



**Ethical Resources for Business Decisions:**  
*Beyond the fear of Criminal Liability*

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Lorena Piñeiro U.  
SCCE, Santiago, Chile, August 2019

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## Why are we talking about Ethics & Compliance?



From rule-based programs to  
value-based programs

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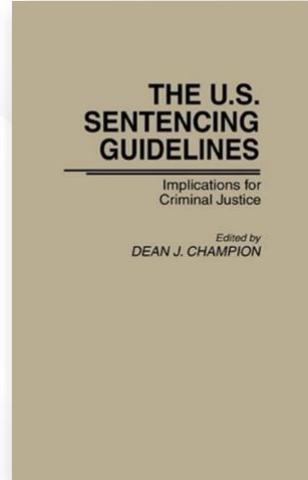
## From rule-based programs to value-based programs

**1994** - Focus on compliance

**2004** - Focus on ethical culture

*...to have an effective Compliance and Ethics Program, an organization should:*

- 1) Exercise due diligence to prevent and detect criminal conduct; and
- 2) **Promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.**"



"A good corporate citizen must first and foremost operate ethically."

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Ethics

Doing the right thing



Compliance

Doing what is legal




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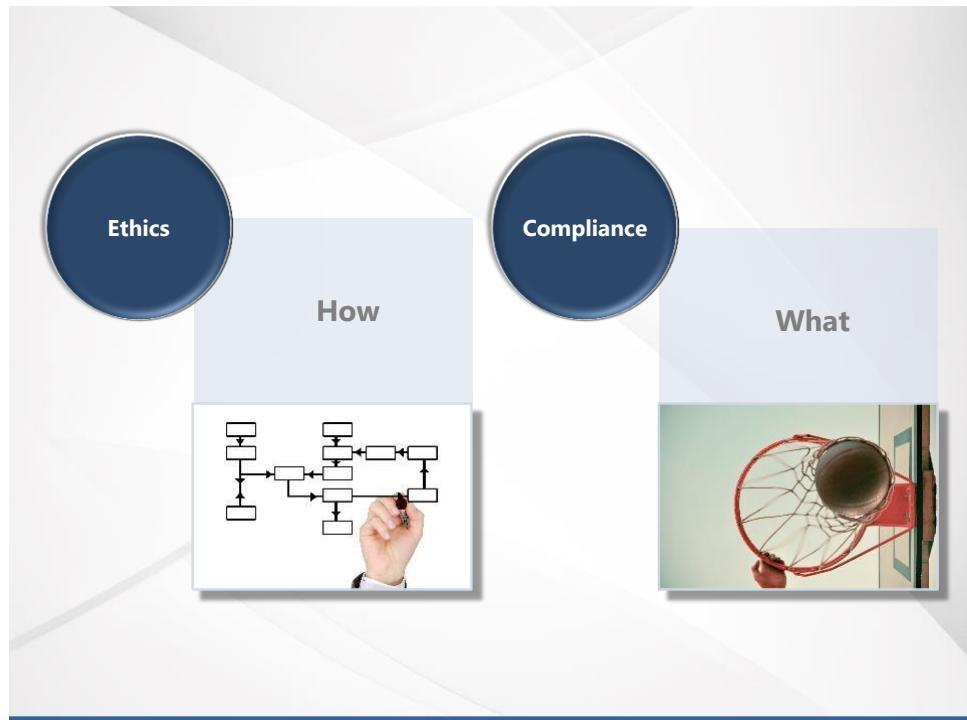
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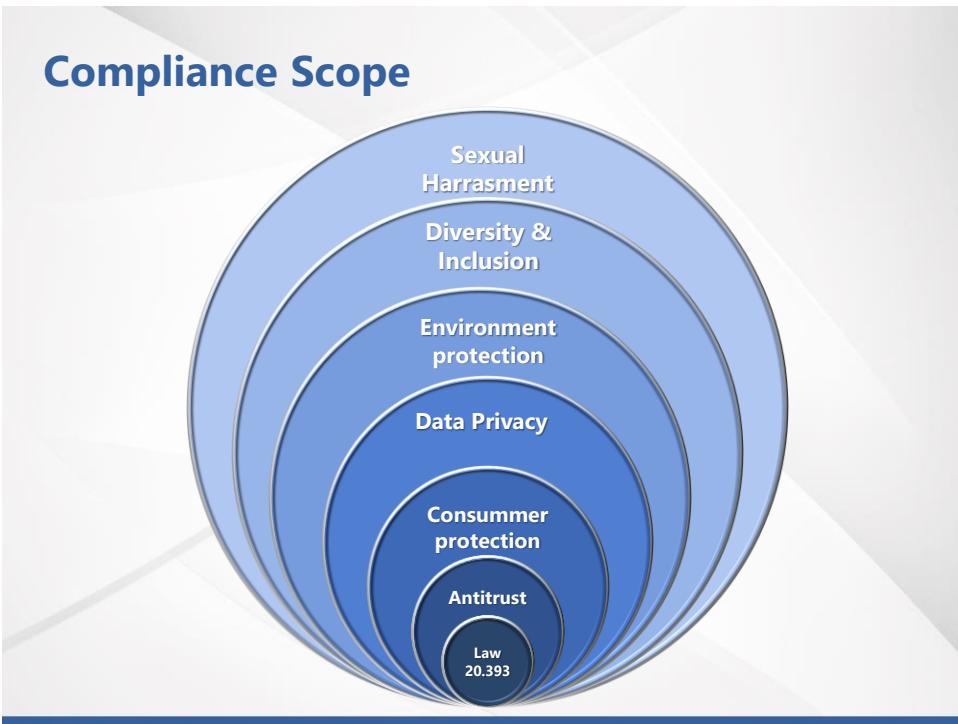
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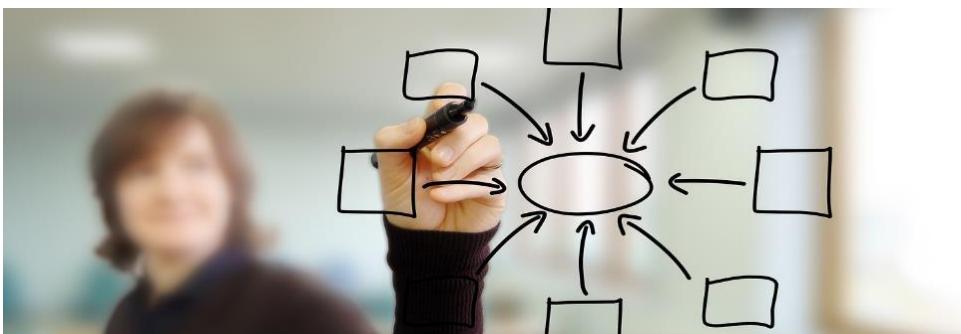
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## Learning from others

