

Part III: Government Regulation or Moral Renewal? How to Improve Corporate Citizenship

William J. Bennett

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

William J. Bennett, *Part III: Government Regulation or Moral Renewal? How to Improve Corporate Citizenship*, 84 Marq. L. Rev. 772 (2001).

Available at: <http://scholarship.law.marquette.edu/mulr/vol84/iss4/5>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

paradox that at the same time there is a pervasiveness of violence available in a variety of media formats and youth violence—I would hazard a guess (I don't know what Milwaukee statistics are) but every other part of the country as measured by the C.D.C, the Department of Justice, and the F.B.I. reports a precipitous decline in youth violence: How can it be that it is the entertainment media that's responsible for the perceived increase in youth violence when in fact there's less youth violence than there's ever been? There's less shootings than there have been in decades. The paradox that we face is that we put in place a regulatory system, we've given parents the tools that they need to help their kids make responsible game-playing decisions, we've reduced levels of violence in games, and there's less violence on our streets and yet, the finger of blame gets pointed first at the entertainment media. I don't hear any of the same rhetoric about access by children to guns. It's remarkable to me that the first instinct—and I don't know the district attorney so I'm not directing this at him—but the first instinct of most law enforcement officials, of most elected officials, of most politicians, is to look first at the entertainment industry as the leading cause if not the sole cause of violence. At the same time, there's less of it out there. It puts lawyers representing the industry frankly, where having done what we believe was right in the self-regulatory realm, in a quandary. How do we advise our clients how to respond to the kind of vitriol that's regularly launched against the industry in the absence of the definitive proof that would be needed to enact regulations? It calls for some interesting moral, ethical, and legal dilemmas on a daily basis.

GOVERNMENT REGULATION OR MORAL RENEWAL? HOW TO
IMPROVE CORPORATE CITIZENSHIP

Dr. William J. Bennett

Dr. William J. Bennett: Ladies and gentlemen, good afternoon. I do have a Jesuit background; I went to Jesuit high school. People who hear me speak in public will often ask, "Just how long did they have you?" They had me pretty long, but more importantly they had me early.

It's a pleasure to be at a university. I do not receive many invitations to them, even though the university is supposed to be committed to the free marketplace of ideas. Let me illustrate with this story—it's not a complaint, just something I find interesting. In 1980, before I entered the Reagan administration, I was thirty-eight years old, and I had

twenty-six honorary degrees. Now, twenty years later, I have twenty-seven honorary degrees. So if you are interested in honorary degrees, mine is not the direction you want your career to take. But I don't mind: My family and I use our Mays and Junes very successfully.

It is an honor, though, to be invited to Marquette University Law School for this seminar. I want to thank Dean Eisenberg, who is here. And I want to thank Mr. Dawdle who, I presume, is not. I am sure that many of you have thought to yourselves, "He's a lot bigger than I thought he'd be." Well, I'm a lot bigger than I thought I'd be too, but we're working on that. Chapter One of *The Book of Virtues* is about self-discipline, and it is addressed to me.

The purpose of the keynote speaker at a conference like this, as you know, is not to speak about the topic in great detail, but rather to speak about it in a more general sense. I know some things about ethics and ethical theory; that was the topic of my dissertation, and I've written some articles about it. In terms of legal ethics and corporate citizenship, though, I am no expert. But I think I can give you a perspective about some of the things you are talking about, and hopefully I can do so briefly.

I thought that when Dean Eisenberg was giving his introduction you had the wrong Bennett here. My brother, Bob Bennett, is a lawyer and has written a fair amount on this topic, and if you get someone else convicted and have another, similar conference, perhaps you can invite him to speak. I was invited to give the commencement at the University of Virginia Law School, and when I accepted, they said, "Oops, we want your brother." To which I responded, "I didn't think you were interested in ethics down there." I had to say *something* after that. They hurt my feelings; I had bought a new robe and everything.

So you have Bill Bennett, not Bob Bennett. My brother is a lawyer; in fact, he is President Clinton's lawyer—or one of President Clinton's lawyers, anyway. President Clinton has many, many lawyers, as you probably know. But Bob is a very good lawyer, which is obviously what's required in that particular case, and a very successful one as well.

