



Ethics and Business

An Introduction
Second Edition

Kevin Gibson

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Ethics and Business

Second Edition

This updated introduction to business ethics offers a clear and accessible framework for understanding the important and complex ethical issues facing business in the contemporary world. Kevin Gibson explains ethical concepts in plain language, showing how terms such as responsibility, autonomy, justice, equality, rights, and beneficence are central to the ways in which business is and should be conducted. He provides numerous examples and discusses cases including VW, Wells Fargo, the Boeing 737 Max, and the exploitation of rare earth minerals, and he pays special attention to recent and emerging issues such as the gig economy, internet commerce, racial and gender justice, and concerns about the impact of business on global climate change. His lively and comprehensive book will give readers the tools to identify and understand a range of problematic ethical issues that affect us all.

Kevin Gibson is Professor Emeritus of Philosophy and Business Administration at Marquette University. He is the author of *Business Ethics: People, Profit and the Planet* (2005) and *An Introduction to Ethics*, (2012), and co-author of *Sustaining Living Cultures* (2012).

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With love to Elizabeth, Anna, and Alex

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Preface

Much has altered in the world since the first edition of *Ethics and Business: An Introduction* was published in 2007. Companies such as Amazon and Facebook, which are in essence marketing companies, were barely on the scene but are now hugely powerful, and handheld smart phones have become omnipresent. The world has encountered a pandemic which has encouraged remote and flexible working. The “gig” economy – where individuals see themselves as independent consultants doing discrete projects rather than being tethered down to a traditional corporation – has mushroomed. Issues of diversity and inclusion have rightly come to the fore. In response, many of the cases and examples have been updated, to include vaping, EpiPens, genetic use restriction technology (GURT) and genetically modified organism (GMO) applications, the VW scandal, Boeing’s 737 MAX, Wells Fargo’s unethical sales, diversity issues at Starbucks, and concerns about rare earth minerals, among others. Recent philosophical work on intersectionality and standpoint theory is now integrated into the text. An expanded section reviews the concept of justice not only from the viewpoint of classical theory but also its application to women and people of color. Nevertheless, the fundamentals of business ethics remain: questions of how to deal with one another and the environment when faced with the internal logic of capitalism; the thorny issues of how to be fair and just when businesses have a mandate to serve their stakeholders while at the same time needing to survive, grow, and make a profit.

This new edition of *Ethics and Business: An Introduction* is an accessible yet philosophically rigorous book that gives readers the conceptual apparatus necessary to deal with the range of topics that they are likely to encounter. It

is aimed at undergraduate students and students new to philosophical language.

It reframes the way issues in business ethics are presented in order to give students a more unified, consistent, and conceptually elegant introduction to the field. There are numerous references to contemporary cases and real-life examples, and each chapter comes with a case and discussion points at the end. The cases are designed as a springboard for further thinking, and hence are relatively short and open-ended as the issues continually evolve and should be further researched.

Although it is explicitly philosophical, I believe this book will be appropriate for readers without any prior training in the discipline – for example, graduate or undergraduate business students. Philosophy should never be intimidating – and, in fact, most people engage in it naturally and unself-consciously without realizing what they are doing. So while some of the discussions occasionally involve technical language, as they would in any discipline, the substance is easily within the grasp of students and business professionals.

There are two major features that set this book apart. First, the conceptual framework deliberately sets up a way of approaching issues built on basic moral principles. We cannot hope to cover every possible topic in the field, but if we can develop a clear way of approaching *any* topic then we will have accomplished a lot. The conceptual scheme is not exclusive or exhaustive, of course – for example, we could examine employee privacy from several perspectives. Setting up an analytical framework goes a long way to bridging the awkward gap between theory and practice and provides introductory students with proper tools to get a good intellectual grasp of complex issues. Once we map it out, though, students can apply principles consistently across different topics and consequently construct reasons for a course of action from a reasoned argument rather than from awkwardly articulated intuitions.

Second, by situating business in the capitalist system we give a context for many of the forces that shape the way companies behave and provide a backdrop to further analysis. My experience is that it is always worth laying out the fundamental framework within which the business world functions before moving ahead with discussions about individual or

organizational morality. Clearly, in a profit-driven system there will usually be a paramount need for businesses to survive, grow, and make profits. At the same time, however, they are chartered by the public and thus instituted for the common good, and the pull to serve both investors and society is one of the foundational ethical tensions facing companies.

In the words of one executive, the next billion computers are not going to be sold in the West. If a company is going to thrive in the global economy, it must turn to thinking more broadly and in the longer term. Executives are coming to realize that they have a vested interest in developing and sustaining markets over time, that is, businesses ought not to be looking only at immediate returns, but at the communities that will become their consumers and the products lines that they can sustain for the foreseeable future. From this perspective, it is imperative that companies carefully reexamine what the overall business climate will be in an international market and the nature of their interactions with all their stakeholders. Put bluntly, a simplistic notion of businesses operating by the ethics of a predatory jungle no longer applies, and companies will be forced to adopt a fresh approach to deal with changing conditions.

In Chapter 1 we look at the problem of ethical relativism, the notion that what is acceptable moral behavior is dependent on circumstances of time and place, or on each individual decision-maker. This is an important discussion for several reasons. First, if we are unable to defeat relativism in some way, then the whole ethical enterprise will falter, since it will have no leverage to criticize the behavior of others and ethics will become a question of personal preference. Moreover, in the current global economy, the issue of varying standards across cultural boundaries has become immediate and pressing. For example, should businesses be allowed to use lower standards of worker rights (child labor, few safety measures) in overseas factories than in local factories, even though they may represent an improvement over previous standards?

This is not to say, of course, that there should be a single absolute standard for everything, a procrustean bed where the occupant is stretched or severed to fit. Rather, it demands we work out what values should be regarded as universal and the conditions that let us treat others unequally, questions which naturally lead into an overview of ethical theory.

The heart of the book examines business using the language of responsibility, rights, autonomy, justice, and beneficence. The term responsibility is ambiguous and Chapter 4 clarifies its meanings, which will help discussions varying from corporate social responsibility to notions of fault. Chapter 5, on autonomy, closely examines the foundational notion in capitalism that the consumer is sovereign and individual free choice is a paramount good. This is also an appropriate place to discuss advertising, which, if effective, sways us to buy things we otherwise might not.

Justice has many facets, and after looking at traditional approaches (Chapter 6) we apply the concept to the urgent contemporary issues of diversity and inclusion. Next, we consider rights claims (Chapter 7), which are often thought to override other considerations. We also look at recent claims that humans are not the only ones entitled to rights – perhaps animals and the environment should also be part of the discussion. Chapter 8, on beneficence, asks what moral duties companies have to society at large. The concept appears in a lot of contemporary literature under the banner of *corporate social responsibility* or *Environmental, Social and Governance reporting*, and here we expand the analysis to discuss the general relationship between business and the community at large. The basic tenets of capitalism appear to promote doing only as much as the law requires on behalf of workers, consumers, or the community at large. Some people have suggested that the greater power and influence of big corporations means they have correspondingly greater duties to act for the common good. This claim gets tested, though, when we consider whether they should interfere with sovereign states, even ones where the company could bring significant social benefits.

Chapter 9 deals with the relationship between business and the planet. It is becoming increasingly apparent that unless we act properly to preserve and sustain the biosphere the future for our descendants will be very bleak. This is especially pressing since one of the pressures in capitalism is constant growth, which effectively means the consumption of finite resources. There is some movement toward including corporate impact on the environment and climate change as a factor in annual reports (so-called triple bottom line accounting) and also highlighting ecological stewardship in corporate mission statements. Still, globalization presumes that the market

is an adequate mechanism for valuing the environment, which may not always be the case, especially if we are dealing with aesthetic, historical, cultural, or religious values. While the book draws mainly on American and English-speaking sources, I believe that the global reach of business means that the issues involved are both international and timely.

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1 An Overview of Business Ethics

The Bhopal Disaster

While most of the population slept during the night of December 3, 1984, a toxic cloud of over forty tons of methyl isocyanate (MIC) gas escaped from a Union Carbide (UCC) plant in Bhopal, India.¹ Heavier than air, the lethal gas blanketed slums surrounding the facility and spread over the city of 800,000 people. At least 3,000 died immediately although accurate numbers are hard to come by. It is estimated that up to 20,000 people may have died prematurely and 500,000 were injured. The mortality rate for those exposed to the gas was almost a third higher than those who were not exposed, and they are twice as likely to die of cancers and three times more susceptible to kidney disease. According to medical reports, current residents exhibit compromised immune systems, growth retardation, and miscarriage rates seven times the national average. Children have unusually high rates of muscular dystrophy, autism, and learning difficulties, among other conditions. Infant mortality is twice the national average.² “It would be better if there was another gas leak which would put us out of our misery,” said a resident. “Just let it end. This is not life, this is not death, we are in the terrible place in between.”³ The chemical plant, long defunct, has polluted

¹ A. Madavilli (2018). “The World’s Worst Industrial Disaster Is Still Unfolding.” *Atlantic*, July 10, <https://bit.ly/3JHAKnd>; R. Ramesh (2004). “Bhopal Still Suffering, 20 Years On.” *Guardian*, November 29, www.theguardian.com/world/2004/nov/29/india.randeepramesh; C. Sharma (2005). “Bhopal: 20 Years On.” *Lancet*, 365, p. 111.

² K. Fortun (2001). *Advocacy After Bhopal: Environmentalism, Disaster, New Global Orders*. Chicago, IL: University of Chicago Press.

³ H. Ellis-Petersen (2019). “Bhopal’s Tragedy Has Not Stopped.” *Guardian*, December 8, <https://bit.ly/3A3OqvY>.

the local aquifers with carcinogens and exposed open puddles of toxic waste. Local municipal workers tend to the area without any protective gear. Meanwhile, both UCC and the Indian government deny any culpability or obligation to remediate the effects of the disaster.

A decade before the disaster, India had actively solicited investment by foreign companies and formed a joint venture with UCC to build a plant producing Sevin, a common pesticide. However, by the early 1980s the Bhopal facility was operating at one-quarter of its capacity due to poor harvests, a reduction in the capital available to farmers, and lack of demand. In 1982, a visiting UCC team declared the factory unsafe. By July 1984 the plant was for sale and UCC was planning to dismantle some components for shipment elsewhere. However, despite cutbacks and warnings the plant continued to operate.

After the event, UCC maintained that the spill was due to deliberate sabotage by a disgruntled employee. Whether or not that is correct, other independent investigations have pointed to poor maintenance and lax safety controls leading to water mixing with the volatile MIC after several fail-safe mechanisms failed to operate, and found that the health and safety standards were well below those of its sister plant in West Virginia.

In 1989, the government of India negotiated a deal with UCC on behalf of the victims, restricting lawsuits to Indian courts. The company paid \$470 million in compensation and accepted moral responsibility with an average settlement to the bereaved of about \$2,200.⁴ In return, all pending legal action against the company was dropped. Nevertheless, the regional courts charged CEO Warren Anderson personally with manslaughter, and, when he failed to appear, seized UCC's Indian assets, including the now defunct and polluted plant. The company insisted that all claims arising from the gas release were discharged by the settlement and denied any enduring responsibility, maintaining that the regional government had now taken control of the situation. The central Indian government considers cleanup efforts to be a local responsibility, but the state of Madhya Pradesh has not been active in doing so, saying only the federal government

⁴ E. Broughton (2005). "The Bhopal Disaster and Its Aftermath: A Review." *Environmental Health*, 4(6), <https://doi.org/10.1186/1476-069X-4-6>.

has the required resources. In 2006, local activists walked 500 miles to the capital Delhi to demand action, apparently without much response from the government. In 2010, the Indian government submitted a petition to Dow Chemical, the successor company to UCC, to improve the earlier inadequate compensation. Documents from the organization WikiLeaks indicate that when the Indian government sought to renegotiate the settlement they met resistance from American authorities who did not want to chill American investment in the country.⁵ As Dow's website comments, "Although Dow never owned or operated the plant and was not connected to the event . . . we learned from the tragedy and do all we can to ensure that similar accidents never happen again."⁶ The tragedy no longer appears on the municipal corporation's website.

In recent years, India's economy has grown steadily at about 7 percent a year, outpacing many more developed countries. This is in part spurred by World Trade Organization rulings since 2000 that encourage foreign investment. Some commentators link the rapid growth and industrialization with poor environmental practices, dumping of pollutants, and risks to public health.

The Philosophical Contribution

The Bhopal case typifies the complexity, mixed motives, and potential for benefit or harm characteristic of contemporary business activity. Merely reciting the facts or reviewing the legal decisions will fail to tell us what values have been determined to have priority and how we might approach difficult issues in the future. Because of this complexity, it is critical to start by stepping back and trying to work out a normative response, that is, what we *should* do. In this way, philosophical inquiry is vital to any considered discussion since it can help us understand the nature of business and arrive at moral judgments.

⁵ J. Raymond (2010). "Obama Told to 'Change Stance' and Stop Protecting Dow Chemical from Bhopal Liability." *Storm Clouds Rising*, December 3, https://wikileaks.org/gifiles/attach/33/33718_Blog%2001-06-11%20Freechild%20interview.pdf.

⁶ <https://corporate.dow.com/en-us/about/legal/issues/bhopal.html>.

Philosophy – literally, the love of wisdom – is hard to pin down as an academic activity. It embraces fundamental and abstract questions about human nature and our relationships, the existence of God, the meaning of language, and how we establish and implement our values. However, at the most basic level, philosophy has two primary functions:

- the examination of concepts
- the study of arguments.

At first glance, these may not seem to be highly important activities, and yet they underlie all human behavior. We literally shape our lives by the way we organize our world – by the way we create the conceptual framework we use to make sense of things and by the values we consequently embrace. For example, many people throughout the ages have laid down their lives for the sake of glory or liberty or have demanded rights of independence and sovereignty, and yet we rarely step back to examine exactly what these words signify. Thus, it is worthwhile to begin by examining these very basic concepts and how they apply to our lives.

This is especially true when we apply these concepts to business and the workplace. Most of the Western world operates under a capitalist economic system based on fundamental assumptions – assumptions that are often taken for granted, say, about the benefits of economic growth, what constitutes a fair return on investment, or who should be responsible for harms that result from faulty products. The consequences of these assumptions are momentous for our quality of life. Furthermore, many of us will spend the majority of our adult lives in a work setting, usually employed by an institution or someone else, and we will inevitably be affected by baseline moral assumptions about, for example, justice and fairness in such areas as working conditions, terms of employment, privacy, assumption of risk, and concerns about health and safety.

In the Bhopal case, the Indian government had made value-laden decisions about the desirability of foreign investment and UCC was looking to realize a profit for its shareholders. The company's actions reveal certain assumptions about safety and the environment, at least in the Indian context, because UCC appears to have applied less stringent safety standards there than at their American plants. Before rushing to judgment on

governments, corporations, and the consumer, it will be valuable at the outset to seriously examine the conceptual foundations underlying business and how they are put into practice.

The second major task of philosophers is to look at arguments. As viewed by philosophers, arguments are a linked series of statements that force a conclusion. They can go wrong in a couple of important ways: Either the statements themselves may be faulty or the links may not connect as claimed. Analysis of this kind is critical because we often decide what to do based on a set of claims and what they purportedly conclude. So, for example, Dow Chemical claims that UCC and its successors completely fulfilled their obligations to victims because the Indian government approved the legal settlement. A philosopher might examine whether paying a fine does, in fact, discharge one's duties of reparation. In another common practice, a business may lay off workers without notice because it believes employees who know they will soon be out of a job will slack off and lower the morale of the firm. A philosophical approach would be to question those empirical claims and ask whether they will in fact cause the result management suspects.

We may be misled by clever rhetoric or invalid arguments and one of the philosopher's tasks is to sort out sound reasoning about any particular claim. In the case of the business laying off workers without giving notice, the employer is making a causal claim about human behavior and comes to a conclusion primarily based on the purported effect on company efficiency. That is, a worker who begins to slack off may lower profitability, and profitability is the thing that matters most. But if we analyze the employer's argument closely we may see that the claim is not as obvious or compelling as it initially seems. For instance, we could empirically examine the premise that knowledge of the impending layoff will hurt productivity, or we might accept this premise yet still disagree with the employer's conclusion that it is right to keep employees in the dark. Perhaps there are moral reasons to treat people decently that are independent of the bottom line. If layoffs are imminent, perhaps it might be appropriate to give employees some time to adjust and make plans rather than making it a surprise and escorting them to the door on a Friday afternoon. In short, we need to look carefully at both the assumptions that are at work in

an argument and at the way these assumptions are linked to arrive at a conclusion.

One way to critically assess an argument is to look for counterexamples that refute the claims being made. If it turns out that there are a number of cases where businesses have given notice of impending layoffs and found that employees still worked diligently, it would speak against the assumptions implicit in the claim that the best way to deal with layoffs is not to give notice. Similarly, we might contrast the Bhopal case with one where a company has undertaken to do whatever is necessary to remedy harms that its actions initiated, whether or not there have been intervening independent causes.

Another method of assessment is to discern the principles at work and see if they apply in other settings. For example, take the claim that a firm is responsible for any and all consequences arising from the use of its products. While this might be appropriate in, say, the case of damage resulting from exposure to toxic chemicals, the principle may not hold quite as well in cases such as obesity resulting from habitual consumption of fast food. Philosophers find it useful to examine the differences between cases and their underlying principles to determine the significant distinction – such as the acceptance of risk by the individual consumer – and then determine if the distinction has value in other contexts as well.