- Enron
- Volkswagen
- SQM
- LAN



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- Conflict of interest
- Poor financial reporting
- Pseudo partnerships

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 A slide with a dark blue background. In the center, the words "Code of Conduct" are written in large, white, bold, sans-serif font. To the right of the text, the "ENRON" logo is visible. Below the main title, there is a table of contents and a foreword section.
 

Index	Page
Foreword	2

**Foreword**

As officers and employees of Enron Corp., its subsidiaries, and its affiliated companies, we are responsible for conducting the business affairs of the companies in accordance with all applicable laws and in a moral and honest manner.

and Other Payments Compliance with the Foreign Corrupt Practices Act Compliance with Antitrust Laws Compliance with Environmental Laws Conflicts of Interests, Investments, and Outside Business Interests of Officers and Employees Responsibility for Reporting Compliance; Administration	48 50 51 54 57 60 62
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- Respect
- Integrity
- Communication
- Excellence

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- **Respect:** We treat others as we would like to be treated. We do not tolerate abusive or disrespectful treatment. Ruthlessness, callousness and arrogance do not belong here.
- **Integrity:** We work with customers and prospects openly, honestly and sincerely. When we say we will do something, we will do it; when we say we cannot or we will not do something, then we won't do it.

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## Corporate Culture

- Quick wins
- Individualism
- Bypassing the rule
- Wrong Incentives
- No space to question

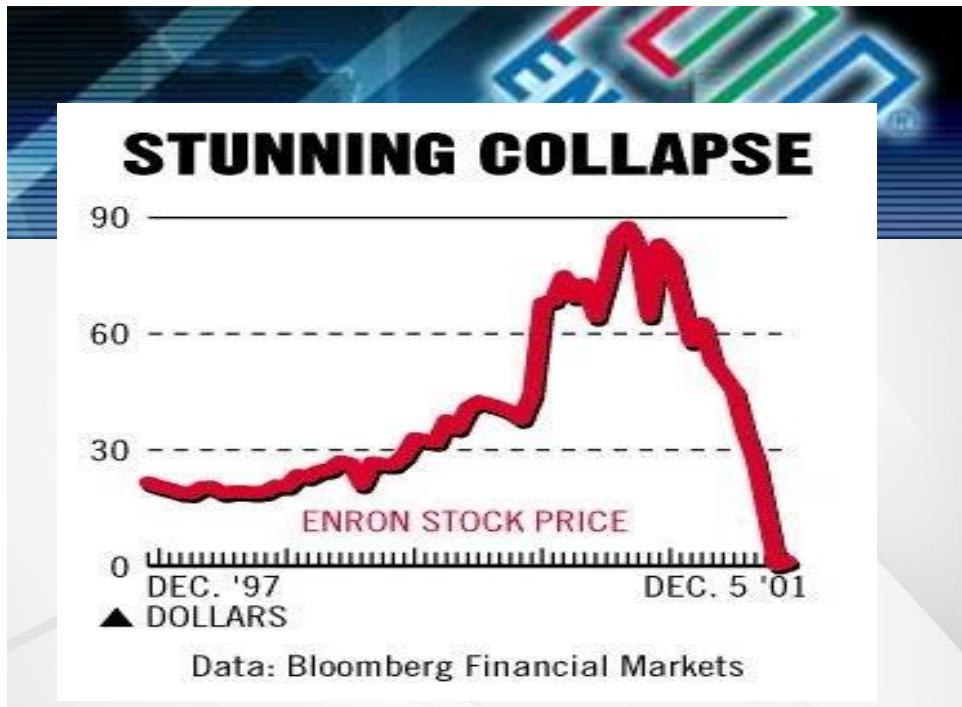
Culture of lying, cheating and stealing

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## Consequences

- Bankruptcy of the Corporation
- *De facto* dissolution of Arthur Andersen
- Losing billions in pensions and stock price
- Various executives in jail

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## Volkswagen case

- Defeat device that showed 35 times less nitrogen oxide emission than real
- 11 million vehicles altered worldwide
- More than 100 executives involved
- USD\$17,5 billions to compensate US consumers
- More than USD\$4 billions fine



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## Volkswagen's Code of conduct

"It is our conviction that sustainable economic success can only be safeguarded by following rules and standards. In our daily business we advocate honorable and honest behavior that complies with the rules."



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## Volkswagen case

"A sustainable supply chain and environmentally compatible transportation solutions form an indispensable part of demonstrating comprehensive responsibility for human rights, as well as commitment to the environment and to the battle against corruption."

Volkswagen Sustainability Report 2014, p. 6



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## VW Corporate Culture

- Focus on the goal instead on the process
- Little tolerance for work teams that failed to meet goals
- Rigid hierarchy and authoritarian leadership unwilling to listen to bad news
- Widespread failures of oversight



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## Stock Price

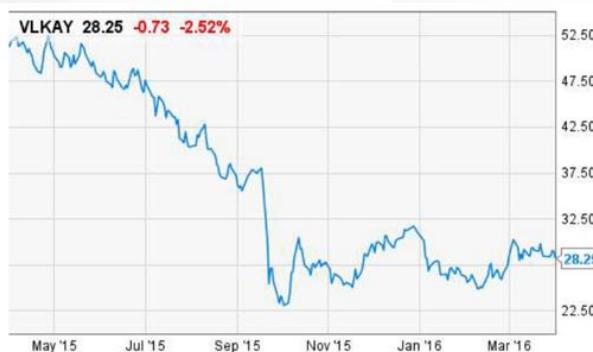


Figure 3.2: Ongoing Drop in Volkswagen Stock Price  
Source: (Gomez, 2016)



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## Two local cases



USD\$22MM



USD\$30MM

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## Learning from others

- Enron
  - Volkswagen
- }
- Culture does matter
- SQM
  - LAN
- }
- We live in a globalized world



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The best example of building a strong culture of integrity after a crisis



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## How high should we set the standards for an efficient Ethics&Compliance program?



