
Foreword: Research handbook on law and ethics in banking and finance

Andrew Bailey

It is a great pleasure to be able to make a small contribution to such an important piece of work. I am grateful to the contributors, not just for their work on this volume but more broadly for the leadership they show in such an important field. Unfortunately, we can say this with so much more certainty and passion having witnessed in the global financial crisis what can go wrong.

As a financial regulator, I am all too aware that we cannot place our faith in, and reliance on, contractual relationships alone. The same goes for statutory law: on its own, it is not enough. There are a number of reasons underpinning this state of affairs. Pure reliance on contracts flowing from statute does not deal well with the unequal distribution of power and influence. We have to recognise that many people in any society are vulnerable. Also, the application of contracts can often be opaque, and can thereby create an imbalance of power and influence, and harm to one or more parties.

So, it is not surprising that from at least the time of Ancient Greece, ethics have stood alongside jurisprudence, and there has been a continuous need to infuse the more abstract concepts of law with ethics. The system conveys both rights and duties, and we have to recognise and pursue the latter in order to uphold the former.

But history tells us that we cannot, and should not, expect the balance of law and ethics, and rights and duties, to remain constant. Over time there have been changes, for better and worse, and we can expect this pattern to go on. Before the financial crisis, there was a loss of anchoring in a broad moral tradition of ethics. It was supported by a re-assessment, and in my view misinterpretation, of history. How otherwise could the Adam Smith of the Theory of Moral Sentiments be so ignored in favour of an interpretation of Smith that did not fit with his work. But such things happen, and recent history would tell us that the area of finance is one of the fields most susceptible to such re-interpretation. The ethics of finance were compromised for a crucial period of time before the crisis.

There will no doubt be arguments of the ‘This Time is Different’ sort, namely that in view of the scale of the crisis we won’t make that mistake again. But the authors are correct not to take that for granted. Maintaining the balance of law and ethics requires that we have an environment and culture which supports open debate and intellectual vitality. This debate has to be constantly invigorated. And, of course, times change, and the context of the debate needs to move on.

There are new forms of ethical challenge always appearing. Let me give a very pertinent example. A colleague recently reminded me that according to the 1982 original version of the film *Blade Runner*, in 2019 synthetic humans are engineered. I think we can be fairly sure that has not happened, but in financial markets we are seeing the rapid growth of the use of artificial intelligence, machine learning and the use of personal data on a much larger scale. When things go wrong – and like any activity they can and do – at the FCA we are not impressed by the type of excuse that goes under the heading of ‘it was the machine that did it’.

Unlike the dystopia of *Blade Runner*, machines, however complicated, are ultimately controlled by humans, and that is where the responsibility and accountability resides. But, of

course, along the way the ethical questions are many and various. Ultimately it is possible for us to outsource tasks, but not responsibility and control.

Let me thank the authors for such a thought-provoking set of contributions. Please read them, and be prepared to re-read them, because as the world around us changes we have to come back repeatedly to law and ethics.