George Washington, Benjamin Franklin, Thomas Jefferson and the other founding fathers of the United States were not inclined to comply with the law unless they had good reasons to do so, and those reasons are not provided by authoritarian declarations but by appeals to sound ethical principles. As we learned from the American Revolution, a demand for compliance without accompanying good reasons for complying creates resentment. I mention this because you need only attend one of my classes or workshops on the ethics of market conduct with insurance agents to see such resentment when the subject of compliance is brought up.

Compliance has its good side. Compliance is necessary when the internal controls or mores that provide for an orderly and just society have lost their effect. When ethical expectations are not met, society calls upon legal remedies, which unlike appeals to morality, can impose sanctions and penalize undesirable behavior in the here and now. However, since laws impose sanctions, they use fear as a motivator: “Obey me or pay the price.” Therefore laws and regulations, although necessary, will be resented for the compliance they require since they restrict liberty and appeal to fear.

As we know all too well, breakdowns in ethical behavior on the part of some members of the insurance and financial services industry required the introduction of legal remedies, the end result of which was the emphasis (some would say overemphasis) on compliance. While the goal of compliance—to establish or reestablish ethical behavior is laudable—the resulting new emphasis on compliance and compliance training leaves a lot to be desired. Let’s see why.

**Compliance Needs Ethics**

Even though the goal of compliance is to help improve ethical behavior, simply concerning ourselves with being in compliance and satisfying the letter of the law will not improve ethical behavior by itself, because being in compliance with the law is not the equivalent of being ethical. To equate following the law with being ethical is a mistaken view.

To illustrate how being ethical demands that we go beyond the law, let’s review one of the great moral stories of western culture, the story of the good Samaritan. A man traveling the road from Jerusalem to Jericho is attacked by robbers and left to die on the side of the road. A priest and Levite pass the man by, and it is only a Samaritan—the supposed enemy of the man—who stops to help him. It is clear that when the priest and the Levite passed by the wounded man, they did nothing illegal; there were no good Samaritan laws 2,000 years ago. But there has been near universal agreement that the priest and Levite were morally irresponsible and that the real moral hero is the
Samaritan, who in spite of his fears and hatred of Jews in the abstract, was led by sympathy for his wounded fellow man. Therefore, although a legal judgment of the priest and Levite would find nothing illegal, a moral judgment would find them morally deficient. I know of no one who thinks the Samaritan acted badly. Yet most people agree that the priest and Levite, who did nothing, acted reprehensibly. This story of the good Samaritan gives us a clear picture of why going beyond the law is morally required. Ethics calls on us to do more than just obey the law.

Clarence Walton, the former chairholder in ethics at The American College posits a Law of Social Motivation, which asserts “...that in advanced industrial affluent and democratic societies, people demand that consideration of the common welfare be borne in mind by large private associations—even when the law is silent on such demands.” In short, neither individuals nor companies meet their full ethical responsibilities when they simply aim to stay in compliance.

Too Much Reliance on Compliance Can Undermine Ethics

Beyond realizing that to be ethical we need to go beyond compliance, it is interesting to note that if companies rely solely on appeals to compliance to promote ethical behavior, they may end up undermining the very ethical behavior they seek to encourage. Let’s see how that happens.

Compliance and the Letter of the Law

Since compliance is targeted at meeting the basic legal requirements, it emphasizes the letter of the law, rather than addressing the reasons for the law, the spirit of the law. But just as an arrow aimed too low will miss the target, aiming only to meet the basic requirements of compliance—to be in accord with the letter of the law—will fail to hit the target of acting ethically—that is, acting in the spirit of the law.

Simply meeting the demands of compliance does not always make it ethically. For example, consider how upset you become when you go to purchase a product on the strength of an ad but find out when you arrive at the store that because you hadn’t read the small print in the ad, you weren’t going to get nearly the bargain you had thought you were. The salesperson can explain that if you had just read the small print, you would have seen that everything was indeed spelled out. That explanation, however, doesn’t stop you from feeling used and deceived. Thus we can see that while the small print in the ad meets the legal requirements and puts the company in compliance, it manipulates the customer and fails to live up to the spirit of the laws against false advertising. The fact that some advertising agencies seem to take pride in seeing how far they can push the envelope and still stay within the letter of the law doesn’t make their behavior ethically laudable. It may make it clever. But thieves can be clever.

The spirit of any law for truth in advertising rests on a moral belief that a prospective customer is just like you and me, has a right to know what he or she is purchasing (informed consent), and should be able to make that choice
freely without being manipulated. Small print violates that spirit. If the small print is there merely so a company can be in compliance, then being in compliance violates the spirit of the law. Thus, by aiming only at being in compliance we might end up being unethical.

There is another more subtle way that an overemphasis on compliance can undermine ethics. By behaving simply to be in compliance, people get into the habit of acting from the wrong motives, such as fear, and habitually acting from the wrong motives can have dire consequences for an ethical climate.

**Acting To Avoid Punishment**

There are two reasons for obeying the law or being ethical: first, because it is the right thing to do, and second, because we do not want to get caught and be punished. We often do things because we wish to avoid penalties and punishment. Fear is a very effective motivating tool. Consider what happens, however, when fear of punishment or avoidance of penalties becomes the only reason for acting. If the sole motive for acting in a particular way in certain circumstances is to avoid punishment, when there are no punishments to avoid in those circumstances, the reason for acting in that way is removed. If your only reason for not lying is that you’re afraid of the consequences of getting caught, what reason do you have to avoid lying if you know you won’t get caught?