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- A photograph of a man in a dark suit, light blue shirt, and dark tie, sitting at a desk and looking thoughtful with his hand near his ear. To his right is a list of questions.
- How much should I spend?
  - How many people should I hire?
  - Is my competitor doing the same?
  - How much is the rest spending?
  - How much is enough just to mitigate corporate responsibility?
  - Will this cost have any revenue?
  - **Have any company been sanctioned?**

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## Some answers:

- No social context for the enactment of Ley 20.393
- No regulation
- No judicial enforcement yet
- No judicial interpretation yet

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## How Corporate Compliance Decisions are made?

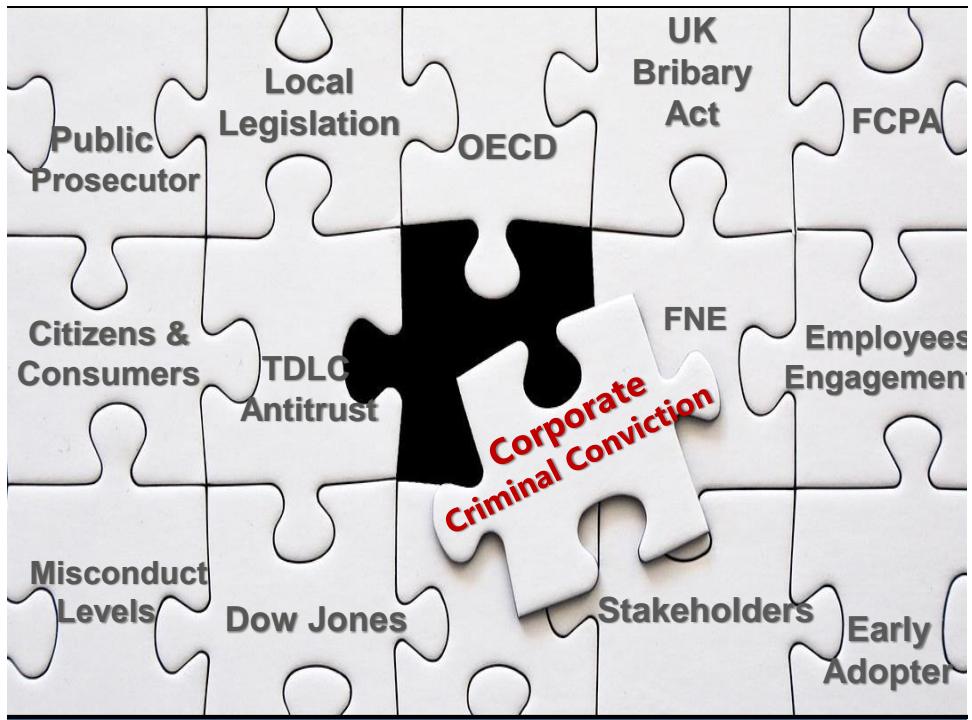
- Cost benefit analysis
- Intuitive analysis
- Cognitive limitations
- Group thinking



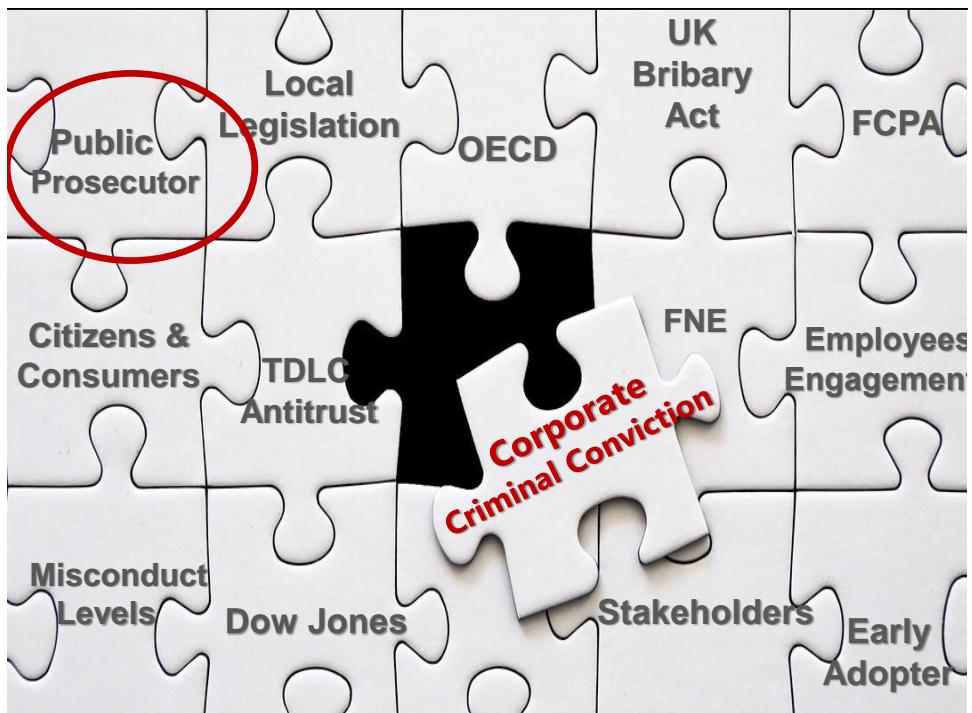
**Corporate compliance is a determination made by industry actors in a particular context.**