Let me get the compulsory lawyer joke out of the way. I will not tell you a joke that you may already have heard but rather a true story. During the Clinton impeachment, there was a public debate on the matter, and my brother and I were often on opposite sides of the question. After the Senate voted not to convict and remove the president, my brother and I had a public debate that was moderated by Tim Russert. Tim Russert asked each of us what was the hardest thing your brother said about you during the last two years. I said I couldn't

remember what Bob said about me, and I didn't feel he had said anything that was particularly harsh. But Bob said, "Well, my brother Bill did say something very harsh on a TV show once." Russert asked, "What was it?" Bob said, "Well, Bill was asked by the moderator what he thought my real opinion of the case was." And I had responded that my brother didn't have a real opinion because he's a lawyer. And that really hurt him, as I understand it. Anyway, I am here and I'll do the best I can.

Let me just start with the rules of professional conduct, the Preamble of which says, "The rules do not exhaust the moral and ethical considerations that should inform a lawyer. For no worthwhile human activity can be completely defined by legal rules." True enough; you won't find the definition of responsibility, of all that needs to be said about one's obligations and one's aspirations, in the rules of professional conduct. The rules make no pretense that they are doing such a thing. It's a nice statement because it puts in perspective the relatively small place of things like the legal rules in the larger picture.

That's the way the lawyers write it. The way the poets write it is somewhat different. I remember that I read something by Samuel Johnson in law school, and it was very helpful to me. He said, "How small of all that human hearts endure that part which laws and kings can cause or cure." That is useful for discussion of legal ethics; it may also be useful for a discussion of politics as well. We try to do so many things through the law and through legislation when, in fact, for those things that the human heart really endures, legislation may not be the best remedy. In any case, there is a larger world of ethics outside the rules of legal ethics and the code of professional conduct.

Without some consideration of ethics in that context, the grounds for ethics and for morality, the rules become of very little if any effect. To summarize our ethical condition—both in the legal profession and the business profession as well as the larger society—I would quote one of the great lawyers and jurists of American history, Oliver Wendell Holmes, Jr., who said, that the main remedy for most of what ails us is to grow more civilized. I believe that's right. If we do not hold certain standards internally, if we are not guided by an internal compass, I'm not sure whether the rules we write will matter much.

When I served as the Director of the Office of National Drug Control Policy—the Drug Czar—I spoke with a judge in Michigan, who said to me, "Well, they bring them in and we sentence them. We're throwing them in and we're filling the jails with them. I supposed that's what we should do." He said, "But one thing seems to have changed,

Mr. Bennett. When I look these guys in the eye now—and I've been doing this for thirty-five years—and say to them, 'Young man, didn't anyone ever teach you the difference between right and wrong?' They look me in the eye and they say 'No, no one ever did.'" And then the judge said to me, "Maybe they'd always have said that, but now I believe them."

For a large number of the people that judge dealt with, or that I dealt with in that job, no one ever taught them right from wrong. They weren't raised by two parents. They were raised by one parent. They watched a lot of television; they spent more time with the television than with the parent. That makes a difference in learning the difference between right and wrong.

I just use that as one datum—I know the plural of anecdote is not data—but it's a story that I heard in many versions over the course of my tenure as drug czar. So while that's just one story, I think it's indicative of a problem we see everywhere. Why isn't one generation passing their values and beliefs on to the next generation? Or why are those values and those beliefs missing in so many homes, in so many families? Combine this absence with complaints about the culture and about the example of some people's public lives and the disintegration of the family in America, and you get some sense of the unease Americans feel about the larger topic here before you, that is, ethics and the state of morality.

Now, we have lots of frameworks for talking about this. Just as a point of reference, one of the frameworks I like to use is Lon Fuller's wonderful book *The Morality of Law*,³⁶ which I read as a law student. Fuller talks about the morality of aspiration and the morality of obligation—duties of obligation, duties of aspiration. Those duties of obligation are things that we must do. They are the minimal expectations we have of people in society. The duties of aspiration, however, are those things we do because of what we would be, because of what we would become, or because of what we think our nature and destiny is. If we believe, as ninety percent of Americans say they do, that we are moral and spiritual beings, then our morality or aspiration ought to be somewhat higher than the rules of professional conduct. And this takes us to the heart of the matter, both the questions of how we generate basic moral ideas, codes and agreements we can live by and whether we are doing enough work on the morality of aspiration.