In this way, philosophy fundamentally differs from disciplines such as economics or sociology. In these disciplines, scholars study how people actually behave and produce *descriptive* reports. An economist might examine the nature of economic growth in central India and balance the wealth created against the costs incurred. However, this is a neutral endeavor until policymakers make the further value-laden claim that, for example, growth *ought* to be permitted as long as the benefits outweigh the costs. Similarly, it may turn out that a quarter of all students in MBA programs admit cheating at some point in their academic career. Importantly, this finding tells us nothing about what the students *should* do. The very fact that many students cheat is instructive, yet we must recognize the gap between a factual statement – one that can be verified – and the value claim that cheating is wrong. Economists and sociologists report behavior but do not suggest that it is right or wrong. If we read a news report telling us that there were 65 million

attempts by employees to extract source code from their corporate network in 2021, we have purely descriptive information.⁷ The report does not automatically carry the ethical implication that downloading and removing code is wrong and should stop. Disciplines such as economics are explicitly nonnormative in that they make certain presumptions about human behavior – such as the desire to increase personal welfare – but do not take moral positions about them or their consequences. To bridge the so-called fact/value divide between what there is and what there should be, we need to adopt a prescriptive moral framework – one that informs us how we ought to behave.

It is worth distinguishing philosophical ethics from religion. The two do not compete, in that both ask about what it is to have a good life and how we should behave. Both are teleological, meaning that they look to an end or purpose for what we do. A religious person will take certain beliefs as foundational and then derive how to act accordingly or they may be influenced by understanding that there is a supernatural being watching and they may subsequently be judged. Humanists, those who don't believe in a deity, may also share many bedrock assumptions, for instance, that we should be respectful of others, look after children and the elderly, and be good stewards of the earth. What sets philosophy apart is that it engages in assessment of our assumptions and arguments, relying on the value of critical analysis.

Philosophy consists of subdisciplines. Broadly speaking, *ethics* is the branch of philosophy dealing with issues of morality. Morality includes notions of good and bad, justice, fairness, right and wrong, and the way we develop and apply our values. *Metaethics* is concerned with the various theories that promote ideas of what constitutes the good. Another area, *normative ethics*, applies standards or norms and reaches conclusions about what we ought to do. Business ethics is the area within normative ethics that is concerned with the special moral issues and concerns arising in the context of business activities. These issues may be expansive, such as whether there should be any restraint on economic globalization, or

⁷ H. Murphy (2021). "Workers Increasingly Steal Company Data during 'Turnover Tsunami'." *Financial Times*, August 12, www.ft.com/content/a7a2b5c4-1653-4364-84c1-c322c5b56745.

specific, such as how a firm should deal with a dangerous plant, a defective product, or an injured worker.

Two Meanings of Business Ethics

The term *business ethics* is ambiguous. It has at least two different meanings, each with significantly different implications depending on its use. The first meaning of business ethics is to set out rules of acceptable behavior or specific practices in a limited domain. In sports or competitive games, players know what behavior is acceptable. It may be fair to bluff or lie to win in poker but wrong to mark the cards or use a confederate. This sense of the term is sometimes used to describe, say, the ethics of a criminal gang, where shooting rivals is acceptable but ratting out someone to the police is not. When we use the term *ethics* like this to delineate a set of activities within a certain domain, it need not refer to concepts of decency or morality.

This use of the term *business ethics* typically appeals to people who have a strong sense of role morality, where individuals take on the behavior of the office they hold rather than relying on their personal judgment. By this way of thinking, it would be appropriate for a professional to ask a client whether they should respond to a question as a friend or as an accountant, with the idea that different standards apply depending on the function that a person undertakes. When managers reporting to NASA were deliberating whether to ask for a postponement before what turned out to be a fateful launch of the space shuttle Challenger, the chair of the meeting literally said, "Take off your engineering hat and put on your management hat."⁸ The hats symbolize the various roles people take on in different situations.

Therefore, if the overall rule of business is just to maximize profit, businesspeople would be allowed to act as if business were an amoral game where success is measured solely in financial terms. Part of this game, like not hiding cards up your sleeve in poker, is minimal compliance with the law; beyond that, any artifice or brinksmanship that brings in more profit is not only appropriate but encouraged. Often those who hold

⁸ D. Vaughan (1996). *The Challenger Launch Decision*. Chicago, IL: University of Chicago Press.

this point of view will make claims to the effect that they have done nothing illegal, or they have paid the required penalty and therefore have done nothing wrong.

The second understanding of business ethics makes no distinction among the different roles in our lives and in fact rejects the notion that we can divide our moral lives into discrete sections labeled “home,” “family,” “business,” “romance,” and so on, each with its distinct set of rules. Instead, this view proposes that we have a single set of standards that apply throughout our lives. The difference is that business presents us with new and different situations that require specialized assessment. Thus, relationships between producer and consumer may involve a set of considerations that do not apply to interactions between two people without the element of commercial interest and questions of how to treat employees during a downsizing require special analysis. Nevertheless, the baseline of moral decency would be consistent throughout and the same moral principles of justice, fairness, goodness, and what is right would hold in business as they do in our everyday dealings. By this light, the legal and ethical spheres may overlap, but we gauge correct action by personal morality rather than by reference to a legal code or set of rules of behavior for specific situations. Typical maxims of a manager who adopts this approach might be stated as questions such as “Would I be prepared to have my actions printed on the front page of the newspaper?” or “Would I think it acceptable if others treated me the way I treat them?”

Instrumental and Prudential Approaches

We can also think about morality in terms of intrinsic and instrumental motivation. Those holding intrinsic views believe good should be done for its own sake, whereas instrumentalists would take the action that results in some form of personal benefit whether or not it is also the “good” thing to do. Imagine that a company could make a significant amount of money in a negotiation if it lies. Company officials could decide to be honest because it is intrinsically wrong to lie and, irrespective of the consequences, decide not to exploit the advantage. On the other hand, instrumentalists would examine the situation to see what course of action is most economically

beneficial. Again, the answer might be not to lie. Although lying would provide an immediate reward, there may be greater economic payoff in the long run from acting honestly and thereby benefiting from an enhanced reputation in the marketplace. For instance, research has found that sellers with negative customer feedback on the web-based auction house eBay are likely to sell their items for up to 10 percent less than those with positive feedback.⁹ The technical term for following the moral path because of an anticipated benefit is prudence.

Prudential benefits need not be immediate. For example, a company might invest in a poor community because it believes that doing so will mean it will have an educated pool of workers in the future. Similarly, individuals may donate blood although they do not perceive any immediate personal gain. Rather, they may see that this behavior enhances everyone's welfare and they are better off in a community where there is an attitude of common concern. Actions that have a general benefit, although ultimately motivated by personal well-being, are described as *benign self-interest*. Take the case of a car repair company: It may benefit in the short run by inflating the amount of work that needs to be done to customers' cars, but as with many firms it will retain its customers based on its credibility and if that is lost it will have nothing to fall back on. If customers start to question their bill or suspect shoddy workmanship, they are less likely to return and may post their concerns on social media and the company will falter. Hence, a prudential company might adopt the attitude that it makes economic sense in the long run to build a reputation for fair dealing and trust.

In another case, think of a firm that sponsors a charity run to benefit sick children. The firm prominently displays its logo on the start and finish lines and prints its logo on the event T-shirt. The company is allocating resources to the charity, which may result in increased sales, but the beneficial consequences may not be immediate or obvious. However, the elusive evidence may not matter as long as there is a general sense that doing good has a financial payoff. As an analogy, a faithful religious believer might resist

⁹ R. Mickey (2010). "The Impact of a Seller's eBay Reputation on Price." *American Economist*, 55 (2), pp. 162–169, www.jstor.org/stable/41429205; E. Laitinen, T. Laitinen, and O. Saukkonen (2016). "Impact of Reputation and Promotion on Internet Auction Outcomes: Finnish Evidence." *Journal of Internet Commerce*, 15 (2), pp. 163–188.

temptation and do charitable works because of a promise of eternal salvation, even though there is no evidence this will occur. As a practical matter, the evidence becomes secondary to the individual's belief. The same might be true of business dealings, because despite the difficulty in proving that a business would benefit by doing good works, it may become self-verifying if everyone involved in commerce adopts the belief as a matter of course.

The company clearly has some element of advertising in their sponsorship and they could be taking the expenses associated with the charity run as a tax deduction. Some commentators might argue that the corporation's actions are therefore impure as they are tainted by some element of a payoff. However, the question may be misplaced, as doing well by doing good doesn't necessarily mean an act is corrupt or wrong and self-interest can coincide with benevolence. For instance, the blood donor could derive personal satisfaction and let their friends know about how often they give, but it would be wrong to condemn the donation as immoral or even as less worthy based on those grounds alone. Similarly, we can concede that private firms in a capitalist society are often motivated at least in part by prudential concerns, just as individuals may get personal psychological satisfaction, and in both cases perhaps the better focus should be on whether total welfare has been increased by what they do.

There is some anecdotal evidence that firms that act morally do better in the marketplace. Still, the evidence is not robust and tends to reflect the empirical difficulties firms have in finding out whether advertising is effective. For instance, it is hard to know if any single given action translates directly into individual purchasing decisions. We may choose to go to one department store over another because it offers scholarships to needy students, but the store may also have the quality and range of goods we prefer, among a constellation of other factors, so it is hard to isolate corporate moral actions sufficiently to draw definitive conclusions.

A further confound is that companies doing good works and prospering in the market often tend to be well established, stable, and profitable anyway. This is not to deny that firms that act morally may prosper as a result, especially over time, but the direct causal link is hard to establish and the empirical evidence is mixed, at best. The upshot is that we cannot incontrovertibly prove the claim that corporations benefit from ethical action.

Conversely, it is reasonable to suggest that unethical firms are likely to do badly, especially when reputation and repeat business is an essential component of what they do. In the absence of evidence either way, and given the choice, acting morally may be a practical and judicious self-interested strategy. Moreover, it turns out there may be very strong reasons to do the intrinsically right thing regardless of its instrumental effect on the bottom line.

Rule-Based Approaches

A belief often associated with the economist Milton Friedman is that the moral requirements of business are fulfilled simply by following the law. In fairness, this view also calls on firms to adhere to the moral norms of society, but for the sake of argument we can assume from this belief that the law is not only the ethical threshold but also its ceiling. This may mean emitting greenhouse gasses, polluting, or not disclosing relevant information in order to facilitate deals, so long as it is not clearly illegal to do so.

From this perspective, employees in a private corporation are agents for investors seeking to maximize their returns. Consequently it is not up to the employees to promote their own social and political agendas as their duty is to put profits first. For example, suppose a manager is concerned about habitat loss for wildlife because of a proposed expansion that would discharge dirty water into nearby rivers. By this view, they should work to maximize profits while at work and disregard any jeopardy for animals and flora not protected by existing laws. The check and balance, according to Friedman, is that they can take their wages and do whatever they want with them: If they choose to support a wildlife organization that then mobilizes the political process to change the law, they are welcome to do so. At the point the law changes, so does the firm's obligation to the environment. But it is not their place to unilaterally make the decision to preserve more wildlife or plants if it will hurt the company's profits. Friedman points out that managers are paid for their workplace expertise, so such matters as social welfare or environmental protection are usually beyond their scope and should be left to those with the training and experience.

Nevertheless, the company is not precluded from voluntarily reducing pollution, giving to charity, or doing other good works that are over and above the law, but the acid test will be profitability. If there is a benefit through improved public relations or avoiding a costly lawsuit, then the company will have an incentive to act beyond the legal minimum and a wise manager will take these broader and more long-term factors into account. However, absent any financial justification, the company will default to legal compliance as its ethical guide.

Ethics and the Law

There is a temptation in life and in business literature to use the law as a moral template, in the sense that following the law is considered to be morally sufficient, with the implication that if we have done nothing illegal, then we have done nothing wrong. While we must admit that abiding by the law is a good start, it shortchanges the essential dialogue needed to establish appropriate standards and responses. Ethics and legislation are not symmetrical, and we can see this by considering cases that are either legal but immoral, perhaps like selling life insurance to geriatrics, or illegal but moral, such as civil disobedience protests. Furthermore, laws are local and subject to change in ways we might hope ethics is not – slavery was legal in many parts of the world until the law changed, but has always been immoral. The law cannot cover every case, and lawyers make a good living arguing about what precedent applies. Hence, it is usually easier and more productive to discuss the moral principles and policies involved in business dilemmas than to haggle over the merits of legislation, especially in the international arena. In addition, the law is a reactive instrument that often remedies harms that have already taken place, so if we wait around to have a case decided before we stop releasing a new chemical into the groundwater, the damage will have been done before the case is decided. Many cases fall into a legally gray area, where people are called on to use their discretionary judgment. Finally, consider what a world would be like that relied on the law alone – we might believe every transaction was predatory, and we would rely on regulation as our guide, litigation would be the norm, and we would have armies of legislators, enforcers, judges and juries, and

punishers. This vision alone should propel us into taking virtues of honesty, trust, fair dealing, and personal integrity seriously – in other words, it is well worthwhile spending some time talking about the ethics as well as the legality of business.

The watchword of rule-based systems is *compliance*. Minimally, compliance means making sure that the law is followed. Many companies have tried to institutionalize ethics by generating a code of conduct that lays out acceptable and sanctionable behavior. An illustration of this approach is accounting in America prior to the scandals of the late 1990s, where the profession was very much rule-governed, with a strict and comprehensive code of conduct. Yet the rules themselves restricted the scope of what accountants were required to do, so that in auditing a company they only had to make sure that the relevant accounting standards were met and that the books were balanced, but they did not need to question business practices that appeared improper. In the wake of the Enron fiasco where the firm lost some \$74 billion in the four years before its bankruptcy, accountants excused themselves on the basis that they had seen nothing illegal and therefore were not implicated in any wrongdoing.¹⁰ The claim subsequently damaged the credibility of the profession and helped bring down Arthur Andersen, one of the world's largest accounting firms at the time.¹¹

Principle-Based Approaches

One of the chief difficulties with a rule-based approach is that it does not deal well with new or difficult issues where it is unclear what rule should apply. Furthermore, in some cases rules will clash, and there needs to be a way to adjudicate between them. So, for example, a cooking spray that contains nothing but fat might be sold as “fat free” because the serving size does not reach the reportable threshold amount. That might be acceptable if the serving size were listed as more than a spray lasting one-third of a second, which seems unrealistic and manipulative. In a similar vein,

¹⁰ T. Segal (2021). “Enron Scandal: The Fall of a Wall Street Darling,” *Investopedia*, November 16, www.investopedia.com/updates/enron-scandal-summary/.

¹¹ B. Toffler (2003). *Final Accounting: Ambition, Greed, and the Fall of Arthur Andersen*. New York: Broadway Books.

a soup manufacturer might claim that it has reduced the amount of sodium in its product, whereas all it has done is to reduce the recommended serving size from twelve ounces to eight. A firm might demand that its employees submit to drug testing and then use the samples to test for susceptibility to genetic diseases to protect the firm's insurance costs, or a sales agent may want to treat her client to a lavish dinner that goes against company policy but not the law. Using the law or rules alone gives little guidance on vague issues, and in some cases prompts ingenious people to research the law for the purpose of figuring out loopholes.

An alternative is to move to a more principle-based approach, where moral considerations are thought of in more general and abstract terms. The benefit is that when a novel issue arises people will have a point of reference from which to work. For example, if an overarching principle is to "do no harm," then it can be applied to a wide range of more concrete issues. The associated problem, of course, is that applying principles in any given situation requires a degree of interpretation, which will, in turn, rely on the moral discernment of the individual involved. In practical terms, a principle-based approach is likely to require additional resources for training and discussion rather than strict adherence to simple directives.

Ethical Relativism

Some educational institutions have an honor code along the following lines: "I will not lie, cheat, or steal, and I will not tolerate those who do." While most students feel comfortable with the first clause, they tend to be less compliant with the second, because they believe that individuals should be responsible for their own actions, and there is no moral imperative to interfere with the conduct of others if it does not affect them directly. Very often they may disapprove of poor behavior by other people but will not do anything about it because they feel each of us should be in command of our own actions. However, there may be problems with that attitude as well. Consider an exam where it turns out that most of the students have brought in calculators with some formulae already programmed in. Sticking to the honor code in that kind of situation may leave the honest students feeling they are foolish to put themselves at a disadvantage when

they aspire to a higher moral standard than the prevailing norm. Many of these same dynamics are echoed in business dealings, especially across different cultures.

Experience shows us that people, not surprisingly, have varying moral judgments, tempting us to believe that therefore all moral beliefs and principles are relative, in the sense that someone's judgment will apply only to that individual, in that situation, at that time. This implies that it will be difficult to criticize anyone else's actions, and consequently we would have no grounds to intervene and tell them they are mistaken. It would also mean that there is no universally accepted absolute standard of morality, since everything will be context dependent. In the case of sweatshop labor, for example, a relativist would say that the use of child labor has to be seen in the context of the prevailing standards or needs of the local people, such that we are in no position to judge the actions of others.

We could think about the difference by imagining two islands with no passage between them. People on the first island practice what might be termed *absolutism* or *objectivism*, wherein there are real moral truths that hold constant throughout space and time. They might claim, for example, that torture or incest are always wrong. For them, the fact that certain societies have allowed these practices to exist does not show that standards vary by context but instead shows that humans can discover moral truths over time.