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## Public Prosecutor / Ministerio Público

- Guía de Buenas Prácticas de Investigación Responsabilidad Penal de las Personas Jurídicas. Unidad Especializada Anticorrupción (2015)

"La investigación de un modelo de prevención de delitos ....debe orientarse a determinar si el modelo es eficaz y si ha sido efectivamente implementado (no es sólo un modelo de papel, sino que la prevención de los delitos impregna el funcionamiento de la estructura empresarial)"

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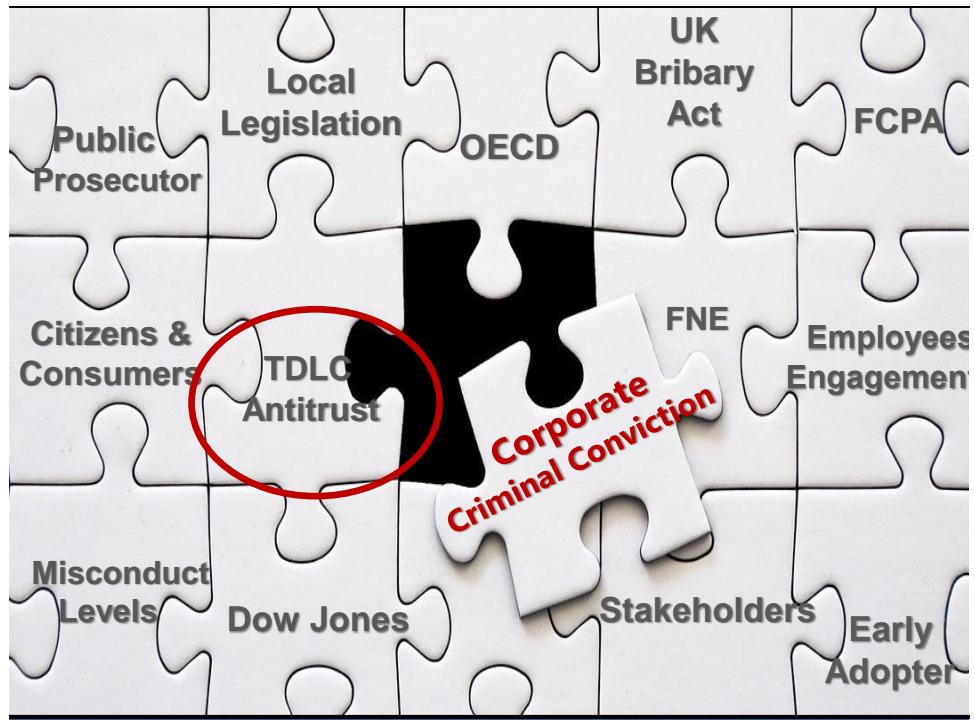
## Public Prosecutor

Huge press coverage to investigations



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## Tribunal de Libre Competencia

### Economía

Viernes 01 marzo de 2019 | Publicado a las 05:30

## **Walmart, Cencosud y SMU deberán pagar millonaria multa por coludirse con el precio de los pollos**

15% reduction of Walmart fine for having an Ethics&Compliance program

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## Sentencia Nº167/2019 del TDLC. Caso Supermercados (2)