Behavior is prohibited by law because it is viewed as undesirable or unethical. It is not undesirable because it is prohibited. Thus lying is wrong and hence prohibited because in lying you use other people for your own purposes. It makes no sense to say that the reason lying is wrong is that you might get caught lying. Of course, as we have seen, when we declare an unethical action illegal and attach a sanction to it, there is an additional motive for not acting that way, but the fear of the sanction is not the primary reason for not acting that way. The primary reason is that the action hurts people or is unfair.

To sum up, then, actions are made illegal because they are unethical. They are not made unethical because they are illegal. Hence excessive or exclusive reliance on compliance to motivate ethical activity puts the cart before the horse, and attempting to modify behavior through fear of sanctions sends the wrong message about why it is unacceptable to treat customers or clients unethically.

**Compliance as a Cause of Resentment**

But why the resentment about compliance? In the insurance industry, the concern for promoting more ethical behavior has been well-meaning. The intention was to strengthen efforts at compliance and to launch a number of training programs in compliance. If we reflect for a moment, however, we realize that action motivated by fear tends to limit rather than expand acceptable behavior; it is reactive rather than proactive. An emphasis on acting to stay in compliance, rather than acting for the sake of creating
benefits for ourselves and others has a constricting effect on behavior. We have already seen that acting exclusively from the perspective of compliance gets us in the habit of looking at things from a what’s-in-it-for-me viewpoint, which when adopted exclusively leads to unethical behavior.

Even more important, acting exclusively out of compliance begins to constrain our outlook and attitudes. Consider why. To be compliant is to be passive. We do not act so much as react. (This, I suspect, is the real reason why agents resent compliance officers. They stifle the agents’ creative behavior.)

Simon De Beauvoir, the French philosopher/psychologist, described resentment as an attitude that builds when persons, who are perfectly capable of acting on their own, are prevented from carrying out activity they know will be good and beneficial. Think of a time when you were engaged in a project with others and you knew how to do something but the person in charge didn’t allow you to do it. Didn’t a part of you wish the project would fail? Then you could have said, “I told you so,” or “I know we should have done it my way.” When people are capable, have a creative imagination, and come up with inventive ways of acting, only to be told that they can’t act that way, they have got to feel resentment and frustration. It follows, then, that when an honest agent who has been behaving in a tested, successful way is told not to act that way, that agent is bound to be angry and to feel that his or her integrity is being challenged.

There is more than one way to do things. Rigid compliance programs that ask for lockstep behavior, that appear to be motivated more by the fear of litigation than concern for the clients’ well-being, will cause significant resentment and resistance.

Compliance As Reactive Rather Than Proactive

There are those who say that sports are a microcosm of life. I think they are correct, at least to the extent that we can learn many lessons about life by observing sports behavior. Assume it’s Sunday afternoon and you are watching your favorite NFL team. It is the last quarter of the game. Your team has just scored to go ahead by two points and kicks off to the opposition. Your team goes into a prevent defense. Most of the time it doesn’t seem to work. Compliance can be like a prevent defense that causes the players to sit back on their heels—to react instead of attack.

Suppose you are playing golf in the club championship. You are two up over your opponent with six holes to go. You begin to play it safe. Instead of a full, easy swing where you let it rip, you try to guide the ball off the tee, and you push the ball off to the right into the trees. You do not get the result you wanted.

It is important to make sure that the compliance mentality that is permeating the insurance industry is not like a prevent defense or conservative golf. What both those instances show us is that acting out of defensiveness or fear is rarely as effective as acting in a more proactive and
positive way. Acting defensively, with only compliance as our guide, is being reactive, not proactive. Proactive people and companies are robust and confident, surging forward and doing things, not afraid to make a mistake. Reactive people and companies are retiring and defensive, moving ever so slowly, preferring to do nothing so as to avoid making a mistake.

A company whose decisions are always constrained by a legalistic, hyper-cautious approach and whose sole concern is the avoidance of trouble is a company that has lost its self-confidence. Not much new and creative will come from that company. The paradox is that if your only goal is to protect yourself, you probably won’t. Rather you will create many other problems. There is something disconcerting about a multibillion dollar corporation that deals with its problems in a dictatorial way when the environment calls for a values based empowerment approach that builds upon integrity and honesty. With such a culture a company can be more aggressive and build flexibility into the system. It will think of what its customers want and gear the company toward meeting those needs, instead of focusing on how to avoid litigation.

**Compliance and Professionalism**

One final concern. Acting out of fear and being governed by fear causes us to be excessively self-absorbed. There is nothing wrong with looking out for our own interests. But it is not clear that extreme risk aversiveness works in the long run for our best interests. To have robust, fulfilled lives we need to be willing to take the initiative, make commitments, set high goals and expectations and set out to achieve them.

What makes a professional insurance agent more than a commodity salesman is the desire to bring value added service to others. That turns the role into more than merely a job; it becomes a professional career. The vast majority of agents are not insensitive individuals with no interest in their clients; they are people who get great satisfaction in helping others solve financial problems. This is why so many of the agents I talk to—successful, honest, ambitious people—resent the compliance restraints. They believe those restraints keep them from doing their best, and they assume that the company’s motives for restraining agents do not give any indication of faith in the agents’ own integrity. It is incumbent upon a company, then, to promote the message that it is committed to an ethical perspective, that the reason for doing something is because it’s the right and ethical thing to do. In that way, compliance may be seen as a necessary tool for the short run, but the long term goal is ethical based empowerment.

It is quite popular these days for companies to stress the procedure side of ethics through compliance. It is important, however, that companies begin soon to look beyond the mere procedures approach and begin building an ethical based culture throughout the organization for the future that will rely less and less upon compliance. Successful companies do not prosper at the expense of customers. They prosper because of the value they bring to their customers. If a company has a soul, the surest way to lose it is to view the customer as someone to exploit rather than as someone to serve.