People on the other island, on the other hand, practice what might be termed *relativism* or *coherentism*. Their view is that we cannot make moral judgments apart from understanding the context involved. They believe that the acceptability of an act depends on the individual facts and the prevailing norms. This is not to say they believe that anything goes, however. The coherentist label indicates that they feel the object of moral theory is to make sure our values are internally consistent and do not contradict each other. People may believe both in property rights and in individual liberty but would condemn slavery where one concept overrides the other.

One version of relativism says that we only generate norms within a cultural context, and so the meaning of the word *good* within a society is that which is in accord with an accepted practice. Hence, there is no

objective sense of right and wrong, but only what the society has sanctioned over time. This would explain some of the radical differences in the way various cultures deal with the same issues. For example, it is inappropriate for women to take an active role in business affairs in some countries in the Middle East, and abortion is legal and accessible in some countries but not in others. It also means that the notion of good may change over time. The subjugation of women was once widely accepted, but societies have changed, and some would say become more enlightened, and what was once thought of as proper is now condemned.

However, this approach does not mean that differing cultural norms cannot be criticized. A more sophisticated relativist position would suggest it is possible to assess different cultures once we truly understand what is going on. It could be that one society takes heroic medical measures for its elderly members, whereas another believes in minimal intervention. What initially looks like opposite approaches may, in fact, be manifestations of the same human concern, that is, respect for the elderly. Each society may value its elderly and wish the best for them, but the way this is manifested turns out to be quite different; one sees respect as dignity in maximizing the quality of life whereas the other seeks to extend the quantity.

The counterclaim by absolutists is that without an anchor, there is no way to validly criticize practices. In effect, there must be some overarching principles – such as respect – that allow us to compare different practices.

This tells us that it may be that the two views – absolutism and relativism – are not as different as they originally appeared, and we can draw on insights from both. However, it is important to realize that the mere existence of moral disagreement does not imply that there is no moral truth or that it can never be found. Take the analogy of religion: Clearly, there are many different religions, but we do not take from that fact alone that a spiritual quest is meaningless and futile. The plurality of religious beliefs may paradoxically support the validity of the religious dimension of human life. Similarly, the fact that there are disputes over particular moral issues may reinforce the fact that moral values are a constant and important feature of human life. Another way to put this is that people become invested in issues they see as value-laden, and disputes arise over whether

they are moral or immoral, but we rarely find people being *amoral*, that is, completely indifferent to value questions.

A better model than the two islands is perhaps a sphere with a crust that represents variations and a core that is constant. Consider the anthropological fact that contracts form the basis of human society. Even in a basic society there will be some exchanges. Unless we keep our word with respect to them, society cannot operate. Thus, if we want some anchor point, one that avoids the so-called slippery slope, we could say that society requires a concept of contracts to function. Again, that is not to say that people would never break contracts. The point is that the very idea of a contract requires an agreement in principle that people keep their promises, and someone who does not would be punished in some way in order to preserve the practice. This is a very minimal level of agreement, but it shows that there will be at least some universal agreements. The list could be expanded: All human societies have systems for looking after their young and forming families. From this start we could develop a core of common values that all humans share. The question then becomes whether the core is small with a wide band of disagreement, or whether the surface of differences only represents a thin crust. As we saw in the case of respect for the elderly, many societies may have similarities in principle that are manifested in different ways. It could be that various societies have a notion of a fair profit that is contrasted to usury or exorbitant gains, but the actual percentages involved may vary considerably in practice; or that bribery is condemned although the difference between a gift, a “grease payment,” and a bribe lies on a broad spectrum.

The upshot is that there are valid ways to deal with relativism in business. While there may be startling differences in standards of moral acceptability across cultures, that does not mean that they are all equally legitimate. It will be important to find out the operating beliefs that lie behind particular actions and start the discussion at the level of the underlying principles involved. Hence, although there may be no countries that endorse the practice of bribery, there may be different understandings of what constitutes a bribe.

The second step is to decipher whether there are threshold values that should never be compromised. For example, just as genocide is never acceptable, we might say that it is universally wrong to expose workers to deadly hazards unawares, or to deprive native people of traditional lands

without compensation merely because the land has desirable mineral deposits. As we shall see in Chapter 7, the language of rights may be a useful way to frame the debate. Furthermore, we can examine the moral posture of a company within a culture for inconsistencies in need of resolution. We also need to be sensitive to the prevailing norms of the country and determine whether there are legitimate differences that merit accommodation or whether we should impose the company's domestic standards.

Egoism

The other major challenge to developing an ethics of business is posed by *ethical egoism*. An egoist would say that we rightly put our own interests and concerns above those of others, regardless of external ethical standards. This is critical in discussing business behavior because many practitioners tend to have an initial intuitive reaction that business operation is predatory and competitive, and therefore a special kind of self-interested morality has to apply: the so-called law of the jungle, where only the strong and ruthless survive. In contrast, *ethical altruism* suggests there are times when we do good purely for its own sake, perhaps by anonymously donating to charity or volunteering in the community. It is important to note that the egoist claim is often self-verifying as it may assert opaque psychological motives that the individual may deny: the charity donor or volunteer gets to have warm self-satisfaction, or forestalling guilt for a privileged lifestyle.

The long tradition of egoism contends it is human nature to do whatever is best for ourselves, and ethical action is no more than a social construction upheld by a legal system. Over 2,000 years ago the Greek philosopher Plato (427–347 BCE) used the character Glaucon to illustrate this point in his work *The Republic*. Glaucon tells of a shepherd who discovers a magical ring that can make him invisible. The question posed is whether, if we were released from the constraints of the law, we would still behave decently. Glaucon concludes that our conscience would be overcome by the temptation to do whatever we want, so long as there are no personal consequences.¹²

¹² Plato (1947). *The Republic*, trans. B. Jowett. New York: Random House, Book II, 358d–361d.

Machiavelli and Hobbes

Current advocates of egoism often appeal to the works of major historical figures: Niccolò Machiavelli (1469–1527) and Thomas Hobbes (1588–1679) as well as the more recent work of Ayn Rand (1905–82) and her book *The Virtue of Selfishness* (1964). Machiavelli is best known for his work *The Prince*, which was published after his death. He considers the nature of a principality and advocates that a bold leader should acquire and use power to his personal advantage by whatever means possible. He felt that whatever private morality someone had, if the individual was a leader he had to be prepared to act to promote his own interests above all others. In the public sphere, right and wrong did not matter as much as praise or blame. The prince had to act expediently for himself in every case and do whatever was necessary at the time. This meant, as he put it, that although it was desirable to be both loved and feared by one's subjects, it was safer to be feared. There is some debate about Machiavelli's sincerity in what he wrote. However, his work has been influential in advancing an attitude that leaders need to be self-promoting without concern about the welfare of others, and to adapt their morality to changing circumstances. Machiavelli says:

It is necessary for a prince wishing to hold his own to know how to do wrong, and to make use of it or not according to necessity ... He need not make himself uneasy at incurring a reproach for those vices without which the state can only be saved with difficulty, for if everything is considered carefully, it will be found that something which looks like virtue, if followed, would be his ruin; whilst something else, which looks like vice, yet followed brings him security and prosperity.¹³

The English philosopher Thomas Hobbes also starts from the assumption of constant competition and moral relativism. His view is that we are all necessarily self-interested but because of risks from the actions of others we

¹³ N. Machiavelli (1992 [1592]). *The Prince*, trans. W. K. Marriott. New York: Alfred A. Knopf, pp. 70–71.

need to create a society that has sufficient power to dominate us all, like a super police force. He observes:

For moral philosophy is nothing else but the science of what is good and evil in the conversation and society of mankind. Good and evil are names that signify our appetites and aversions . . . Hereby it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war as is of every man against every man . . . where every man is enemy to every man, the same consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withal. In such condition there is no place for industry, because the fruit thereof is uncertain: and consequently no culture of the earth . . . no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.¹⁴

For our purposes, the insight that matters most Hobbes' his recognition that it is not always in our interest to compete or dominate: The features of a life worth living come from cooperative endeavors. In many ways, we might describe his posture as strategic rather than moral, since it is the way rational people would behave. We can be indifferent to the situation of others and only care about their welfare insofar as it affects us personally, but then grasp that humans necessarily live in communities and exchange goods and services, and so the individual may be best served by mutual cooperation. Despite its current usage, the author Rudyard Kipling, who coined the term "law of the jungle," saw it as collaborative, not competitive:

Now this is the law of the jungle, as old and as true as the sky,
And the wolf that shall keep it may prosper, but the wolf that shall break it
must die.
As the creeper that girdles the tree trunk, the law runneth forward and back;
For the strength of the pack is the wolf, and the strength of the wolf is the
pack.¹⁵

¹⁴ T. Hobbes (1998 [1651]). *Leviathan*, ed. J. Gaskin. Oxford: Oxford University Press, p. 84.

¹⁵ R. Kipling (1922). "The Law of the Jungle," *The Jungle Book*, www.kiplingsociety.co.uk/poem/poems_lawofjungle.htm.

Game Theory

We can model Hobbes' view of strategic morality using *game theory*, the term mathematicians and social scientists apply to competitive scenarios where individual parties are seeking to maximize their own outcomes. The name is somewhat misleading, since some of the nontrivial subjects they have researched include warfare and economics. The theories are useful in many disciplines because they can provide quantitative data about rational choices under varying conditions. For simplicity's sake, many of the dynamics are represented by two sides that have to make decisions that will result in a payoff. The most straightforward case is a zero-sum game, where a win for one side (+1) represents a loss (−1) for the other and the outcome is balanced out (+1 and −1 = 0).

We can dramatically illustrate this dynamic by thinking of two nuclear powers poised to confront each other. If one side launches by surprise, they are likely to win. However, strategic game theory demands that we consider how the opponent is thinking. If they are rational and deliberate like us, then they would also be considering a surprise attack, and the worst overall outcome would be both launching at the same time. The options, then, are individual launches, mutual launches, or, most preferably, mutual restraint. In business too we can imagine that there are temptations in a competitive field to take opportunistic actions that lead to immediate benefits. On the other hand, if all parties are thinking the same way then such a dynamic may easily lead to a spiral of mutually damaging acts.

Hobbes assumed that in the absence of full trust and information our self-interested nature would necessarily lead to destructive behavior, and we can see that is certainly one possible outcome. On the other hand, there may be other options, especially if we see that many, if not most, encounters are not zero-sum – there is a greater payoff for both parties if we work together. So, for instance, a person might be more adversarial in a one-time negotiation because playing “hard ball” may be very effective. However, if we have to deal with the same people over and over, we tend to be more cooperative. For example, if two gas stations are on opposite sides of an intersection, neither is served well by consistently cutting prices to beat the other. While they do not have to directly collude, each could independently

reason that maximum profit is achieved by each posting the same price. In repeated computer simulations, the evidence suggests that defection by one side (say, undercutting the rival station) would likely be met with defection on the other, leading to mutual harm; this makes it very hard to restore cooperation in the future. Consequently, a fully rational player would strategize that it is worthwhile to cooperate voluntarily and perhaps for-sake the allure of immediate profits, because the long-term benefit matters more than the short-term gains.

The actions of corporations acting internationally provide a helpful indication about the limits of egoism. A firm that operates away from its home base is usually free to operate by the rules that apply in the host country. If the overseas laws are lax, then the natural temptation will be to exploit the potential economic efficiencies. Extrapolating, we can imagine that there are regimes where, for example, child labor and exposure to asbestos are legal, and trying to organize a trade union is a criminal offense.

The descriptive evidence is that some companies do make the most of weaker laws in developing countries, especially in unskilled or low-skilled industries such as apparel and assembly work. There are reports of workers suffering physical abuse, of people being forced to work long hours without breaks or paid overtime, and of employees being made to spend their earnings at a company store at inflated prices, effectively making them indentured servants.¹⁶ Corrupt regimes may permit or encourage these practices because of the promise of hard currency and side payments to those in power.

The striking feature of business behavior is not so much the existence of exploitative conditions, though, but the fact that such features are not universal. One reason for these constraints is that there is usually some level of transparency available, so our actions, even overseas, will leave a trail of information, especially when monitored by nongovernmental and consumer organizations. Hence, there may be self-interested reasons to maintain certain standards in the long term. Several cases are instructive here. Reports surfaced in the 1990s of worker abuse in third world

¹⁶ E. Martinez (2001). "Sweatshops, Firsthand." *The Nation*, November 19, www.thenation.com/article/archive/sweatshops-firsthand/.

sweatshops where a dress that retailed for \$100 in the United States netted \$15 to the contractor but less than a dollar to the seamstress; or a pair of sneakers made in Vietnam that cost the manufacturer less than 1 percent of its final retail price.¹⁷

One firm, Nike, responded by saying they were merely marketers and the factories were run by their subcontractors, and so it had little control over them. However, after a string of bad publicity, the stock price and earnings slumped over 25 percent. Nike chairman Phil Knight publicly admitted there had been problems and announced a series of measures to address them, including international monitoring and a higher minimum wage for overseas workers, greater transparency, better air quality in the factories, a minimum age for employees, and education programs. While it would be wrong to make direct causal connections, Nike is no longer considered an archetype of global exploitation, and its earnings have consistently risen in recent years.

In another case, Apple products are often produced by a firm called Foxconn. Foxconn's Shenzhen factory employed 450,000 workers at one point, and it is said that the company installed nets on its buildings to catch suicidal workers who could no longer tolerate the working conditions such as being required to work twelve-hour shifts, six days a week. Apple also got bad publicity from its dealings with precious metal mining companies in Banka, Indonesia, where it appeared the supplier was using child labor. Apple was sensitive to consumer reaction and in both cases it subsequently required adherence to a supplier code of conduct and issued an annual public audit report. As one official put it:

The simplest course of action would be for Apple to unilaterally refuse any tin from Indonesian mines. That would be easy for us to do and would certainly shield us from criticism. But that would also be the lazy and cowardly path, since it would do nothing to improve the situation. We have chosen to stay engaged and attempt to drive changes on the ground.¹⁸

¹⁷ J. Ballinger (1997). "Nike Does It to Vietnam." *Multinational Monitor*.

¹⁸ R. Bilton (2014). "Apple 'Failing to Protect Chinese Factory Workers'." *BBC News*, December 18, www.bbc.co.uk/news/business-30532463.

The association with these companies led Apple to join the Fair Labor Association, a monitoring group demanding due diligence and transparency from companies with global supply chains.¹⁹ Whether or not Apple was responding to market feedback, conditions for the workers in its supply chain have undoubtedly improved as a result. Apple's current vision statement announces that they want to "make the best products on earth, and to leave the world better than we found it."²⁰

In conclusion, even if morality in business turns out to be self-interested and firms act strategically, the evidence indicates they will be motivated to maintain certain standards and build a solid reputation rather than descending into Hobbes' war of all against all.

Morality and Strategy

As described in the previous section, there may be prudential reasons causing companies to resist complete exploitation, just as individuals may see that over the long term their own benefit lies in cooperation. Nevertheless, taking a strategic approach to morality presents difficulties. It depends crucially on the calculations involved – the actions of companies are still profit-driven; if the numbers were to show they could make more money by acting badly, there would be no independent reason to change their behavior.

The moral problems of expedient changes in moral attitude are further highlighted by the presence of public relations specialists. Company sales, as we have seen, may depend on the way a company is perceived. The Nike case is often used as an example of a successful public relations campaign that changed public perception. Taking this logic to its conclusion, the lesson for a corporation would be that hypocrisy pays. That is, the truth of the matter is immaterial, since the important variable is the public image and what is perceived to be the case. So, if a company could cleverly mask its actual operations or consistently confuse the public through some well-promoted charitable work, and if these campaigns cost less than, say, raising the

¹⁹ www.fairlabor.org/.

²⁰ C. Rowland (2022). "Apple Inc.'s Mission Statement and Vision Statement (An Analysis)." Panmore Institute, May 22, <http://panmore.com/apple-mission-statement-vision-statement>.

minimum wage of overseas workers, the program of masking and confusion would be the most appropriate course of action. Further, they could base all their operations on a game-theoretic strategy. Morality would become subordinate to strategy and a matter of expedience. If they could maximize profits by using cheap labor overseas they would do that, and if it turned out that customers would pay a higher price for organic goods or union-made apparel, they would follow market demand and do that. Notice that they follow the moral tide, so that they will do whatever it takes to make the most profit. They are constrained from out-and-out competitive behavior only because they realize there may be a future payoff.

There is something jarring about the notion that a company should alter its moral stance depending on its cost-effectiveness like a chameleon changing its color to suit its surroundings, and yet this is the correlate of an egoist working out what is in their best interest and plotting their behavior accordingly. Still, we should again return to the positive aspect of business behavior and look for a common element that underlies these discussions. Many companies do have a baseline of acceptable behavior that is independent of external monitoring. Furthermore, the fact that many consumers choose not to buy brands associated with poor working conditions illustrates that there will be a point where individuals are willing to pay more to preserve higher principles. Moreover, even in a corrupt regime where there are virtually no laws restricting the terms of employment, many foreign companies are unwilling to compromise what they perceive as basic human rights. In the same vein, consumers are often willing to accept that there are relative standards that mean workers in other countries do not have the same complement of benefits as workers at home. However, there is a point where consumers feel that their economic welfare matters less than guaranteeing the humane treatment of the people who produce their goods.