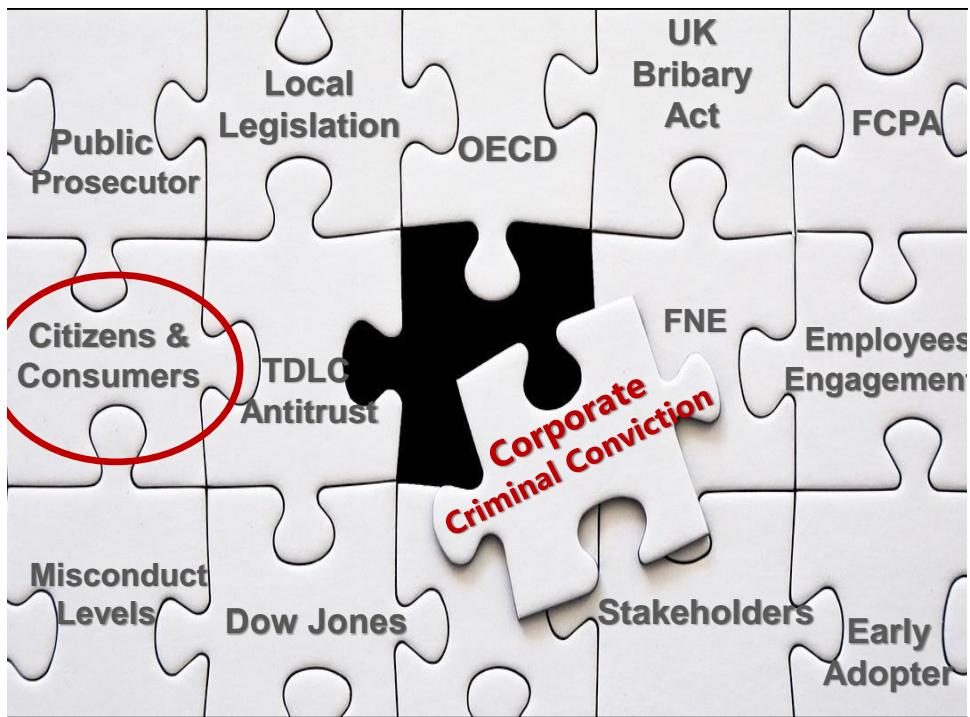
“...los esfuerzos acreditados por Walmart en esta materia no pueden sino ser destacados y promovidos...”

“...Atendida la evidencia presentada para sustentar sus alegaciones en esta materia, no cabe sino reiterar que se trata de un programa serio y riguroso, que responde a altos estándares y que debiera ser continuado y profundizado por la compañía...”

“...Que, como hemos visto, la situación de Walmart es radicalmente diferente a la de las otras dos cadenas requeridas. Dicha firma sí desplegó un esfuerzo particular dirigido a demostrar que diseñó un programa de cumplimiento y ética razonable, que es implementado por la compañía y aplicado si lo requirieran las circunstancias, de modo que, a su juicio, debiera ser calificado como un programa serio, creíble y efectivo. Si bien dicho programa no fue preexistente a los hechos de la causa y poseía importantes falencias a la época de su ocurrencia (por lo que distaba de tener todos los atributos antes mencionados, según indicamos en los considerandos 185 y siguientes), su diseño fue comparativamente muy superior desde un inicio y constituyó de todos modos un avance muy relevante para la compañía, que debe por cierto ser reconocido...”

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## Citizens & Consumers

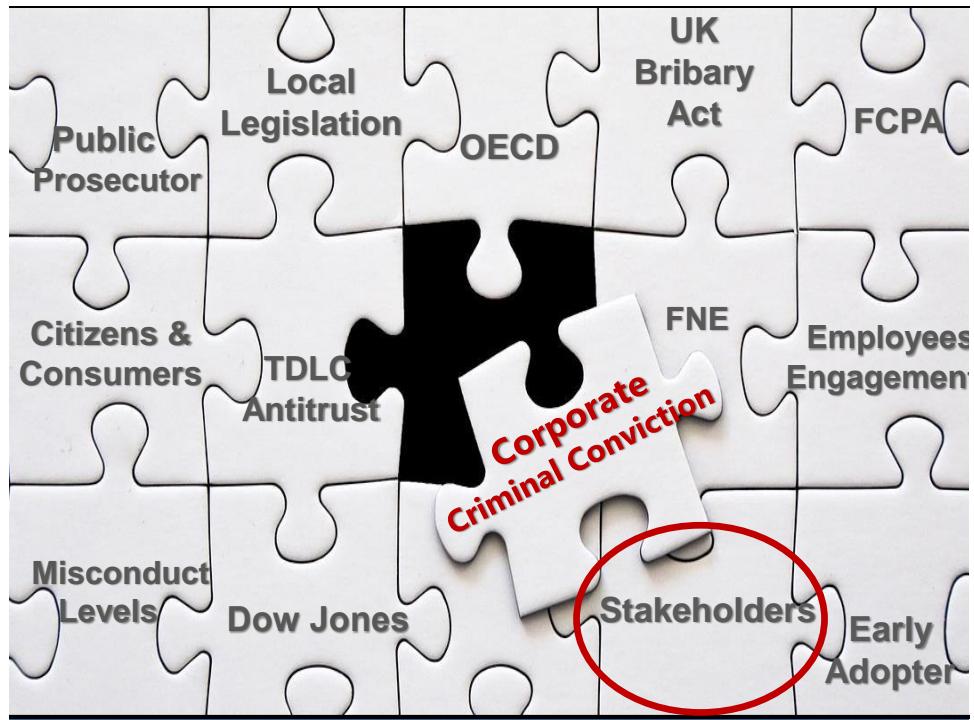
- Empowered
- Hyper connected
- Low level of tolerance



