

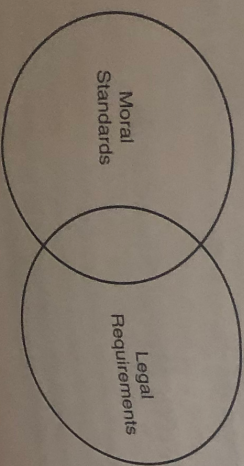
our society. If we can, then we have the standards to guide managerial decisions and actions even though these standards may be at a minimal level. If we cannot accept the set of rules as representing the collective moral judgment of our society, then we will have to look elsewhere for our standards. In considering the possible relationship between moral judgments and legal requirements, there would seem to be three conclusions that can be reached fairly quickly:

1. *Considerable overlap.* The published requirements of the law overlap to a considerable extent but do not duplicate exactly the probable moral standards of society. Clearly, a person who violates the federal law against bank robbery also violates the moral standard against theft. And it is easy to show that the laws governing sexual conduct, narcotics usage, product liability, and contract adherence are similar to the moral beliefs that are probably held by a majority of people in our society. I think that we can fairly readily agree that in a democratic society, the legal requirements do reflect many of the basic values of the citizens and that there is a considerable area of overlap between the law and morality, as shown in Figure 3.2.

But the area of overlap is not complete. There are some laws that are morally inert, with no ethical content whatever. The requirement that we drive on the right-hand side of the road, for example, is neither inherently right nor inherently wrong; it is just essential that we all agree on which side we are going to drive. There are also some laws that are morally repugnant. Until the early 1960s, some areas of the United States legally required racial discrimination (segregated education, housing, and travel accommodations), and even slavery was legally condoned just 100 years earlier. Finally, there are some moral standards that have no legal standing whatever. We all object to lying, but truthfulness is not required by law except in a court, under oath, and in a few other specific instances such as accounting records and financial contracts.

People who believe in the rule of law and accept legal regulations as the best means of governing human conduct within society would respond by saying that it is not at all clear that racial segregation was deployed by a majority of the population prior to 1962, or even that slavery was considered unconscionable before 1862. In a much lighter vein, concerning lying, they might even claim that most people have become accustomed to, and perhaps are somewhat amused by, a reasonable lack of truthfulness in advertising messages and political discourse. Moral standards, they

FIGURE 3.2 Overlap between Moral Standards and Legal Requirements



would say, are difficult to determine, and we must be careful not to infer that our standards represent those held by a majority of the population.

2. *Negative injunctions.* The requirements of the law tend to be negative, while the standards of morality more often are positive. In the law, we are forbidden to assault, rob, or defame each other, but we are not required to help people, even in extreme situations. There is no law, for example, that we must go to the aid of a drowning child. Here, we do have a situation where the moral standards of the majority can be inferred, for doubtless 99.9 percent of the adult population within the United States would go to the aid of a drowning child, to the limit of their ability. People who support the rule of law, however, would say that this instance does not indicate a lack of relationship between moral standards and legal requirements; it only indicates the difficulty of translating one into the other when a positive, compassionate, or charitable act is needed. How, they would question, can you define—in consistent and universal terms—what is meant by assistance, the characteristics of the person who is to provide that assistance, and the circumstances under which it will be required? This, they would conclude, is just another illustration that the law represents the minimum set of standards to govern behavior in society and that actions beyond that minimum have to come from individual initiative, not legal force.

3. *Lengthy delays.* The requirements of the law tend to lag behind the apparent moral standards of society. Slavery, of course, is the most odious example, but sexual and racial discrimination, environmental pollution, and foreign bribery can all be cited as moral problems that were belatedly addressed by legislation. Advocates of the rule of law would say, however, that the evidence of a delay between apparent moral consensus and enacted legal duty does not necessarily indicate a lack of relationship between legal requirements and moral standards. It only serves to confirm that relationship, they would claim, for laws controlling discrimination, pollution, and bribery were eventually passed.

None of these arguments—that legal requirements are not fully consistent (overlap rather than duplicate) with moral standards, or that the legal requirements appear in different forms (negative rather than positive) and at different times (sequential rather than concurrent) than moral standards—seems truly decisive. None of these arguments really helps to determine whether a given legal requirement does indeed represent a collective moral judgment by members of a specific society and consequently can serve as a means to analyze the managerial decisions and actions of a company within that society. We can easily say that the law does not represent *our* moral judgment in a given situation, but how can we say that the law in that instance does not represent the moral judgment of a majority of our peers? For that, I think, we have to follow through the process by which our society has developed the law as a universal and consistent set of rules to govern human conduct.

The Process for the Formulation of the Law

Law is obviously a dynamic entity, because the rules change over time. Think of the changes that have occurred in the laws governing employment, for example, or pollution. This is essentially the same point that was made previously: that there seems