Responses to Egoism

Plato's magic ring story suggests that, left to our own devices and without any accountability, no one could resist the temptation to do whatever it took to increase personal power and wealth. However, that may not be entirely true. The likelihood is that some people and companies would, in

fact, restrain themselves because they recognize that it is wrong to deprive others of life, liberty, or property, based on the idea that humans are entitled to individual rights.

There is also another line of response against egoism, based on the character of the person involved. Glaucon, along with Machiavelli, Hobbes, and many others, believed that human nature was essentially self-aggrandizing, power-hungry, and hedonistic. Glaucon's shepherd acted on his whims when freed from any accountability. It could be that there is more to human nature, and indeed many people would not exploit magic powers at all, or would do so only to improve the general welfare rather than just their own. Individuals are rarely called to publicly declare what their values are and what they are going to do to bring them about. Businesses, on the other hand, very often do make public statements of their core values, and often these incorporate a lot more than the desire to return yield to investors. They have statements about public responsibility and their corporate practices: in effect, a summary of corporate character. So, for example, Nike changed its corporate mission statement in the late 1990s from one that declared an ambition to be the best sports company in the world to the more recent version:

Our mission is what drives us to do everything possible to expand human potential. We do that by creating groundbreaking sport innovations, by making our products more sustainably, by building a creative and diverse global team and by making a positive impact in communities where we live and work.²¹

The mission is more focused on serving people and communities than enriching the company and its investors. Of course, we should acknowledge that there may be some rhetorical flourish in these statements, but nevertheless, they do not have to make them at all, let alone broadcast them and follow up by directing resources to substantiate what they espouse. If we look at some of the top international companies, we find that the vast majority make announcements of this kind on their websites and in their company literature. Moreover, public statements give activist groups some leverage insofar as they can point out potential "hypocrisy gaps" when they

²¹ <https://about.nike.com/>.

confront companies that are not conforming to their public assertions. For instance, some firms have promoted their ecological stance while continuing unsustainable practices, an effect known as “greenwashing.”

The effect of having a mission statement along these lines is to project the image that the company may not, after all, have a purely egoistic nature. A publicly held corporation will be interested in making a profit, to be sure. However, the evolution of mission statements that are more outwardly directed to other stakeholders seems to indicate that companies often assert a set of values that may sometimes conflict with increasing investor returns.

One question we will explore further in this book is whether a company prioritizes doing the right thing in terms of acting ethically and expects that profits will follow, or does it seek profit as its paramount goal and see ethical action as the most advantageous strategy to achieve it? Although there are undoubtedly companies that act as if their sole goal is constantly increasing profits, there are many others that believe that their prime mission is one of service, and improving human welfare and earnings are seen as a secondary benefit. Therefore, it is important not to treat all businesses as part of a monolithic structure. Individual corporations vary widely both in their goals and in their perceptions of the appropriate means to achieve them.

Summary

The Bhopal disaster underscores the difficulty in fully analyzing ethical issues in business and the number of factors to be considered: The facts of individual cases can be highly significant. In Bhopal, circumstances set the stage and a series of problems came together to make the gas leak as widespread and deadly as it was. There are many stakeholders with widely varying interests in the case, and many of them are incompatible. Some commentators will emphasize the perceived difference between legal and moral responsibility, the acceptability of risk, and the nature of compensation. There are diverse cultural expectations that have complicated the issues, as well as tensions between rich developed nations and poor developing ones. We also have to think about the long-term effects of business activity: Although the incident happened decades ago, its damage to human health and the polluted environment continue to affect the region.

This preliminary survey has explained some of the ways in which philosophers approach situations and also the limitations of those approaches. Philosophy is unlikely to be able to transform hard questions into simple ones, and in fact may only be able to illustrate the complexity and nuanced nature of moral questions. Nor will it provide a simple algorithm that can tell us exactly what to do in any given situation. However, it does offer the promise of developing a reasoned analysis of business practice and a framework for making decisions on a normative basis.

In the rest of the text we will look in more detail at several of the key concepts that frame ethical debates in business. In Chapter 2, we will look at the ethical theories underlying business ethics so that we have a basis for evaluating issues. Then, in Chapter 3, we look at the nature of capitalism and some of its implications for corporate and individual actions. We will also examine what is meant by the key concepts of responsibility (Chapter 4), autonomy (Chapter 5), justice (Chapter 6), rights (Chapter 7), and beneficence (Chapter 8). This will better equip us to systematically study the morality of business and its impact on our lives.

Issues for Reflection

1. Are there any absolute rules that should never be broken, whatever the circumstances?
2. Does morality change when you are in different roles, such as a business executive or manager versus a subject-matter expert or line worker?
3. Are those hurt in industrial accidents owed compensation? If so, who should pay it?
4. Does moral motivation matter? If a company does good works, should we be indifferent to the fact that they may lead to increased profits?
5. How much do you think reputation matters in business? Would you pay a premium for an item if it came from a retailer with a reputation for being honest?
6. If you were giving employees ethical training, would you stress knowing the law and the company rules, or try to explain the principles behind the rules?

Case: Vaping

Smoking is bad for you. Cigarette packages routinely carry required government warnings from the fairly tame prose, “Caution: Cigarette Smoking May Be Hazardous to Your Health,” in the United States to the more direct message, “Smoking Causes Lung Cancer,” in New Zealand, accompanied by pictures showing the disease that cover 30 percent of the front and 90 percent of the back of a pack.

The active ingredient in cigarettes is nicotine. Nicotine has a complex effect on the brain, in that it can enhance moods by either relaxing or exciting the smoker. Proponents compare it to caffeine, while detractors say it has the addictive properties of heroin. The way cigarettes deliver nicotine is to burn tobacco while users inhale the smoke along with other side-products, such as tar.

Worldwide, about one in five people smoke, and 15 percent of all deaths are attributed to smoking with higher rates in some countries in Asia, Northern Europe, and Eastern Europe. Second-hand smoke, that is, inhaling the smoke of others, accounts for 2 percent of deaths, and is implicated in a number of conditions including asthma, respiratory infections, and sudden infant death syndrome.²²

The act of smoking can be a social activity. Until the 1990s smoking was allowed on airlines and there are stories of flight attendants not being able to see the rear rows of the aircraft because of the blue haze once the no smoking sign was turned off. Theaters and cinemas routinely provided ashtrays. At one point, doctors were recruited to endorse smoking, and “mild” or “menthol” cigarettes were promoted as less irritating. Only in 1998 did the tobacco industry abandon its attempt to maintain that there was a controversy over the purported ill effects of smoking, such as increased risk for lung cancer and chronic bronchitis.²³

A challenge for the tobacco industry has been to find a purer delivery method for nicotine. Various attempts have been made such as chewing

²² “Health Effects of Secondhand Smoke,” Centers for Disease Control and Prevention, <https://bit.ly/3vQozVT>.

²³ K. Keck (2009). “Big Tobacco: A History of Its Decline,” CNN, June 19, <http://edition.cnn.com/2009/POLITICS/06/19/tobacco.decline/>.

gum or patches, but neither give the instant stimulus of smoking nor mimic the habitual behavior of puffing. Two graduates at Stanford University, Adam Bowen and James Monsees, came up with the idea of a vaping device. Their solution was to use nicotine salts, glycol, glycerin, and flavors and integrate them in a single unit that creates an aerosol that can be inhaled. The product they developed has the trade name JUUL, looks similar to a smart phone and is powered through a USB connector.

There are clear benefits for smokers if they switch to vaping, and JUUL's mission statement says it aims "to transition the world's billion adult smokers away from combustible cigarettes."²⁴ Vaping delivers the satisfaction of the habit while limiting many of the risks. On the other hand, the purity of delivery can have its own drawbacks. Ten puffs of JUUL provide more than five times the nicotine of a cigarette with greater absorption into the bloodstream.²⁵ Vaping has been promoted as a method of quitting smoking, but the evidence is mixed – many smokers take up both, and often-cited studies that claim double the success rate of other replacement therapies also included dedicated behavioral therapy as part of the program, and still had a four-fifths failure rate.²⁶

For its initial launch, JUUL purchased advertising on such sites as the cartoon network seventeen.com, and both nick.com and nickjr.com owned by Nickelodeon. It effectively used Twitter, where it turned out that over 80 percent of followers were between 13 and 20 years old. JUUL dominates the market to the point that the company name is synonymous with vaping products. Their original advertising campaigns included younger-looking models and enrolled social media influencers. One aspect of vaping is that it is almost undetectable as it does not have the telltale aroma of cigarette smoke and the dispensers can be disguised in various forms. A 2019 study by the American Medical Association

²⁴ www.JUUL.com/about-JUUL.

²⁵ P. Rao, J. Liu, and M. L. Springer (2020). "JUUL and Combusted Cigarettes Comparably Impair Endothelial Function." *Tobacco Regulatory Science*, 6 (1), pp. 30–37, <https://doi.org/10.18001/TRS.6.1.4>; M. Blaha (2022). "5 Vaping Facts You Need to Know." Johns Hopkins Medicine, <https://bit.ly/3OM4dnx>.

²⁶ A. Mozes (2019), "Vaping Beats Patch, Gum in Helping Smokers Quit," *WebMD*, January 30, <https://wb.md/3SxcsXv>.

found that 7% of 13-year-olds, 15% of 15-year-olds, and 16% of 16-year-olds had used a JUUL product in the previous month. The most popular flavors among the younger age group were mango, mint, crème brûlée, and fruit.²⁷

In response to lawsuits, JUUL removed flavors other than menthol and tobacco from stores and offline and agreed to pay \$40 million to the state of North Carolina. It was also required to “abandon all marketing strategies and content that appeals to young people. JUUL will be prohibited from influencer advertising, outdoor advertising near schools, sponsoring sporting events and concerts, and most importantly, social media advertising . . . JUUL cannot make claims that its e-cigarettes are safer or better for your health than combustible cigarettes.”²⁸ Despite growing restrictions fueled by fears of health concerns and underage sales in many countries, the market size for e-cigarettes was valued at \$15 billion worldwide in 2020 and is expected to grow at over 25 percent from 2021 to 2028. It has seen considerable investment from all the major tobacco companies such as R. J. Reynolds, and Philip Morris.²⁹ Moreover, there are many imitation products, and distributors often buy in bulk online, with the effect that regulations are hard to enforce.

Questions from the Case

1. Is there any legal product or service that a firm should not provide?
2. How do you react to the claim that a firm is morally neutral, and only fulfilling consumer demand?
3. If JUUL is one of the most profitable investments someone could make, are there any moral reasons not to get involved in the industry?

²⁷ A. Leventhal, R. Miech, J. Barrington-Trimis, et al. (2019). “Flavors of E-Cigarettes Used by Youths in the United States.” *Journal of the American Medical Association*, 322 (21), pp. 2132–2134.

²⁸ V. Langmaid (2021). “E-Cigarette Company JUUL to Pay \$40 Million in North Carolina Lawsuit Settlement,” CNN, June 28, <https://cnn.it/3JT4gNz>.

²⁹ *State of North Carolina v. Juul Labs, Inc.* Final Consent Judgment, 19-cvs-2885, June 28, 2021.

4. What would you say about the claim that selling vaping devices that attract young users is acceptable because everyone else in the market is doing so?
5. Smoking in any form is harmful and may have long-lasting effects. Should a manufacturer be responsible for any or all consequences of its products?

2 Insights from Ethical Theory

Case: Gleaning at the Grocery

Owen Bedborough was working his way through college with a part-time job in a grocery store, which is part of a highly profitable national chain. He did not expect to encounter any moral dilemmas, but as the weeks went on he became more and more troubled. Some of the staff would purchase food for their breaks, but the checker would not scan all the items. He mentioned it to one of his coworkers and was told that it was one of the unofficial perks of working for barely more than the minimum wage. She also pointed out that it was quite routine for staff to use their company discount for friends and family and that he would hurt a lot of people if he reported it any further. He also noticed that customers near the fruit would sometimes sample grapes directly from the display, and some would go as far as to eat a small bunch before returning the stalk to the shelf. He relayed his concerns about customer sampling to the shift manager and was instructed to ignore it unless the person looked homeless, and then to call security.

When he worked at the checkout, he would sometimes be given government food stamps for cola drinks and prepackaged candy. He wanted to tell the customers they would be much better off using them for healthy food but said nothing. However, the main moral dilemma he faced involved the store policy of disposing of meat that had reached its sell-by date. Part of his duties involved sorting the meat on display and throwing out-of-date packages into a dumpster behind the store, which he then had to lock to prevent scavenging. Prepackaged meat is usually good for several days if kept cool and then thoroughly cooked, and when he questioned his supervisor about the policy, he was told that the company was simply protecting

itself. By getting rid of the meat this way before it spoiled, the store avoided potential lawsuits due to people getting sick from its products, even if they had recovered them after they had been thrown away. Owen routinely told his roommates when he would likely be throwing food into the dumpster and for several months, if no one was around, they would meet him behind the store and take it home. One day the manager was watching the security camera when Owen did this, observed what was going on, and fired Owen immediately.

The Value of Theory

Owen faced several ethical issues in his job. Like him, our intuitions are often spontaneous and inconsistent, and it is not obvious what we should do or how much we should get involved. The analytical framework of ethical theory can help us sort out our thinking and develop a more coherent and justifiable basis for our behavior.

We usually speak without thinking much about the background rules of grammar involved, but if occasionally we're not sure about the correct words to use, we refer to those rules. Similarly, much of the time we simply act without too much reflection. But there are times when it is appropriate to step back and consider what should govern what we do, much as we might refer to rules of grammar for how to speak. In this chapter, we will look at some classical ways of considering moral questions and see how they might apply to business. Theory works at an abstract level giving us overarching principles (sometimes known as *metaethics*), but we will also see how the purity and clarity of theory is challenged by the more immediate practical perspectives when we try to put them into practice, such as conflicts between principles, working out the calculations, and the tempering effects of egoistic strategic thinking.

At the outset, we can see that those ethical issues rest on foundational and often unexamined beliefs: Owen might defend his actions on the basis that good food was going to waste, that he was only acting like every other employee, or that no one was being hurt by his actions. These rationalizations, like other ethical intuitions, beg an explanation of the principles behind them, and once we bring them into the light we can start to develop

arguments about what we should do. Owen may be drawing on ideas about maximizing benefits, or thinking he was doing whatever he would expect of other people, or a range of other unarticulated principles. Reflection at this abstract level has a natural normative element, that is, it helps us work out how we *should* react – whether we approve of an act, tolerate it, or should intervene to change what is going on. Owen’s case also demonstrates that merely following the law is often an insufficient guide, since the law may be ambiguous, may not apply to a particular set of circumstances, or may not be enforced, and, as the saying goes, a law that is not enforced is no law at all. Next we will look at some classical ethical theories to analyze concerns such as Owen’s.

Utilitarianism

Utility is a measure of welfare – what does us good or brings us happiness. The familiar motto “All’s well that ends well” is typically associated with utilitarianism, one of a family of theories that take the paramount gauge of morality to be the consequences of an action, or, in other words, the amount of good or harm it produces overall. In very rough terms, it correlates to a cost/benefit analysis expressed in moral language.

The term *utilitarianism* was coined by Jeremy Bentham (1748–1832) and the theory was later refined by John Stuart Mill (1806–73). Mill’s insight was that utility offers a single criterion by which we can compare and assess moral action. He formulated the greatest happiness principle, often expressed in the maxim that we should act to bring about the maximum good for the maximum number, or as he puts it: “Actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain and the privation of pleasure.”¹

Although Mill’s claim is often accepted at face value, we should note that it involves two highly significant embedded features. First, he believed that it is in human nature to have a natural sympathy with one another and that we are capable of distancing ourselves sufficiently to make impartial moral

¹ J. S. Mill (1971 [1863]). *Utilitarianism*, ed. S. Gorovitz. Indianapolis, IN: Bobbs-Merrill, p. 18.

decisions where everyone counts equally. In practical terms, this means that we cannot give our friends and families moral preference, and a worker in an apparel factory in an undeveloped country has the same standing and entitlements as we do. Second, the theory demands that we have an obligation to all affected by a moral decision. Thus, we cannot benefit a few well-off consumers if it means that a larger group will suffer.

Interpersonal comparisons of utility are complex. At a basic level, we can imagine giving a group a set amount of money and a deadline by which to spend it. Most likely each individual would purchase a variety of items and services based on their personal preferences: Some might buy electronics, others donate to charity, while others might buy academic books. The point is that given free choice there are a wide range of possible ways that individuals will seek happiness, so that a student who gets so engaged in a subject to the point of exhaustion might still qualify as being happy, because the activity brings them personal fulfillment.

Recent theorists have tended to abandon the language of maximizing happiness, pleasure, or the good as the terms are so hard to quantify and compare, and instead have concentrated on taking personal preferences as a way of assessing right action. By this view, maximizing utility means assessing what individuals would prefer from a range of available options and then doing that which, on aggregate, will be closest to giving most people what they want. Distributing resources in this way might mean that everyone gets less than they hoped for, but it means that the total resources are spread in a way which brings the most overall satisfaction, all things considered. Nobel award-winning Herbert Simon has explored this approach in economics and describes it as *satisficing*.² It goes some way to overcoming the difficulties involved in trying to measure and compare individual conceptions of happiness.

