by companies as an internal moral obligation. An ethical company that bases its operation on dialogue will verify that one of the company’s moral responsibilities is to incorporate these demands. Companies on their own initiatives, based on their Corporate Social Responsibility, need to promote plans to increase women’s leadership.

CONCLUSION

The main purpose of this paper was to discern the potential of law and ethics to achieve equal access to leadership positions for both women and men. Broadly speaking, it is true that legal frameworks with external sanctions can help to correct companies’ immoral behaviour; but we must wonder why it is that despite community guidelines and laws like the *Ley Orgánica para la Igualdad de Mujeres y Hombres* of the Spanish State, still so few women occupy leadership positions and are on Management Boards. Although moral principles exist and have been explained through policies, plans and legislation, the problem remains, as we have seen: “today the inefficiency of the law as an exclusive instrument for conflict resolution is already clear” (García-Marzá 2004, 30), so business ethics becomes necessary. If we complement law and ethics, what the company has not internalised in character may be hampered by external sanctions through laws. Once again, we wish to highlight the importance of ethics and its close relationship with law to build egalitarian societies:

For millennia, there have always been laws, and also one ethics or another that have guided the community’s conduct. Both are complementary but non-redundant. Laws arise predominantly from the background while ethics derives from moral belief. Laws create authority by threatening punishment while ethics is the expression of the principles that engage individuals at the deepest level of identity. The focal point of law is obedience while in ethics it is the development of human character and community (Dalla Costa 1999, 141).

Another of our principal aims was to emphasise that women’s inclusion in

business leadership is a moral issue. The vital importance of women and men having equal access to the company and equal possibilities to rise in it is reflected in the different ways from such a claim is made: from Spanish legislation to EC plans, to feminist theory demands. Like the universality that transcends to specific legal frameworks, companies should recognise gender equality as one of its basic principles, a moral value that should be integrated into decision making. For this reason, we highlight the need to critically analyse the lack of women in decision making, and above everything else, “the requirement of gender studies to be rigorous, to be critical, to reveal just what seemed «natural» for millennia: inequality” (Reverter and Torrent 2012, 12).

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