36. LON FULLER, *THE MORALITY OF LAW* (1964).

It's good that your conference is looking at the question in this way. You are not looking at it in the way that I have seen at a large number of conferences on professional ethics, where the focus is on difficult cases, quandaries and dilemmas, what I call the Karen Quindlan syndrome. Karen Quindlan, you remember, was that terrible case of the young lady who was on life support systems, totally unconscious, and the question was whether you should pull the plug or shouldn't pull the plug. I have been to seminar after seminar—until I couldn't take it anymore—in which people talked about ethics and morality as if it was a matter primarily of solving or cracking tough dilemmas. That is not what ethics and morality is about. Most people who try to live a decent and moral life do not go through fourteen dilemmas a day. They come up in the law and politics occasionally, but for the most part, the demands on us are pretty straightforward—the demands others make on us, the demands we make on ourselves, and the demands that are made on us by virtue of our commitments. The whole representation of ethics as if it were a lot of Hamlet-like head scratching about tough cases is a misrepresentation of ethical life as we live it.

But I'm going to now shift gears and talk about corporate citizenship in one particular context. Your title asks, "Moral renewal or government regulation?" Well, I would say moral renewal if we can get there. In the absence of moral renewal, I suppose government regulation. I suppose, too, that even with moral renewal we will want some government regulation. I don't have any problem with Mr. Dawdle going to jail. I don't have any problem with fining companies that break agreements and pollute the environment. I don't have any problem with going after corporations that violate any of the rules or commitments that they have made.

But again, my guess is that we are worried about the general moral state of things, and the way to improve that is probably not through this legal funnel or that legal funnel, but through the larger or more general moral considerations. Consider that in this regard something that is not, for the most part, a legal question, but is rather a question of American standards and American morality. We have a nice text about corporate citizenship and Hollywood that popped into the news this week. Some of you may be familiar with this report that the Federal Trade Commission issued on Tuesday. It focused on movie, music, and video game companies and their advertising practices—especially as they relate to children.

The report said the following: "Companies routinely market products to children under seventeen, that their own ratings and

labeling systems say are inappropriate for children or that warrant parental caution due to their violent content. This Commission believes that these advertising and marketing efforts undermine the industry's parental advisories and frustrate parents' attempts to protect their children from inappropriate material."

The FTC went on to say it wasn't going to do anything about the problem except issue this report. But the report itself was a scold, a nagging finger at the entertainment industry, saying "You can do better than this. You're breaking your agreement."

The FTC report cites a number of instances where companies had focus groups of eight- to twelve-year-olds reviewing products that were labeled as appropriate for those over seventeen. The larger the market, the bigger the profit. What the report also describes is how companies would change the content based on the reaction of the children in that focus group. Earlier this week, I said that I thought we had here the moral equivalent of nicotine, that what we saw in a number of these companies was that they would add certain content so as to hook, not the body of the child, but the soul of the child. There is no question—and people in the industry have told me this—that when you're making a slasher movie, for example, if you include more blood and more nudity, you'll attract more young male customers. This holds true across the board, in music and video games and the like.

Now, I bring this up as an example because two FTC commissioners, knowing about my interest in the topic, called me about this. They said, "There's not a whole lot we can do about this. We would need additional legislation in order for us to do anything more about it, but we thought you ought to know and we expect this will be a big political issue." Well, it is a big political issue and the discussion goes on.

The point I would make here, as a way of getting back to my larger claim about the nature and sources of morality, is this. I don't think it's hard to argue that a lot of the stuff that's coming from Hollywood through the movies, music, video games and television is stuff that's unfit for consumption by young people. In fact, I would argue that a lot of it is unfit for anybody's consumption. Senator Joseph Lieberman and I have been arguing that for about six or seven years, fairly successfully, with very deep and bipartisan support. This is not an issue for right-wingers; it's not an issue for religious zealots; this is an issue for parents. Senator Lieberman and I used to give out something called the "Silver Sewer" to people who had done the most to pollute the moral and cultural environment. We honored—or perhaps dishonored—people such as Edgar Bronfman and Rupert Murdoch. As I said, we're

bipartisan; we get them all. No one accepted our Silver Sewer Award, of course, but we gave it to them anyway.

Now, as I said, I don't think there's any question that a lot of this stuff is just awful, horrible stuff. Let's bracket the question of causation—whether this causes people to become worse, whether it makes people kill and so on. On that regard, I would only say that we do tend to think if children listen to beautiful music or hear great writing, it will in some ways, over time, elevate them. And if that is true, then it is hard to argue that if they listen to horrible stuff, it will not have a degrading effect. The difficulty comes when people say, "Well, what are you going to do about it?"