There is a traditional distinction made in utilitarian theory between act and rule utilitarianism. An act utilitarian would be more likely to make snapshot decisions based on the circumstances of the moment, whereas

² H. Simon (1986). *Report of the Research Briefing Panel on Decision Making and Problem Solving*. Washington, DC: National Academy Press.

a rule utilitarian would be more concerned with general application of the principle. For example, in the case of a company wishing to demolish a historic building to expand its factory, an act utilitarian would refer to the balance of welfare in this particular case, whereas the rule utilitarian would appeal to the background laws and policies that are themselves justified by improving welfare. Perhaps the easiest way of understanding the difference is by noting that a rule utilitarian does not have to weigh every individual decision but will appeal to moral precepts such as maximizing personal liberty. An act utilitarian may be much more likely to allow moral exceptions; it might be acceptable, for instance, to lie on occasion if this is justified by the circumstances. Take, for instance, the case of a group of refugees hiding from hostile forces when a baby starts to cry, and the mother ends up smothering the child to save the group. While business cases are generally not life and death issues, it shows us how shifting the focus of analysis from rules to individual acts can alter our moral intuitions.

Utilitarianism and the Voice of the Minority

A persistent concern voiced by critics is that utilitarianism may pose a threat to minority groups. That is, if we acknowledge that the significant measure is utility in the aggregate, then it means that individual dissenters or smaller groups within the larger group may suffer disproportionately. If we could all have cheap oil for the foreseeable future by displacing a native tribe from their homeland in the Amazon, or there is an ample supply of inexpensive clothing created by some workers enduring shabby conditions, then it seems that the welfare of the majority should prevail.

There are two lines of response to this challenge. The first is based on the theory itself and suggests that there is utility in institutions such as the family and being able to enjoy secure lives. Recall that under the theory we must recognize that others will have similar interests, and they should be weighted equally with ours. The net result is that in displacing the tribe we not only have to think about their immediate distress but also the general lowering of welfare if everyone were subject to being expelled from their

homes without recourse. Mill suggests that there is utility through having a just society, and infringements on that must be included in any utilitarian calculus.

Another response uses the terminology of rights and suggests that we may be entitled to self-determination, privacy, physical security, and many other fundamental rights – not because of their overall utility, but because all humans are automatically entitled to them. Both sets of reasoning would preserve the sanctity of minorities and show that the theory is subtler than merely summing up the immediate benefits and harms caused by an action.

Supererogation

One characterization of utilitarianism is that it should provide “the greatest good for the greatest number.” This works well as a review of the immediate effects of a specific action, but we can see that if, looking forward, it applied to all possible effects throughout time, it imposes endless duties. An expression of the former approach is described by Bentham in his letter to a young woman: “Create all the happiness you are able to create: remove all the misery you are able to remove. Every day will allow you to add something to the pleasure of others, or to diminish something of their pains.”³ Utilitarianism prompts questions about when we are being sufficiently good and decent, and how much more could be expected. The technical term is supererogation or going beyond what is expected. In ordinary life, we do not have to do things that are above and beyond normal expectations. For example, if you can swim and see a child in distress in a pool, it is nice if you try to help the child and it could be considered heroic. However, there is normally no moral requirement that you risk your life to save another. First aid training, for example, stresses that the first thing a rescuer needs to do is make sure that he or she does not become another victim.

³ Quoted in L. Hampton (2022). “Jeremy Bentham,” in R. Y. Chappell, D. Meissner, and W. MacAskill, eds., *An Introduction to Utilitarianism*, www.utilitarianism.net/utilitarian-thinker/jeremy-bentham.

American, British, New Zealand, and Australian laws reflect this same attitude. There is no legal duty to recognize an obligation based on common decency. In the words of William Prosser, an expert on tort law:

A physician is under no duty to answer the call of one who is dying and might be saved, nor is anyone required to play the part of Florence Nightingale and bind up the wounds of a stranger who is bleeding to death, or to prevent a neighbor's child from hammering on a dangerous explosive . . . The remedy in such cases is left to the "higher law" and the "voice of conscience" which, in a wicked world, would seem to be singularly ineffective either to prevent harm or to compensate the victim.⁴

In short, Americans are not their brother's keeper in the eyes of the law. In contrast, some countries, including Germany, France, and Japan, have Good Samaritan laws that require bystanders to help unless it puts them in harm's way.

In the context of the workplace, an employee's primary duty is to the employer. Consequently, Owen ought to work diligently when stocking shelves, but it is not as clear whether he has a moral duty to go beyond his assigned tasks or report petty theft when he sees it happening.

The issue is illustrated by the actions of the pharmaceutical firm Merck. In doing research for veterinary products, researchers discovered that its drug Mectizan could cure river blindness, a parasitic disease carried by flies in sub-Saharan Africa. Merck was then faced with the dilemma that it had a sure cure for a crippling disease, but those afflicted were in no position to pay for it. Merck committed to supply sufficient doses to all who needed it free of charge for as long as it took to eradicate the disease. The life cycle of the parasite means that it could easily take over fifteen years to complete treatment. By 2021, Merck had donated four billion doses in forty-nine different countries.⁵ The test of a supererogatory act may be how we answer the question of whether Merck's actions were merely decent, all things considered, or, alternatively, heroic. We might

⁴ W. Prosser and W. Keeton (1984). *Prosser and Keeton on Torts*. St. Paul, MN: West Publishing Co. pp. 375–376.

⁵ "35 Years: The Mectizan® Donation Program," Merck, www.merck.com/stories/mectizan/.

respond that the company did more than it had to, and would not have been held accountable for failing to act. At the same time, moral approaches do not assess actions by what is conventionally accepted but rather look to what we should do. Taken this way, the notion of supererogation falls away, in that we can fairly readily see what we ought to do, and the problem is more a question of overcoming human frailty and self-interest.

Partiality

An additional factor in utilitarianism is the issue of partiality. Psychological evidence suggests that we mainly reserve our pity for those with whom we can associate. In some television commercials, donors to charities working in foreign countries are promised a picture of the beneficiary and periodic letters. Why does the charity bother to do this? Simply because it works. These charities know that by personalizing a starving child in a faraway land, more people will respond generously. In fact, we do not do well when presented with the faceless or distant. We all know how difficult the world is, but it is not until we are shown stark pictures and personal descriptions of deplorable situations that we realize the urgency and humanity of those who are suffering. Partly, this is a defense mechanism. If we empathized with all the suffering in the world, we would be overwhelmed and rendered incapable of doing anything.

Since the eighteenth century, utilitarianism has made the initial assumption that we are all of equal value, and we should care as much about individuals who are distant and unknown to us as we do about our close family. However, it appears we *do* care more about the ones we love, and we shield ourselves from nameless statistics. When these nameless statistics become real, often through the power of social media, we lower our barriers and see them as human beings in need. In terms of the business world, then, this dehumanization of those with whom we do not have contact means that it is much easier to pass on suffering to people we don't know and don't care about, including future generations. We do treat people differentially, and we favor those known and near to us.

Preference Adaptation

Another issue to consider is the “sour grapes” lesson. The standard theory – and indeed much of neoclassical economics – assumes that we are aware of our own preferences and they are generally fixed. But this may not always be true. Advertisers are adept at encouraging us to buy the latest gadgets, and we subsequently discover needs we never realized we had. Moreover, we tend to shift our expectations once they are dashed. For instance, many students who do poorly in organic chemistry classes decide that they did not want to be doctors after all, or, when confronted with the difficulty of a career in musical theater, conclude they will only sing recreationally. Later on, it would not be unusual for them to assert that they never really had those expectations in the first place. In Aesop’s fables, a fox covets some juicy grapes hanging from a vine. He tries, in vain, to take them. He departs, declaring that the grapes were probably sour. Jon Elster describes this phenomenon as “adaptive preference formation.” He says: “Why should individuals want satisfaction to be the criterion of justice . . . if people tend to adjust their aspirations to their possibilities? For the utilitarian, there would be no welfare loss if the fox were excluded from consumption of the grapes, since he thought them sour anyway.”⁶

One of the implications of the *sour grapes* phenomenon is that we cannot rely solely on the personal satisfaction of individuals. They may change their minds or may have been led to expect an unjustly poor outcome, and feel indebted when they receive anything at all. For instance, workers who believe they will be fired if they are injured on the job may be grateful if they are allowed to take a half-day off without pay instead, or victims in Bhopal may welcome any compensation at all, however small it is.

Utility Is Not Always Fair

So far, we have assumed that it is possible to have a solution that creates the greatest good for the greatest number. As noted, mere acceptance of an outcome by one party may not be the same as a maximally fair distribution

⁶ J. Elster (1982). “Sour Grapes: Utilitarianism and the Genesis of Wants,” in B. Williams and A. Sen, eds., *Utilitarianism and Beyond*. Cambridge: Cambridge University Press, p. 219.

of a limited resource. Consider a thought experiment by Keith Murnighan: Two individuals are told that they have to split an amount of money in a given time period or lose the money altogether. The natural default is a 50/50 split. But what if one party is rich enough to be indifferent to the outcome? If the amount were \$1, a rich person could offer the other person a single cent. They would have the leverage to bargain, and the other side is faced with the option of something or nothing. Some might reject the offer, but strictly speaking it would be irrational to do so as they are paying a premium for the luxury of turning down free money.⁷

Similarly, a multinational may make an offer to act as a supplier to a company in a developing country, which will only provide a marginal return for the supplier. The multinational has what is termed the *threat advantage* since it has options unavailable to the company, whereas this may be the only offer the company gets. This outcome will give great utility to the multinational, and some – more than none – to the company. Overall, there is an increase in utility, but it is skewed by an unequal distribution. Commentators have criticized utilitarianism along these lines because although it recommends increasing utility, it generally has little to say about the allocation of the utility itself. To counter this tendency in free markets, a movement has arisen called “fair trade” or “trade justice” that advocates a “fair” level of return to producers irrespective of their bargaining leverage. Thus, for example, some importers of coffee will agree to a guaranteed price for farmers even though the prevailing world market price drops lower. This may go against the self-interest of the importers in purely economic terms, but it means that they are assured that the producers will not be squeezed by loss leading or predatory practices by large firms.

The Value of Life

In the 1970s the Ford automobile company faced a significant public backlash when it turned out that its Pinto model had a design flaw that made it susceptible to bursting into flames after a rear-end collision. The

⁷ J. K. Murnighan (1992). *Bargaining Games: A New Approach to Strategic Thinking in Negotiations*. New York: William Morrow and Company, p. 106.

company was aware of the defect but had made a calculation that it would be less expensive to pay compensation for anticipated deaths and injuries rather than install an \$11 component to mitigate the problem. Some of the outrage centered on the fact that Ford had quantified the value of a life and treated it as a cost/benefit analysis. We often consider life to be sacred and priceless. In some senses that it undoubtedly true, but on the other hand, as a practical matter it is a calculation we do all the time.

An expense that faces both government and industry is maximizing safety for both workers and consumers. While we would often like to think that life has infinite value, realistically we take risks and make compromises – as do the manufacturers of cars and airplanes as well as food producers. Although many will balk at the very idea of putting a dollar figure on life at some particular point, we generally will not spend ever more money to preserve and protect it. In essence, we may be condemning people to die because producers and consumers are unwilling to allocate funds toward, say, mine safety or pollution reduction.

Imagine a local authority faced with the option of installing a pedestrian crossing at an intersection where people have been killed by oncoming traffic. The projection might be that one person will die every five years, but that gets balanced against the cost of the installation and the accumulated inconvenience to thousands of travelers. Similarly, consumers may buy life insurance based on their estimates of potential financial loss, or governmental authorities may have guidelines about compensation for industrial accidents. The question arises, then, as to the precise moral wrong Ford committed. Realistically, car manufacturers could always make safer vehicles – they could limit speeds, increase the strength of the passenger compartment, or surround the vehicle in soft material, but at the price of less efficient, heavier vehicles that consumers would probably shun. Perhaps the problem with the Pinto was not so much the utilitarian analysis itself, but rather the shamefully inaccurate cost projections involved: If they had valued each anticipated death at many millions instead of the \$200,000 they used at the time, the calculation would have yielded an economic signal to recall the cars.

Complications in the Calculus

The promise of utilitarianism is that it can balance the beneficial and harmful consequences of our behavior. Although there has been a lot of work done on methods of calculating welfare, nevertheless we must acknowledge that those kinds of calculations about the future are necessarily speculative. For example, if we harvest Alaskan snow crabs at the present rate, they are likely to be unavailable to future generations, and their diminishing numbers may have an effect on the ecosystem.⁸ Similarly, carbon dioxide emissions caused by current industrial practices appear to be leading to global climate change. However, we cannot know now that people in the future will have similar preferences to ours, or that our predictions about the future state of the world will come to pass. Therefore, there are several questions we should pose in making a utilitarian calculation, including:

1. Who is included in the calculation?⁹
 - Does everyone in the world count equally?
 - Who counts for more, and why?
 - Do future generations figure into the calculation?
2. How do we deal with differing preferences or values?
 - What if a consequence means a lot to some and very little to others?
 - What about people who are never satisfied?
3. How do we account for the various probabilities?
 - Are all the outcomes equally likely?
 - Can we balance a probable good consequence against an unlikely disastrous one?
 - How far can (or should) we predict a causal chain?

⁸ J. Lerner (2021). "Researcher Reports Declining Numbers of Fish After Trawl Survey." *The Nome Nugget*, November 12, <https://bit.ly/3BMkpCg>.

⁹ See, for instance, Mill, *Utilitarianism*, where he says, "I must again repeat, what the assailants of utilitarianism seldom have the justice to acknowledge, that the happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned" (p. 268).

Take the case of electronic waste (e-waste). Electronics in general has a large turnover as the technology improves. Old televisions, computers, and mobile phones are replaced as newer models become available, and the obsolete equipment is typically dumped in landfills or dismantled by hand by unskilled workers in order to recover some of the precious metals. According to the World Economic Forum, some 48.5 billion tonnes were discarded in 2018, but only 20 percent could be accounted for.¹⁰ A utilitarian analysis would have to look at a wide range of factors in deciding what should be done. For instance, if the waste pollutes impoverished areas but the local population is willing to tolerate it in return for financial compensation, should their preferences govern? If we genuinely believe that everyone counts equally, then it is plausible that the majority would be willing to compromise environmental standards for upgraded electronics. Should we also consider the effects of pollution on future generations who do not yet exist? How would we go about counting them – for example, how many future generations should be included in the calculus? Furthermore, it could emerge that those future people have different utility functions from our own, and who has the right to advocate for them? Perhaps the consequences of metals leeching into the groundwater are local and minimal, or, on the other hand, there might be a very low risk that they go on to taint huge watersheds, that is, a small risk with a potentially huge impact. Just as in the case of the Pinto fires, utilitarianism provides a completely reasonable decision-making process, and at some point governments, producers, and consumers need to make their best assessments about likely costs, benefits, and risks. However, quantifying and comparing utilities in order to reach a determination is highly complex.

One avenue for quantifying assessments is to reduce the various factors involved to monetary units. These are often called *contingent valuations* as they involve hypothetical questions such as “How much would you pay to keep the water drinkable?” or “What is the maximum we would expend on a mine rescue attempt?” One immediate problem is that these are not real markets, and individuals tend to have rosy views of their priorities before they are tested in the real world. None of this is to dismiss the power of making a utilitarian

¹⁰ World Economic Forum (2019). “A New Circular Vision for Electronics: Time for a Global Reboot,” <https://bit.ly/3PbTkeG>.

calculus, only to acknowledge that many of the factors will necessarily be speculative based on our best guesses about the future and the imputed values to those affected. On the other hand, unlike many other approaches, utilitarianism has the very significant appeal of generating data to help facilitate a decision.

Duty-Based Theories

In stark contrast to theories that deal with outcomes, deontological or duty-based approaches believe that it is a mistake to judge actions by their results (Greek: *deon*). A deontologist would say that we need to act out of a principle of obligation that does not rely on any particular consequence. For example, a customer may have received too much change at a store. She could think that the world would be a better place if people gave back the extra money or that it would make her feel guilty if she did not. But she may reason that we have duties and obligations to do the right thing, no matter what the consequences. That is, she should return the money just because it is the morally correct thing to do, regardless of the outcome. Similarly, a deontologist would reason that it is improper to lie to potential customers, even though the lie might facilitate sales and never be discovered, merely on the grounds that lying is wrong. In broad terms, we should follow rules we would expect everyone else to comply with – that is, the so-called *golden rule* of doing unto others as we would have them do unto us.

The foremost philosopher associated with deontology is Immanuel Kant (1724–1804). Kant believed that ethics is based on reason and freedom. He argued that people have the mental capacity to make moral decisions and so we should hold individuals accountable for their actions in ways that children or animals are not. Furthermore, we have the freedom to choose our actions. These qualities result in a requirement to respect one another's humanity, meaning that we should not treat people as we would treat a machine. Imagine a tollbooth collector, for example. Although the function they carry out could be done mechanically, we should recognize that we are dealing with a person with dignity and worthy of respect. Another important implication of his approach is that we have to treat people as we would wish to be treated or, as Kant puts it, "One must act to treat every person as an end

and never as a means only.”¹¹ This does not mean that we cannot employ others in pursuit of our goals, but rather that we ought to respect people as people, not just as *human capital*. It would be acceptable to contract individuals to add value in a business, but we also have to realize that they are not there exclusively as a means to our ends – they are likely to be harmed if sacked without notice, put in unhealthy working conditions, or not paid a living wage. In Kantian terms, we should treat all people – employees, suppliers, agents, customers, and everyone else – as “ends-in-themselves.”