#nocompregasco

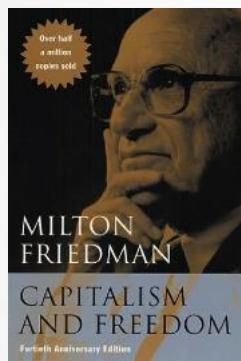
USEMOS EL PODER QUE TENEMOS COMO CONSUMIDOR  
PARA CASTIGAR LOS ABUSOS

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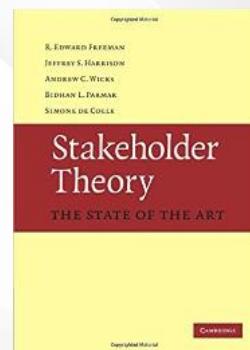
## Economic theories



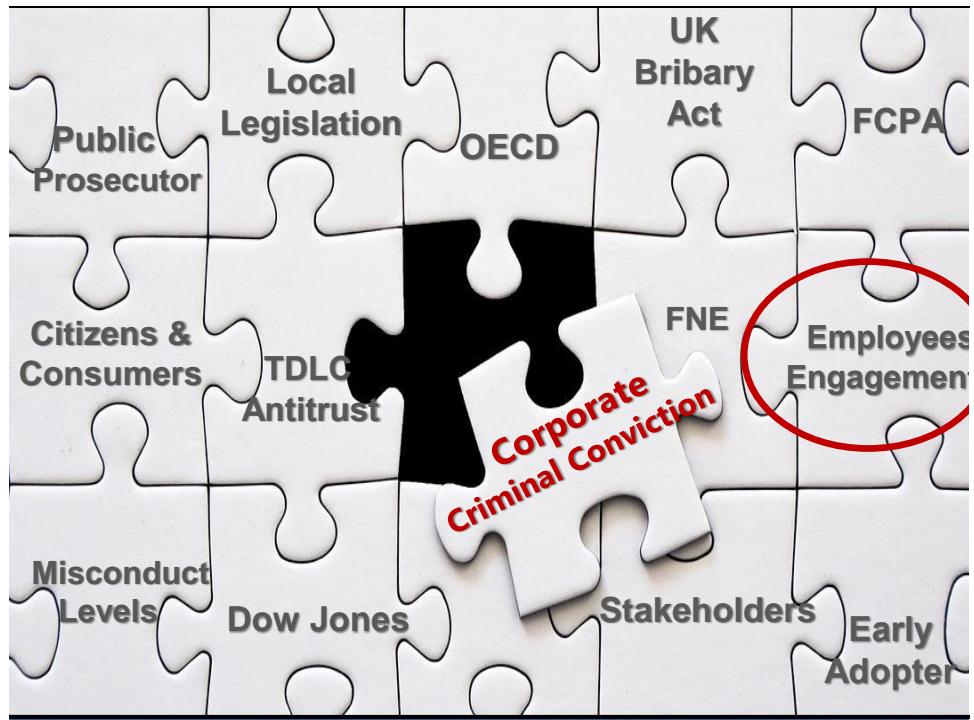
From Shareholders Theory  
(Milton Friedman)



To Stakeholders Theory  
(Edward Freeman)