We visited executives at Time Warner in New York because a particular issue was brought to my attention by a woman named Dolores Tucker of the National Political Congress of Black Women, who was very upset about gangster rap music. She said the portrayal of black Americans in this music was absolutely horrible. She made a pretty good case. She had proof that Michael Jackson made a video in which he used very vulgar epithets about Jews. He was brought back into the studio and made to cut it again because the company would not put that on the album. However, she said, the language about blacks—particularly black women—was equally offensive, and that language went out and was sold and made its way into the market.

Now this is an ethical question about corporate citizenship. We had a meeting with the executives from Time Warner—the president, chairman of the board, and several vice-presidents—and she had the lyrics from a number of songs that the company had made, sold, and distributed. She passed them around and asked if any of the executives there would read them aloud. No one would; everyone passed on that. We then asked whether there was anything so bad, so horrible, so gross, so grotesque they would not market it, produce it, and sell it to young people. There was a long pause. And finally someone said, "We probably wouldn't do something that came out in favor of smoking." I said, "Well, good for you." The natural, physical good has a clear place in American life; everyone recognizes that. But the concept of a moral good, and therefore the concept of moral harm, doesn't have the same kind of vitality.

The question—"What won't you sell?"—just sort of hung there, and we never received anything more than that one, weak answer from any company we confronted. Essentially, what we have been saying to a lot of these companies and corporations in Hollywood is, "Clean up your act; improve your stuff." They feign ignorance. They say, "What do

you mean? Some of this may be poetry to people." We even heard one person at the meeting say, "Well, that's the way black people talk." Dolores Tucker was having none of that.

What do we think of the state of the product that is coming out of Hollywood? I would argue that while a lot of it is unfit for anybody's consumption, I do not think I want to see any laws passed about it. There may be some things you should do at the level of the FTC about advertising, and there may be some other things having to do with the use of the airwaves. But, in general I would not police the content of what comes out of Hollywood. One reason is that Congress would probably do it, and I'm afraid they would make things worse. I'm afraid the first things that would go would be *Saving Private Ryan* or, as one Congressman said, "*Schindler's List* has got to go. There's too much nudity and too much violence." I'm not going to trust the Congress with that responsibility. It's also a serious question as to whether that's the sort of thing government should have the authority to do and whether it is constitutional for the government to do.

But if you don't have that government regulation, then what else is there? The choices you put on the conference title are government regulation or moral renewal. How would you make a case based on moral renewal to the purveyors of this stuff? Or would you not make a case at all? You might decide that what we have to do is to strengthen those institutions which point children in another direction—families, churches, and schools. I would argue that we certainly have to do the latter.

When I was drug czar, I used to say, "Just give me stronger families, stronger churches, and stronger schools." Assume strong families, strong churches, and strong schools, and you can assume away ninety percent of the drug problem and a host of other problems as well.

Is there anything to be done in the meantime? I think so. I think it's possible to make what you might call a "moral case" against things that you think are wrong in this way, without recommending government regulation or legislation, and hope that it takes—that is, that you can convince others to agree with you. You might even convince some people in the industry to agree with you.

It's not impossible. I was out in Hollywood for the Democratic convention. I was commenting on both conventions and ran into a number of Hollywood people, and got into many discussions on this topic. There was one thing that I threw at them that many found quite interesting, and I will close here by throwing it at you. It is a quote from the great movie, *Gone With the Wind*, which is my wife's favorite movie.

You remember the character of Rhett Butler, Clark Gable, who's this charming character. But, on the ethical side, some things are right, and some other things are wrong. He makes his money moving back and forth between the North and the South, getting goods from the North and selling them to Southern soldiers and getting goods from the South and selling them to the North. He's a profiteer, and when he is challenged on his line of work—and think about this in relation to corporate citizenship, Hollywood, or anything else—he says, "What most people don't seem to realize is that there's just as much money to be made out of the wreckage of civilization as from the upholding of one. As for me, I'm making my fortune out of the wreckage."

Now you may not want to make rules or laws about making your money out of the wreckage, but it may be something worth paying attention to anyway. Thank you very much.

Audience: Dr. Valerie Hans: Hi, Dr. Bennett. I'm Dr. Hans from the University of Delaware. Our prior session actually dealt with one of the issues that you raised about the media violence in the entertainment industry, and one of the audience members suggested that even if we don't regulate the industry in terms of government regulation, perhaps civil litigation can address some of the harms that are done through the industry. I wondered what you thought of that suggestion.