Deontology takes motives to be of paramount importance in assessing morality. Kant understood that we often act out of self-interest or because we are following directions. On the other hand, he felt that the highest good comes about when we perform an act for the sake of goodness itself, rather than looking to any particular outcome. Merck’s act in donating drugs to impoverished Africans, for example, may have been done out of a desire for good publicity or to gain political leverage. However, the public announcements from Merck do not appear to justify their acts on these grounds; instead, its behavior seems to be based on the moral belief that there was no alternative in the face of terrible human suffering.

George W. Merck once claimed in an influential speech that “We try never to forget medicine is for the people. It is not for the profits. The profits follow, and if we have remembered that they have never failed to appear.”¹² The view he was espousing suggests that there is a correlation between doing the right thing and profitability. However, it is significant that the company does not do what it perceives as morally correct in order to generate profits. It may be organized to provide a service or product, but it still operates in the belief that profits will be a by-product of a functioning business.

Kantian Principles

Kant’s system is rational in the sense that it does not rely on outside evidence. He believed that we could work out the commands of ethics in just the same way that we could reason through a logic problem. So, for

¹¹ I. Kant (1998). *Groundwork for the Metaphysics of Morals*, trans. M. Gregor. Cambridge: Cambridge University Press, para. 4.429, p. 37.

¹² Merck, “Our History,” www.merck.com/company-overview/history/.

example, if we know that line A is longer than B, and B is longer than C, it follows that A will be longer than C. To many people, this is both obvious and compelling, with the sense that if the first two claims are true, then the last necessarily has to be true. Kant argues that moral rules are not subject to evidence but that they are proven like mathematical formulae and have the same irrefutable force.

Utilizing Kant's theories, we can propose a three-step analysis to determine moral worth. First, you must determine the motive for an action. Second, the motive must be of the right type. It must seek goodness for goodness's sake, and not as a by-product of an action motivated by something else. Thus, if a company discloses to its workers that there is a health hazard associated with the chemicals used to produce computer chips because of a legal requirement or with the aim of reducing sick leave, it would not be fully moral, according to Kant, since the disclosure did not stem from moral obligation alone. The third step can be characterized by Kant's statement that "Duty is the necessity of an action performed from respect for the moral law."¹³ In other words, actions cannot be subjective, but must be objectively true ones that everyone would assent to if they considered them rationally. He believes that people can rationally determine a set of moral prescriptions (for example, "Do not lie," "Do not steal," and so on) that are obvious to everyone. These would then take on the force of a law – they are commands that would have to be complied with even if we found it inconvenient or against our immediate self-interest. He used the term *categorical imperative*, since the laws would not allow exceptions and hence apply *categorically*, and are *imperative* as they are commands, not recommendations.

For Kant, moral principles can be tested by whether they are consistent, which means that they must apply universally without contradiction. So, for instance, he considers whether it would be permissible for someone to borrow money by making a promise to repay, knowing that it can't in fact be repaid. He reasons that to be consistent he would have to allow everyone to do the same, which would lead to universal distrust. This leads him to

¹³ I. Kant (1959). *Foundations of the Metaphysics of Morals*, trans. L. White Beck. Indianapolis, IN: Bobbs-Merrill, p. 16.

reject any course of action that might be immediately attractive but cannot withstand his test. Sometimes Kant's universalization criterion is misunderstood by those who believe universality can be determined empirically, by doing surveys or gathering factual evidence. However, that is not Kant's approach. Instead, he believes we must work out moral questions at the conceptual level, independent of outcome assessment entirely.

Kantian Capitalism and Stakeholders

Kantianism is manifested in the recent emergence of so-called stakeholder theory. Traditional theories of the firm contend that its paramount function is to maximize returns to shareholders, either through dividends or increased share value. In this theory, the executives of a firm are essentially hired agents who should do everything they legally can to increase profits. This sort of motivation means that key decisions will always be determined based on whether or not they will reduce costs or raise returns. Consequently, employees are functionaries of the firm and are assessed by their ability to add value. If a company has what is sometimes euphemistically called "surplus overhead" – that is, more workers than it needs – then the traditional approach would advocate swiftly getting rid of them.

An alternative view has arisen, spearheaded by the academic Norman Bowie, who coined the term "Kantian capitalism."¹⁴ For him, this means that the relationships within the firm must change – we need to give individuals more autonomy and more meaningful work. Salaries should ensure independence and the work environment should be safe and healthy. Bowie would encourage worker participation and fairness in the workplace. He believes that we need to reconceive the nature of the corporation as a responsible member of a community with the associated duties and privileges: It would be a partner rather than a scavenger. Similarly, R. E. Freeman uses the term *stakeholder* to flesh out his analysis¹⁵. Essentially, any party that might be affected for better or worse

¹⁴ N. E. Bowie (2015). "Kantian Capitalism," in C. L. Cooper, ed., *Wiley Encyclopedia of Management*, <https://doi.org/10.1002/9781118785317.weom020134>.

¹⁵ R. E. Freeman, J. S. Harrison, A. C. Wicks, B. L. Parmar, and S. de Colle (2010). *Stakeholder Theory: The State of the Art*. Cambridge: Cambridge University Press.

by corporate actions will have an interest or stake in its future. This would include, for example, customers, suppliers, and the community. Some relationships would be more official or contractual, such as a customer at a restaurant, whereas others would be more remote, such as suppliers located in a different country.

Freeman suggests that the firm should not be run for the paramount sake of one group in particular – that is, the investors – but that management needs to consider the interests of all stakeholder groups when making its decisions. For instance, the owners or shareholders in a fast-food restaurant have duties beyond operating the site profitably. He would claim that they should care about the community in which it is located – perhaps, for example, by opening a play area, making sure their employees are treated humanely, and checking that they are not degrading the local environment. The deontological factor is that profit by itself is not the overriding function of the business: A firm should operate in this way because it is a minimally decent way to deal with others and the community.

We should emphasize that Kantian approaches to capitalism are foundational in that they look to the very basic ideas that make the system operate at all. One of their main points is that there is necessarily a moral underpinning to any market economy since it would collapse without a set of shared understandings about appropriate behavior.

Following Kant, the reason we should care about others is that we respect them as ends-in-themselves, not just as instruments of our professional ambitions. Freeman has taken the Kantian notion of respect to mean that the job of management is to consider all stakeholder interests as having equal weight – a task that, he says, requires the wisdom of King Solomon from the Bible. That is, he gives no primacy to shareholders but feels the company has a fiduciary duty to all its stakeholders. In deciding whether to relocate a factory, for example, executives would need to think not only about the increase in efficiency and consequent greater returns, but also about the effects of a shutdown on its current workers and the local community.

It is important to note the kind of justification Freeman and Bowie appeal to. It is not that the firm will be worse off if they fail to enact these more humane measures, but that behaving any other way would entail

a conceptual self-contradiction. Using the test of Kant's categorical imperative, if everyone routinely lied, then the concept of a contract would lose its meaning and it would be hard to engage in commerce. Similarly, a disgruntled employee might feel justified in stealing groceries from their employer. However, stealing as a generalized practice would ultimately undermine the concept of private property.

Kant believed that moral issues could typically be resolved by appealing to a single overarching principle. However, we can imagine cases where obligations might conflict. Plausibly there are times when it would be acceptable to lie, perhaps if a life were at stake. We may have duties to supply drugs at no charge to sick people overseas, but what if the very survival of the firm is in question? One problem with Kantian capitalism is that it does not seem able to readily supply a standard by which conflicting obligations can be judged.

One suggested solution has been proposed by the English philosopher W. D. Ross (1877–1971). Ross thought we had several *prima facie* or self-evident obligations based on our everyday moral reflection.¹⁶ He is termed an *intuitionist*, since he offers little justification beyond what he believes are obvious axioms. They include reciprocity, reparation, gratitude, justice, beneficence, and self-improvement. For instance, while we have baseline duties to everyone, we have special duties to those who have helped us in the past or those we have harmed. Thus, if a company has been assisted by a tax break from the local community, it will have the usual duty to produce returns to its shareholders and produce safe goods, but in Freeman's managerial balancing test, it should put community interests ahead of others. Although there is an inherent vagueness in Ross's approach, it does offer a way of dealing with conflicting deontological principles.

So far, we have looked at the shareholder approach, which suggests that the central concern of business is maximizing returns to company owners, and a stakeholder view where profitability is secondary to moral action. We might also chart an intermediate position, where companies take account of stakeholder interests but realize that doing so is also a good management strategy. As Freeman notes, while we consider a private firm to be a vehicle

¹⁶ W. D. Ross (1930). *The Right and the Good*. Oxford: Clarendon Press, p. 21.

for enhancing overall welfare, it also needs to stay in business – that is, make a profit. Therefore, even in a Kantian business, giving some primacy to the needs of the owners might be appropriate.

The language of stakeholders is prevalent in current business, and it appears to reflect a sincere commitment on the part of companies to act as good corporate citizens. Although some of the language may be used rhetorically or to enhance the firm's reputation in order to become more competitive, it has nevertheless been thoroughly integrated into business discourse and espouses doing good for its own sake and participating in commerce as a responsible corporate citizen.

Virtue Theory

A third perspective relies on developing character as opposed to determining the right action in any specific case. If we were to ask someone how they would like to be remembered, it is likely that the response would be something along the lines of “as someone who was kind, generous, caring, compassionate, friendly, and humorous.” The point is that people typically do not point to particular acts or achievements but instead look to general character traits. This provides an insight into virtue ethics, which challenges the relevance of emphasizing outcomes, as in utilitarianism, and rational decision procedures, as in deontology. Virtue theory is more concerned with character and what it means to live a good life. It echoes the common belief that we should judge people by more than just their effectiveness in increasing welfare or how well they fulfill obligations.

The key figure in virtue theory is the philosopher Aristotle (384–322 BCE). Aristotle believed that we should have a purpose in life, by aiming to achieve *eudaimonia*, perhaps best translated as “human flourishing” or being the best we can be. It is specifically human because he sees the ability to reason and express ourselves in action as distinguishing us from all other living things. We learn best from role models in society and making the most of our talents. Instead of working out an algorithm of correct action, we should model ourselves on heroic people we admire and want to emulate, asking what they would do in a particular situation. Moral goodness is achieved by encouraging and shaping our virtues. Aristotle says: “Virtue,

then, is of two sorts, virtue of thought and virtue of character. Virtue of thought arises and grows mostly from teaching, and hence needs experience and time. Virtue of character results from habit, ethos, hence its name ‘ethical,’ slightly varied from ‘ethos’.”¹⁷

The virtues, though, do not exist in isolation. They are expressed in a particular context, and our moral character involves moderating our virtues between excess and deficiency, much like a rudder steering a ship. We need to balance feelings of fear, boldness, desire, anger, pity, pleasure, and pain between too much and too little. Hence, it is fine to be trusting, but there is a balance to strike between being not trusting enough and being gullible. In Aristotle’s words, our responses need to be at the right times, on the right occasions, toward the right people, for the right motives, in the right way, and to the right extent, and our ability to judge correctly characterizes goodness. Thus, anyone can fly into a rage, but a virtuous manager will be able to direct their anger appropriately so that the right person gets the right message, at the right time, to get things done properly. Too little anger will make people think nothing is wrong, but too much may leave employees feeling resentful. Moreover, it is part of the manager’s job to praise or reward those who are directly responsible. This gives rise to the often-quoted maxim of “moderation in all things” but it is more accurately moderation as balance between extremes.

Aristotle believed that virtues may not be taught by mere classroom instruction. Humans have both reason and desire, and there are two types of corresponding virtues – intellectual virtues and practical virtues – and those of us with character will apply the virtues appropriately in given situations. Intellectual virtues by themselves can make someone clever or wily but not necessarily good. For example, a hacker who develops a computer virus which does damage to others is undoubtedly very bright, but their intellect is misdirected. Aristotle believed that we should combine cleverness with the ability to know when and where to apply it, which comes from experience and from listening to respected members of the community. It does not preclude competition, so just like in athletics,

¹⁷ Aristotle (1987). *Nicomachean Ethics*, trans. T. Irwin. Indianapolis, IN: Hackett.

everyone is encouraged to develop personal excellence, and doing so does not entail disrespect to others.

Moral training is also a question of developing the right habits. We could make an analogy with car seat belts, which were once optional, and then made mandatory by law. As people started wearing them, they became habituated, and most people now have an automatic reaction to buckle up in a car. Similarly, virtue training will first enforce the disposition to find the mean between excess and deficiency, but then it will become more normal and habitual until it eventually becomes an internal characteristic. However, it would be wrong to portray virtue theory as automatically demanding a uniform response. Explicitly, every person will have to determine their best action in specific situations.

A central element for an Aristotelian is to conceive of actions as part of a continuing personal history, that is, one with a future and a past. Just as learning to play an instrument takes time and practice, we can only judge an individual on overall character. The perspective of time will allow us to gauge a person by building a profile of actions in a range of circumstances and seeing the continuing motivational dynamic (*energeia*) behind actions. Furthermore, virtue theory necessarily looks at the context of an act, something Kant ignores.

Another feature is that virtue theory recognizes that our actions take place within communities and must be judged in those terms. Thus, on an individual level it makes sense that the qualities of a good marine and a good librarian are different, although we can judge each by how well they fulfill their respective functions. Firms operate within the societies that charter them, and so we should not judge them in isolation. Moreover, as members of a community firms will have clearly articulated rights and responsibilities that go beyond the vague directive to do the right thing.¹⁸

Aristotle also uses the term *phronesis*, which roughly equates to sound judgment that marries intelligence and experience. The contemporary philosopher Rosalind Hursthouse explains that we cannot have a purely cerebral ethics, but as social creatures our notion of flourishing must reconcile our individual capacities and emotional makeup as well.¹⁹ Alistair MacIntyre,

¹⁸ D. Koehn (1995). "A Role for Virtue Ethics in the Analysis of Business Practice." *Business Ethics Quarterly*, 5 (3), pp. 553–539.

¹⁹ R. Hursthouse (1999). *On Virtue Ethics*. Oxford: Oxford University Press.

another recent writer, draws on Aristotle when notes that we have developed various institutions and what he terms “practices” within them. So, for example, a hospital is an institution, but a doctor practices the profession of medicine within it. To be a good physician there are certain forms of behavior that are encouraged, such as applying specialized knowledge and skills. The rewards within the practice are often internal, and certain character traits are associated with good doctors – these have developed over time and are fostered within professional organizations. On the other hand, there are external rewards, such as pay and status, but these are not unique to the practice – one could acquire them by, for example, becoming a lawyer instead. Conversely, someone could be a great doctor without taking the external rewards, but it would be impossible to be one without subscribing to the virtues internal to the practice because these traits are vital if someone wants to achieve excellence. To put it another way, we could perhaps bribe a child to take piano lessons, but that will only be effective up to a point. Without internal rewards, they are likely to stop as soon as the external incentives disappear. There is a necessary tension, MacIntyre claims, because institutions realize the value in promoting internal rewards but are themselves largely motivated by external rewards. Thus, a hospital will seek out funding, prestige, and other external rewards, but ironically these may promote conflicts with the best practice of medicine.

If we apply the distinction between internal and external incentives to business, we can see that corporations inevitably feel the pull toward expansion and avarice, but nevertheless realize there is value in fostering their employees and being responsible community members. Thus, someone inside a corporation may be motivated by the internal rewards of the practice – perhaps creating a great product, taking satisfaction in expertly applying skills, or providing great service – while the firm itself is ultimately propelled by competitive forces. In Aristotelian terms, the nature of someone working for internal rewards is called craftsmanship, where the work itself helps fulfill the worker.

In this sense, taking craftsmanship seriously offers a hope that we can resist the temptation to think solely in terms of external rewards as a gauge of personal and professional success. Clearly, if we look to pay as a reward, then we will do things that serve to maximize it, and we will

move to a culture like that at the German company Wirecard where very bright people thought they could outsmart any constraining system to make as much money as possible.²⁰ The restraint against those forces, it seems, has to be framed in value terms such as justice, honor, courage, and truthfulness – virtues independent of external reward.

Public corporate statements and popular management literature often use virtue language. JPMorgan Chase provides an example of a brief statement of core values: “In business, as in every other arena, ethical behavior does not just happen. It has to be cultivated and repeatedly affirmed throughout the organization . . . acting with integrity is paramount – and it applies to every aspect of our company.”²¹ The company goes on to list the virtues of respect, humanity, humility, and tenacity among others. These lists could always be expanded, of course. The philosopher Robert Solomon published a list of over forty business virtues, ranging from ambition to zeal.²² However, being true to the spirit of Aristotle’s philosophy, these cannot be promoted in isolation but are to be used judiciously to the right effect. Additionally, the environment of the firm needs to be conducive to the development of individual employees’ virtues so they can flourish and have the happiest and most rewarding lives possible, which leads to the question of the moral status of the corporation itself.

The Virtuous Corporation

While it makes perfect sense to ask if people are virtuous, is the claim that “Theranos acted badly” meaningful? Can we say that a company itself has moral attitudes above and beyond the people it employs? One way of thinking about this is to consider that many firms have a distinct *culture*. There is typically a set of unwritten corporate policies and shared understandings not written in a company’s code of conduct, and those who are in

²⁰ R. Browne (2020). “‘The Enron of Germany:’ Wirecard Scandal Casts a Shadow on Corporate Governance.” *CNBC*, June 29, <https://cnb.cx/3bzWueJ>.