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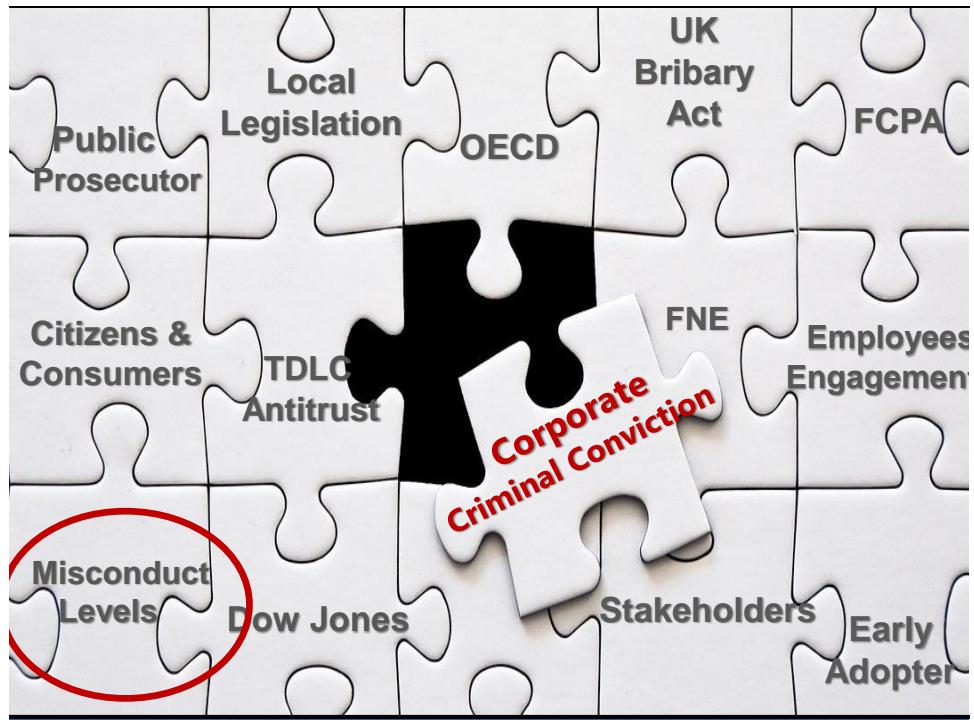


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## › Employees Engagement

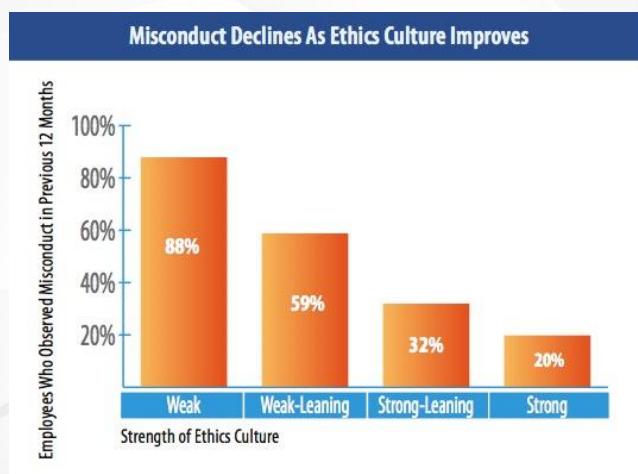
- Higher Productivity
- Lower level of rotation
- More awareness of misconducts
- More willing to report

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## › Level of misconducts



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## How high should we set the standards for an efficient Ethics&Compliance program?

- As high as we can defend our current decisions / behaviour in five more years



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## What's the Challenge of an effective E&C program?

To build a solid  
Culture of Integrity



Leadership is key



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## Ethical leadership

- Tone at the top
  - Narrative
  - Role model



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## Ethical leadership

- Consistency on the:
  - Application of the Code of Conduct
    - Always
    - To everyone
    - To all matters
  - Allocation of resources
  - Incentives



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## Doing the right thing, when nobody is looking... or when everyone is!

### **Carabinero que detuvo a Arturo Vidal: "Sólo cumplí con mi deber"**

El sargento segundo Osvaldo Pezoa tuvo que enfrentar la actitud violenta del futbolista que el martes chocó conduciendo ebrio.

"Y cagaste a todo Chile nomás", le dicen ahora, bromeando, sus compañeros.

FOTO: UNO



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**Thanks**

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