Dr. Bennett: I'm not expert enough on the civil litigation to say except to tell you that I know of a lot of people who are pursuing this. I know of a number of cases that have been brought. I got a letter from a man whose son did nothing for thirty days but listen to Marilyn Manson before he killed himself, and now he wants to sue the record company and the holding company of the record company. One wonders why the kid was allowed to listen to Marilyn Manson nonstop for thirty days, too, but I imagine when these cases make their way up through the courts that this will perhaps be another instance. I don't have any objection to that because it will help us to clarify in the language of the law, which is very well thought out and has a long history, what responsibility means.

Let me tell you why I think that would be useful. In the context of the entertainment industry the only answer I've heard yet, and I've heard it *ad nauseum* from spokesmen for the entertainment industry, is that the notion that some child listens to a song or watches a movie and then goes out and commits a murder—based solely on that movie—is impossible. Well, of course it's impossible. I don't think anybody believes in that kind of mono-causality, that very, very crude notion of causation. But I don't think the law has ever required that, either.

Wouldn't you be held responsible even if yours is not the only place in the chain of events? These cases will help to sort that out. They will be able to say with much greater clarity what we mean by responsibility. So I think that's fine and that's a good way to go. I'd like to see how they come out.

Audience: I want to start off by agreeing with you that it's a mistake for moralists to think that you can impose morality by the law or that you can sustain laws without any kind of mores to back it up, but in your presentation you made it sound as if you just want to kind of write off the law entirely and that seems to me to be going too far in the other direction because you need something to start building on and it seems to me that one way you try to help form moral values is by fighting some fights about the law as well.

Dr. Bennett: No, I agree absolutely and if I was too brusque or cavalier about that point, I didn't mean to be. Holmes is right again, I think, in saying that the law is the witness and external deposit of our moral life. The law does put into statute and rule the things we believe to be right and things we believe to be wrong, and it's right that it does so. But, I think there's also a pretty good argument to make that we have to work harder in our time on getting the consensus on some of these things which underlie and which are presupposed by legislation. One way to do that is to have a discussion as to whether we should have a law about something like pornography or gay marriage or other such controversial things not unknown to you, Professor Wolfe, issues of great import and great controversy.

But no, I don't mean to belittle it. The fact that we are still largely a rule of law, although I think we missed it this last couple of years with President Clinton and that was case A, exhibit A, where everybody was watching. This was a great place to show that we truly had respect for law as a people. We need to take advantage of that rule of law and put into law the things that we believe. We need to have, however, more discussion about what it is that we believe. It has now, I think, reached the point where, not just some things moral, but virtually anything that has to do with morality is treated by some as merely a matter of taste or opinion, and I think that's a very dangerous place to be.

Audience: In the context of divestment in South Africa, there was some success in using shareholder activism to change corporate behavior. Do you see a role for the shareholders in holding corporations more socially accountable?

Dr. Bennett: Yes I do. That's one example. I think you'd get arguments about how effective that was, but I certainly do see that. In

fact, my colleague, Dolores Tucker, did exactly that as a shareholder at Time Warner. She went to meetings and tried to organize other shareholders to take action. So yes, I think that's a very good use of corporate citizenship. Thank you very much.

JUDGES, PROSECUTORS, JURORS AND ORGANIZED LABOR: FOUR
PERSPECTIVES OF CORPORATE CITIZENSHIP

Noel Beasley

Professor Janine P. Geske

Dr. Valerie P. Hans

E. Michael McCann

Frank Daily

Frank J. Daily: Our lead speaker today is Janine Geske who is a former teacher, former judge, former justice of the Wisconsin Supreme Court, and has come full circle and is now back to teaching, and it will be a delight for me to be able to ask Janine some questions because I've always been on the other end of that set-up.

Dr. Valerie Hans is going to be here from the University of Delaware and give a perspective more from the standpoint of somebody that looks in at the profession, looks in at the corporate sector and thinks about topics about what kind of standards do we hold corporations to.

E. Michael McCann needs no introduction. He has been the district attorney here since I think the earth was still cooling, but he has had a long and distinguished career. He has a national reputation. I have the privilege of trying lawsuits in different parts of the country, and when judges and other lawyers even in the deep South or the far West find out that I am from Milwaukee they inevitably say oh yeah, that's where Mike McCann is the D.A. I don't how many of them have had any criminal experience, but Mike is well-known.

Noel Beasley is going to present the perspective of the labor union. Obviously, corporations are comprised of individuals, of people. That's how they operate, and so you have people that are in management, you have people that are in labor, and there are definite views that each of those groups brings to the whole issue of what is expected of corporations and what is expected of employees in situations where they may disagree with a corporate employer. What about the corporation's responsibilities to its employees, and responsibilities of employees