²¹ JPMorgan Chase. “Business Principles,” www.jpmorganchase.com/about/our-business/business-principles.

²² R. Solomon (1999). *A Better Way to Think about Business: How Personal Integrity Leads to Corporate Success*. New York: Oxford University Press.

tune with them and act accordingly will thrive whereas those who do not will flounder. These understandings are not linked to individual executives or employees but represent shared understandings about the way a company operates.

The effect of corporate culture is that it may lead to behaviors where no one individual may be held accountable. In the case of the space shuttle Columbia crash, for instance, an engineer had suspected that there was significant damage to the wing and tried to get satellite pictures taken to determine if he was right. However, the bureaucratic nature of NASA held up his request because the engineer did not use the correct channels to report his concern. As it turns out, he was correct, and the investigatory board faulted the authoritarian and rigid culture at NASA. No specific individual was held accountable. So it could be that every individual in an organization can sincerely say that they were not to blame for an incident, yet they were part of a collective whole that was nevertheless responsible. Consequently, the firm cannot be reduced to just its members, but takes on a moral agency of its own, and we can argue that it is not just people who can be morally assessed by virtue ethics, but corporations as well.

Virtue theory is attractive in many ways, but nevertheless has some weaknesses that leave it open to criticism. As we have seen, the theory is context-based and therefore will tend to reflect prevalent norms and attitudes. Accordingly, in a society where the “good life” is one of constant acquisition and consumption of material goods and where successful business leaders are venerated as celebrities, it would be natural for young people to model their lives after such activities and figures. Aristotle assumes that we have sufficient critical acumen to distinguish among people who are truly worthy and those who are not, but this may be a difficult task for many of us: In contemporary times it seems difficult to name more than a handful of people who consistently stand out as natural role models or heroes.

The lack of an objective principle of right and wrong can also lead to what is termed the “good Nazi” problem. In this case, someone is loyal, brave, courageous, and has many other noble qualities, but unfortunately works for a corrupt and evil system. In essence, we need some independent

external criterion to establish the morality of contextual norms, otherwise the prevailing norms in a clearly immoral system may be immune to criticism.

Virtue theory also begs questions about the moral status of firms and how we should consider the relationship between business and society. While it is straightforward to describe the qualities of a good citizen in a specific society, it is more complicated to frame what we think an ideal corporation would be like, especially given its primary obligations to survive, grow, and make profits in a worldwide marketplace. After all, Aristotle's original notion of flourishing was an exclusively human activity, based on our abilities to reason and contemplate.

Ethics of Care

Recent philosophers have adopted an *ethics of care* that contrasts with classical theories in several significant ways. Feminist philosophers point out that both consequentialism and deontology rely on a form of intellectual processing that does not represent how we operate on a day-to-day basis, and, moreover, they rely on a generalized sense of impartiality. Yet our moral relationships are usually found in specific circumstances with people we know. This goes against the traditional view that many classical philosophers espouse wherein individual moral agents are considered independent, unconstrained, and equal. Care ethicists contend that, on reflection, we should perhaps start from a view of human nature where we see ourselves as interdependent, bound in relationships such as family and friends, and inherently partial. After all, our initial experience of the world emerges from relationships like mother and child which is primarily nurturing, and perhaps this should be a model for how we treat one another.²³

Another way of thinking about care ethics is to return to the question of why one should be moral in the first place. Why should we want to maximize the happiness of all, or treat others as we want to be treated? Care ethics provides an answer that underwrites theories that are based on such

²³ See C. Gilligan (2003). *In a Different Voice*. Cambridge, MA: Harvard University Press; E. Kittay and D. Meyers (1987). *Women and Moral Theory*. Totowa, NJ: Rowman & Littlefield; M. Walker (2007). *Moral Understandings*. Oxford: Oxford University Press.

principles by noting that we naturally sympathize with others. It also deals well with a point often lost in virtue ethics – that we are inevitably inter-subjective beings who live in communities and find our notions of self and others through relationships. Thus, while it is valuable to discuss individual flourishing and purpose we should realize that we only do so in social environments and that we are shaped by our relationships and communities. None of this dismisses the important role of principles or personal character, but rather attempts to integrate them and find inspiration for the moral enterprise by examining how we practice moral decision-making. In effect, care ethics moves the focus from moral justification to moral deliberation. Take a case where a worker wants to take time off to care for the needs of their aging parent: A manager might look for answers from universal and impartial principles of justice removed from the context of the issue at hand, but practically they would likely approach the situation with empathy, personal experience, and an open mind considering the special factors involved.

The Female Voice

The controversy over whether genders have special qualities can be illustrated through the empirical work of Lawrence Kohlberg and Carol Gilligan. Kohlberg devised a set of hypothetical cases and used subjects' responses to these cases to create a scale of moral development. One case involved a woman who desperately needed a drug that she could not afford, and the question posed was whether her husband would be justified in stealing the drug from a pharmacist who was charging an exorbitant amount and who refused to donate the drug or reduce the price. Roughly speaking, Kohlberg rated people who reacted out of fear of punishment lower than those who followed societal convention, and subjects who were motivated by universal moral principles were rated highest of all.²⁴ Typically, women rated lower on Kohlberg's scale than men, a finding that Gilligan later explored. She concluded that his experiments were

²⁴ L. Kohlberg and R. Kramer (1969). "Continuities and Discontinuities in Childhood and Adult Moral Development." *Human Development*, 12, pp. 3–120.

biased toward a disposition she called the “male voice.” We should note, though, that she does not suggest that all and only men have the “male voice,” or that women could not show it; rather, it reflects a set of responses commonly associated with men.

Gilligan found that men were more concerned with rules and rights, whereas women tended to look to responsibilities and relationships, especially ones of care. Her experiments suggested that women fear isolation and abandonment and that they develop connections with others, whereas men fear intimacy and think of themselves as separate from others. The woman’s “voice” values care, attentiveness, trust, and love for others over and above impersonal qualities of equality, rights, respect, and justice. These insights have led to what we might term an essentialist view: that there is something essential to women’s nature and experience, particularly demonstrated within close relationships and in the practice of nurturing, that is valuable and ought to be brought to bear in ethical discourse.

The other main standpoint, following Mary Wollstonecraft, challenges the essentialist view, believing that claims about special qualities are more a product of social conditioning, class, and culture than about the experience of being female. All the same, many believe that classical ethical theory exhibits biases that need to be redressed and that we should strive for an inclusive ethical consciousness, sometimes called gender egalitarianism; thus rather than accepting the dichotomies of, say, reason and emotion and then contesting which is more appropriate to ethics, this view suggests that we draw ethical insights from both without necessarily assigning gender characteristics to either. Perhaps there are no separate and autonomous female values that are not the product of social conditioning. Nevertheless, society may have systematically devalued women’s experience and by taking seriously the perspectives and experiences of women we may challenge our social and moral priorities.

Care ethics has pointed out that the merits associated with classical theories such as logic and principled reasoning reflect traditional masculine traits. Among traditional distinctions such as mind/body, head/heart, or reason/emotion, the first (mind/body) is held to be superior in philosophy but also appears to reflect a gendered way of thinking.

As Nell Noddings put it in a seminal 1984 piece:

This approach through law and principle is not, I suggest, the approach of the mother. It is the approach of the detached one, of the father. The view to be expressed here is a feminine view. This does not imply that all women will accept it or that men will reject it; indeed, there is no reason why men should not embrace it. It is feminine in the deep classical sense – rooted in receptivity, relatedness, and responsiveness. It does not imply either that logic is to be discarded or that logic is alien to women. It represents an alternative to present views, one that begins with the moral attitude or longing for goodness and not with moral reasoning . . . Women can and do give reasons for their acts, but the reasons often point to feelings, needs, impressions and a sense of personal ideal rather than to universal principles and their application.²⁵

A mathematician by training, Noddings argues that moral statements are not derived from facts or principles but by a primary attitude of care. She maintains moral acts are initially motivated by care about relationships that we want to create, nurture, or mend, and in that sense our sympathy stimulates subsequent moral feelings.

Noddings admits these findings are highly generalized, as not all men or women think or act in specific ways, and the differences in approach could be attributed to socialization, class, or culture rather than the experience of being female.²⁶ Still, research on moral development has shown that, generally speaking, women often do value relationships over rules or feel that context should figure more prominently in our moral decision-making. Interestingly, this is supported by evidence found in the playground: Girls like to get on with their games whereas boys spend a lot more time arguing about the rules and who is winning.²⁷ One key point, then, is that in focusing on principles exclusively, we may lose some important human dimensions of sympathy by reducing moral thinking to a kind of algorithm.

²⁵ N. Noddings (1984). *Caring: A Feminine Approach to Ethics and Moral Education*. Berkeley: University of California Press, pp. 2–3.

²⁶ J. Tronto (1993). *Moral Boundaries: A Political Argument for an Ethics of Care*. New York: Routledge.

²⁷ B. Thorne (1993). *Gender Play: Boys and Girls in School*. New Brunswick, NJ: Rutgers University Press, p. 92.

On the other hand, we can see that, at first glance, care ethics could simply be a type of virtue theory. The central distinction, however, is that care ethics looks at very particular relationships rather than more general dispositions. Care ethics is more than one virtue among many others such as courage, humor, generosity, and so forth, but rather a sense that our very identity and actions spring from individual relationships that we then extrapolate to broader normative justification.

An apparent problem immediately arises: If we rely mainly on personal emotional reactions and our esoteric experience of care relationships, the approach could easily slip into moral relativism. Additionally, dealing with issues as independent and contextual, it seems that we can't extrapolate to broader policy or institute strong baselines of right and wrong as we would always be making circumstantial exceptions. It is significant to note that proponents argue raw emotions alone cannot be a guide to morality, but instead feelings need to be reflected on and structured, hence the term care ethics, not simply "care" itself.²⁸ The point is that our judgments are motivated and informed by personal experiences, but that does not mean we cannot isolate and extrapolate important factors and norms from any individual case.

A school of thought has emerged known as *standpoint feminism* which proposes that as women's experiences are necessarily distinct from men's, women have a different approach to knowledge in general shaped by their shared experience of living in male-dominated societies. It looks to the history and sociology of power and argues that there is no unique truth distinct from the context of the tides of human experience. This would speak against impartiality, as such, but does not embrace relativism. Instead, it agrees that gender perspectives will differ and in some cases women may be more sensitized to interpersonal and communal dynamics than men.²⁹

Authors in the care tradition recognize that care ethics is not always soft-hearted and may involve so-called "tough love" where immediate sympathetic reactions are tempered by longer term perspectives. In that light, we

²⁸ V. Held (2006). *The Ethics of Care: Personal, Political and Global*. Oxford: Oxford University Press, p. 10.

²⁹ N. Hartsock (2004). "The Feminist Standpoint," in S. Harding, ed., *The Feminist Standpoint Theory Reader*. New York: Routledge.

don't think of parents as less caring because they don't accede to all the demands of their children and realize that while institutions may have to make difficult financial decisions, including layoffs, they may perceive a bigger picture involving the long-term welfare of many stakeholders. To return to the case cited at the beginning of this chapter, Owen's impulses to look after his friends may have to be tempered with reasoned corporate reasons for not allowing the distribution of outdated meat and the imposition of strong penalties on anyone who does. In contrast to the impartial, distanced, and apparently neutral stance afforded by consequentialism, deontology, and virtue theory, care ethics demands that our moral discussions consider context and nuance in light of our own experience of personal relationships by using moral imagination to put ourselves in particular situations.

Summary

Ethical theories provide us with an analytical framework that starts us on the path to making decisions about what we should do in any specific case and how to persuade others to alter their behavior. However, although they represent different approaches, they are not mutually exclusive. Denying adequate safety gear to employees, for example, could be demonstrably immoral on several grounds – it could minimize good and create unnecessary harm (utilitarianism), it could be behavior that we would not want to apply universally (deontology), and it could not represent the best kind of character we want to exhibit or could deny our sympathy with others (virtue theory). These are not inconsistent claims, but different means of defining moral concepts and subsequently developing rational arguments using different tools. Consider a difficult case where a single mother has a job supervising a small group, but she has sole responsibility for a child with special needs. She often needs to take time away, and this puts a burden on her workmates as her quotas still have to get filled. Ethical theories are not strict algorithms leading to a clear answer, but they do give us language to assess our intuitions at the conceptual level and see if the conclusions we draw are justified.

Let us return to Owen, faced with his various moral quandaries and conflicting intuitions. Ethical theory will allow him to organize his

intuitions and begin to make reasoned arguments. The dilemmas that Owen confronted at work will still involve hard thinking, but by incorporating the language of outcomes, duties, and virtues he may be able to better sort out what he should do and make a persuasive case to others. These approaches, as we have seen, are often nuanced and will not provide a direct recipe for right action in every case. Still, the move from an unreflective action to a justified one is a considerable advance, so that if we are ever called on to explain our thoughts and actions we can do so in a principled and coherent fashion, rather than relying on personal intuitions alone.

At the same time, in examining business ethics it is vital to acknowledge that moral decisions do not occur in isolation, but always take place within a wider context. For this reason we need to understand the structures and pressures capitalism fosters, encouraging some behaviors and censuring others. Like a fire, it seems capitalism makes a good servant to human flourishing, but a poor master, since left unchecked it may lead to excessive, unreasonable, or harmful acts. It turns out that ethical decisions can be much like swimming in a riptide, where we think we are in full control but do not realize there are external forces that may sweep us along with them.

In Chapter 3, we now turn to look at the moral implications of capitalism and bring in more conceptual tools to facilitate discussion about what constitute appropriate ethical responses to difficult situations.

Issues for Reflection

1. What makes a particular decision an ethical one?
2. Do you think business by itself, as contrasted to the people working in a business, can be virtuous?
3. How much should we take potential consequences into account when making an ethical choice? How much work should we put into making sure our assessment of outcomes is correct?
4. At what point can we stop doing things we consider good? Is there a difference between decent and heroic behavior?
5. Should a firm do good because it will lead to profits? If not, what other reasons are there?

Case: EpiPens

Nearly one in fifty people are susceptible to life-threatening allergic reactions. When this occurs, the body reacts to a stimulus such as a bee sting or exposure to peanuts. In severe cases this can lead to anaphylaxis, where swelling can block vital airways. The reaction is worrisome as it can progress quickly and unpredictably. The standard treatment is injection of adrenaline, otherwise known as epinephrine. It has the effect of quickly constricting blood vessels throughout the body, thereby decreasing swelling.³⁰

Military research into antidotes for biological weapons led to the development of autoinjector technology where a spring-loaded device easily administers a prepared dose. Prior to the introduction of this technology, epinephrine was administered by syringe, whereas using the autoinjector allows anyone carrying one to use it immediately, a distinct advantage when time is of the essence.

The autoinjector was approved by the American government in 1987. The original maker, Meridian, had given exclusive distribution rights to a subsidiary of Merck, Mylan N.V. Mylan adopted aggressive marketing of its brand of adrenaline autoinjector, EpiPen, which already held a 95 percent share of the market at a time when the manufacturing price was less than \$70 and it retailed for \$100. The company raised the retail price to \$600 and company revenues attributed to the item grew from \$200 million in 2007 to over \$1 billion in 2016.³¹

Among the factors boosting the company's marketing efforts was a lobbying campaign to have EpiPens available in schools and other government institutions as a safety measure. The CEO of Mylan, Heather Bresch, launched a campaign publicizing the risks of anaphylaxis and recommending that EpiPens be widely accessible. Subsequently, the government provided grants for EpiPens to school systems that stocked the units, which

³⁰ P. Turner, E. Jerschow, T. Umasunthar, et al. (2017). "Fatal Anaphylaxis: Mortality Rate and Risk Factors." *Journal of Allergy and Clinical Immunology: In Practice*, 5 (5), pp. 1169–1178.

³¹ A. Cha (2016). "Lawmakers Call for Probe of EpiPen Price Hike." *Washington Post*, August 24, A13.

were widely purchased at the higher price. Additionally, Mylan actively sought to block the introduction of cheaper generic versions manufactured by other companies and available in Europe. In 2011, Mylan quietly dropped production of single pack EpiPens without consulting government authorities and subsequently only sold the more expensive twin packs, a financial strategy they termed “x 2.”

Many users felt they were held hostage by a company extorting profits on a drug that could make the difference between life and death. In the course of a few months, many families found it had become almost unaffordable. American public sentiment was stirred by the similar action of Turing Pharmaceutical which raised the price of Daraprim, used to treat parasites and some forms of HIV, from \$13.50 to \$750 a dose overnight. Turing was a start-up company created by hedge fund manager Martin Shkreli, who had acquired the marketing rights for \$55 million.³²

Bresch insisted that Mylan had done nothing wrong by raising the price of EpiPens sixfold. She asserted, “there was an unmet need . . . And so we made a conscious decision, the board, we put a business plan together to invest, to build public awareness and access . . . and remember that that price incorporates the entire supply chain. But it was an investment over the last eight years that would allow us to reach patients and save lives.”³³

Bresch was called before the US Congress and testified that the problem with pricing did not lie with the manufacturer but instead with the retail and rebate systems within the healthcare system. In general, those with medical insurance could have the autoinjectors prescribed at rates negotiated between the supplier and the insurance company, whereas those with poor coverage were faced with the high retail cost. Bresch also claimed that the high price in America subsidized European sales where governments can set the price. “We do subsidize the rest of the world . . . and as a country we’ve made a conscious decision to do that . . . And I think the

³² A. Pollack (2015). “Drug Goes from \$13.50 a Tablet to \$750, Overnight.” *New York Times*, September 20, <https://nyti.ms/3voyHF7>.

³³ CBS News (2017). “Mylan CEO on EpiPen Drug Price Controversy: ‘I Get the Outrage’,” January 27, <https://cbsn.ws/3JaUyWa>.

world's a better place for it." At the same time, she noted, "I am running a business. I am a for-profit business. I am not hiding from that."³⁴

The daughter of a prominent politician, Bresch had risen from her initial position as a data entry clerk to becoming CEO of Mylan in 2012. She retired after the company merged with Pfizer's Upjohn division in 2020. From 2007, when Mylan acquired EpiPen, to 2015, her annual compensation had risen from \$2.5 million to almost \$19 million. Shortly after her testimony, Mylan instituted additional discount schemes and introduced a generic version of the EpiPen at half the price.

Questions from the Case

1. What ethical theory would be most useful in analyzing this case?
2. Should governments restrain business activity for the common good?
3. What ethical issues, if any, arise from a company exploiting its market advantage?
4. Heather Bresch claimed that the high price enabled EpiPens to be widely distributed and accessible. Assuming that to be true and that additional lives could be saved, is there a reason the price should be regulated?
5. Are there moral reasons why customers should be treated other than as a means to generate revenue?

³⁴ A. Chandler (2016). "Stabbing at a Response to the EpiPen Saga." *The Atlantic*, August 26, <https://bit.ly/3BQh5Gn>.

3 Capitalism and Its Ethical Implications

Features of Capitalism

Capitalism is an economic system that has a profound influence over our everyday lives. Many of us spend significant parts of our lives working for a corporation or other economic entity; we constantly shop for goods and services, both out of necessity and recreationally. It has resulted in a high standard of living and an abundance of high-quality goods and services, many at affordable prices. At the same time, though, we should consider some of capitalism's other effects, including constant consumption of finite resources, relentless marketing, an imbalance between rich and poor, and the rise of corporate power. Additionally, as capitalism has become more global it has begun to challenge some of the restraints placed on it by individual sovereign nations.

Our landscape is filled with commercial stimuli, dictating many of our entertainment options. Corporate sponsorship pervades research, sports, and cultural activities. Indeed, many of the relationships we have with others have an economic basis. In short, we cannot discuss business ethics without some understanding of capitalism. Before we look at specific topics, then, it is worthwhile to examine the economic system and its internal logic.

Capitalism is based upon certain important presumptions: People operate out of self-interest; consumers are discerning enough to demand products and services to increase their well-being; competition is good; the market will reward those who are industrious and innovative; economic growth should be encouraged, there should be no central distribution, and, perhaps most important, aggregated personal preferences will lead to mutually beneficial outcomes.

In this chapter, we will critically assess these assumptions and the dynamics they stimulate as well as some of the ways in which the market system fails. We will see that, in practice, governments have considerably modified the capitalist model, and that the rise of globalization poses a challenge to government restraint. Finally, we will briefly reflect on the logic of capitalism and its potential effect on human fulfillment.

Imagine a society where everyone is self-sufficient – they all make their own clothes and cultivate their own food. Two dynamics are likely to develop as the society grows. First, jobs are often accomplished more efficiently if the tasks are broken down into discrete elements, each performed by a particular person who may well become a specialist in that area. Second, exchange is mutually beneficial. Thus if someone has a talent for making clothes and sewing, whereas another excels at tending animals, they may all be better off when they distribute jobs accordingly and exchange the products of their labor.

A huge shift in the economic system came about with the industrial revolution. The use of machinery powered by sources other than human labor allowed a quantum leap in productivity, but the investment required was largely beyond any one investor. The most efficient means of raising large sums of money was to lessen the burden by pooling resources, so that many people share in the funding and the profits of the enterprise. This is typically known as share ownership, and the financial vehicle for this type of ownership is a corporation. Shareholders may be paid a dividend out of profits and, if the shares are publicly tradable, may trade their stock as it changes value. The central feature of a for-profit corporation, though, is its ability to shield individual owners – the shareholders – from personal liability. Debts incurred by the corporation belong to the corporation and not the individual owners. Furthermore, corporations are perpetual, in that they survive the coming and going of individuals, and thus projects and assets can be maintained over time.

Corporations are typically run by corporate officers who are agents of the company. These executives have a fiduciary duty, that is, an obligation to put their employer's interests ahead of their own and consequently run the firm so that it produces a profit and a return to the shareholders. Firms face significant market pressures to survive, grow, and become ever more

efficient. They have to do this in the face of competition and government regulation. It is not surprising therefore that the ethical dimension of business decisions may sometimes be an afterthought. At the same time, companies exist to serve people and are chartered by society to benefit all, so we have a legitimate interest in regulating and auditing business activity by promoting elements to improve the quality of our lives.

We might imagine the scenario where individual owners show up at an annual meeting to raise concerns about the strategy of the company, but this is getting to be more unusual. In the last fifty years, big institutions like mutual funds and insurance companies have become the holders of most shares. Shares will often be traded based on computer models of expected performance. This means that someone who has a private pension may invest in a mutual fund, which then spreads its assets as productively as it can across a wide portfolio of investments. In this case, the individual is not a direct shareholder of the company, since their money is pooled and redistributed. As a result, even when people invest in an *Environmental, Social, and Governance* (ESG) fund that seeks out investments that conform to certain ethical standards, the degree of anyone's personal support of individual firms in a cluster will be hard to track.

A key element in capitalism is that company shareholders do not increase their wealth by investing their labor but instead they use money – capital – to make money, hence the term “capitalist.” This contrasts with a wage earner who is not paid by the value they add through their labor, but at a rate set by the employer.

Firms have become significant social and economic powerhouses within society. They can shape public and legislative opinion and throw their weight behind political causes. The business sector makes up 72 percent of the gross domestic product of the major developed global economies, and if we look at the top 200 economic entities, three-quarters are corporations. As a point of comparison, it is reported that Walmart, Apple, and Shell are wealthier than Russia, Belgium, and Sweden, respectively.¹ Almost half

¹ P. Sweet (2016). “Corporations Dominate World’s Top 100 Economic Entities.” *Accountancy Daily*, September 14, <https://bit.ly/3A3V7OF>.

their activity was split among four areas: banking and insurance, telecommunications, retail/wholesale, and cars and auto parts.

In an ideal capitalist system, the means of production are privately owned, and there is no central control of investment, production, distribution, or prices of commodities. People buy from a wide variety of potential vendors when they judge that their welfare will be increased, but they may also refuse to buy. Prices are established by the dynamics of supply and demand. The market allows the manufacturer who produces the best quality and most affordable goods to prosper, and the system punishes firms that fail to deliver what the market wants. There are demands within the market or that are vigorously promoted by the manufacturers. This is generally referred to as a *free market*.

Capitalism relies on the generation and reinvestment of profit. Profit is a return over and above the cost of producing and marketing a good or service. A traditional view of business is that its main function is to return profit to the owners of a corporation. Profit acts as an incentive and reward for those who successfully understand the potential of a given company or predict the market. A company may invest substantial amounts in research and development hoping to capture a new market, and in this way capitalism rewards risk-taking and innovation. A maxim in investing is that “risk equals yield.” Those who first saw the potential in on-demand car rides, internet auctions, or nationwide overnight delivery service became very wealthy, while there is the correlative risk of championing an unpopular product or service and losing everything.

A simple assertion made by free market advocates is that merit will be rewarded. If individuals command a product or service that the market will support, they will get what they deserve: A brain surgeon ought to be highly paid because of the intelligence and industry it takes to acquire those skills, and someone like Bill Gates, the founder of Microsoft, merits his fortune because he had the vision and ability to fulfill a market demand. This claim rests on the assumption that the market is a proper gauge of human success, and that meeting needs through business will reap a reward. Critics might claim that this approach unfairly benefits someone who has been lucky enough in the genetic lottery to have come into the world literally gifted with the right intelligence and aptitudes just at the right moment when the idea – like the notion of a computer in every home – gains traction.

In a similar vein, capitalism will reward those whose vision captures or even creates a market. Investors will be attracted to an innovative idea that has the potential to give a return. A venture capitalist will seek out market opportunities to reap a profit but, of course, this can be a gamble that doesn't pay off. In the case of the company Theranos, for example, Elizabeth Holmes was considered a rising Silicon valley entrepreneur based on her promise of fingerprick technology where a small machine the size of a roller bag would be able to scan a single drop of blood to detect a wide range of infirmities. If it could deliver, it would revolutionize the medical industry – machines in pharmacies and grocery stores could provide instant results, rather than a visit to a medical facility and a delay in results. Holmes was lauded by the financial press and investors were fueled by a psychological dynamic known as FOMO or the fear of missing out. At one point the company had a \$9 billion valuation, and she was the youngest ever female self-made billionaire. However, despite corporate statements to the contrary, the machines could not render consistent results and often the company farmed out the samples to other firms to cover its failure. Eventually the fraud was uncovered, the company crashed, and Holmes faced criminal charges, leaving the investors with considerable losses.²

Property rights are another pillar of capitalism. Largely derived from the work of the philosopher John Locke (1632–1704), we have developed certain assumptions about ownership of property. In rough terms, we may hold legal title to property, and then we can give it away, exchange it, or dispose of it as we see fit. However, there may be conditions that would cause society to restrict your freedoms. If you owned a culturally significant piece of art, you might be prevented from destroying it or shipping it overseas; similarly, if the government needed your land for a new airport you might be compelled to sell it.

Locke asserted that we come to own something by mixing our labor with it. Imagine the case of a person who goes fishing in the open sea. They have a boat and nets and, if they catch fish, we consider them entitled to take them to market and pocket the profits. The resource that the fisher exploits is held in common, but by virtue of hard work and expertise they deserve

² J. Carreyrou (2018). *Bad Blood*. New York: Knopf.

whatever the market will pay. However, nowadays most workers do not work for themselves or harvest a common resource. They generally do not have an ownership interest in the business or the product.

An emergent area in the economy is the gig worker who takes on temporary employment such as taxi service or software consulting where he or she can set their own terms and conditions and take on a series of jobs without any sense of loyalty or continuity. Some attribute this to a sense that you only live once, YOLO, and ought to seize opportunities and experiences in the moment. One result is that the workforce has become more transient. Essentially, the owner of the business hires workers based on an exchange of labor for compensation. In the competitive realm of capitalism, the employer seeks to get as much work for as little money as possible, while, conversely, the workers try to get as much compensation for their labor as they can, and job benefits are no longer routine but part of the negotiation.

Embedded in the notion of private property is the idea that we are distinct individuals, each capable of making independent decisions and with interests that are separate from everyone else. Again, this sounds obvious, but it may not be as clear-cut as it first appears. In a very real sense, humans are social creatures, and we identify ourselves in relation to others. This means that we necessarily live in societies where we have relationships involving partiality and obligation. So, while it may initially seem that we all exist independently, a more accurate picture would show us living as parents, children, caregivers, and dependents, among other roles.

Allied with the idea that we are unique individuals is the sense that we are ultimately trying to maximize our own welfare. One view suggests that even apparently altruistic acts may be motivated by self-interest, so that giving to charity or volunteering really amounts to acting so that we feel good about ourselves. *Greed* is not a pejorative term from this perspective, since it is natural for everyone to look out for themselves and should be expected.

The Invisible Hand

Systematic self-interest turns out to be a fundamentally beneficial attribute in an ideal free market. Consider a supermarket: If it offers a wide range of products it is likely to attract more customers than one with more limited

offerings. The store does not offer the array just to be nice to customers but because it recognizes that its greater appeal will maximize its subsequent profits. The same logic holds true of other goods and services; almost paradoxically, looking out for ourselves can result in an increase in overall welfare. Adam Smith first described this phenomenon in his 1776 work, *The Wealth of Nations*, where he wrote:

It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but their advantages . . . Every individual . . . neither intends to promote the public interest nor knows how much he is promoting it . . . by directing industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is, in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. . . . By pursuing his own interest he frequently promotes that of the society more effectively than when he really intends to promote it.³

In the abstract, a free market will be uncoordinated, and no central authority will dictate production or distribution. There are no quotas for, say, the number of cars to be produced or what color they should be; those decisions are left to producers who need to gauge the market. Individuals send signals to producers through their aggregated economic choices, and the market responds appropriately.

Ideally, competition pushes firms to make their goods more efficiently: for example, creating more output from a given input, which drives down costs – a benefit that is passed on to consumers in the form of lower prices. The boost in efficiency can come in several ways – increased use of technology, to be sure – but the pressures also encourage companies to minimize labor costs, both directly and in terms of overheads and benefits, and utilize production processes that comply with the law but go no further. In theory, at least, lower prices increase demand that spurs employment and gives workers more purchasing power, enabling the economy to grow overall and improve the general standard of living.

³ A. Smith (1952 [1776]). *An Inquiry into the Nature and Causes of the Wealth of Nations*. Chicago, IL: William Benton, Book IV, Chapter 2, p. 194.

Another objective in the ideal market is constant growth, and it is often assumed that a growing economy is a healthy one. Still, growth inevitably means greater consumption, which will have ethical implications as products are the result of raw materials being fashioned in some way. A plastic toy in a fast-food meal is typically made from petroleum by-products which last for hundreds of years without degrading and are rarely recycled. The net effect is to transform a finite natural resource into a disposable product which remains intact indefinitely. The low costs of production also act as an incentive to replace rather than to repair products. For example, it is much easier and often more cost effective to buy a new smart phone or domestic appliance than to fix a broken one. An emphasis on expanding sales also leads to the development of goods that have *built-in obsolescence*, meaning that they are designed with a limited life span so that consumers are forced to purchase new goods. Many older computers work perfectly well for the limited range of ordinary uses – email, word processing, and spreadsheets, yet it is in the interest of manufacturers and software developers to create products that require constant upgrading.

While increasing consumption is good for the market, it does mean that we are continually adding to landfills and depleting our resources. It was estimated that in 2016 urban dwellers generated 1.2 kg per person (2.5 lbs) of trash per day, double that of a decade before.⁴ In America, the average is 2.6 kg, amounting to a total of over 250 million metric tons of garbage a year (equal to a pile the height of the leaning tower of Pisa – 59 meters [192 feet] high). The amount of plastic trash dumped in the oceans each year is equal to fifteen grocery bags piled onto each yard of shoreline in the world.⁵ Fifteen billion trees are cut down each year, and a coal-fired power plant releases 3.4 million metric tons of carbon dioxide annually.⁶ The resources of the earth are enormous, to be sure, but they are nevertheless finite. Future generations will face shortages and pollution based on our economic

⁴ A. Sebastian (2021). “5 Countries that Produce the Most Waste.” *Investopedia*, July 12, <https://bit.ly/3Qpu71i>.

⁵ S. Leahy (2018). “How People Make Only a Jar of Trash a Year.” *National Geographic*, May 18, <https://on.natgeo.com/3zAYJGk>.

⁶ “Making Sense of Big Numbers in a Big Industry.” *Recyclist*, <https://bit.ly/3vRVvxm>.

activities and the lifestyle we promote, not to mention the well-documented effects of climate change.

Another way to reflect on the potential effects of constant growth is to look at energy use. In 2019, Canadians used over 100,000 kilowatt hours per person; the United States, 78,000; Australia, 71,000; and New Zealand, 53,000. We can compare these numbers to China (27,000) Brazil (16,000), and India (7,000). Thus, if everyone in the world enjoyed the energy-lavish lifestyles of those in the West, there would be a massive drain on the world's nonrenewable energy resources. Further, these are per person, and so the total will increase along with the population. Imagine, for example, the environmental effects of China having the car ownership rates of America. In 2020, America had a population of 327 million people and 285 million vehicles on the road, whereas China had about four times the population (1,427 million) and roughly the same number of cars and trucks as the United States.⁷ In that year, Americans used 123,000 million gallons (465,000 million liters) of gasoline and 166 million gallons (628 liters) of aviation fuel, putting over 1,000 million tons of the greenhouse gas carbon dioxide (CO₂) into the atmosphere (surprisingly, burning one gallon of gasoline produces almost three times its weight in CO₂ when it mixes with oxygen).⁸ Even with a modest estimate of the growth in car usage, we can project that the drain on the earth's resources and burdens on the environment will continue to increase as national economies develop, and the same will be true of other economic sectors besides transportation, such as manufacturing, agriculture, and service industries.

One pressing issue that the capitalist lifestyle promotes is climate change. When we alter the composition of the atmosphere or deplete forests that capture CO₂, for instance, we impose costs. A warmer climate may lead to greater use of air conditioners that themselves put heat into the environment, leading to a spiral of energy consumption, or we may have to irrigate lands that traditionally relied on periodic rainfall. The ethical significance is whether we modify some of our activities, perhaps by investing

⁷ The Economist (2020). *Pocket World in Figures*. London: Profile Books.

⁸ U.S. Energy Information Administration (2021). "Gasoline Explained," www.eia.gov/energyexplained/gasoline/use-of-gasoline.php.

in mitigating alternatives such as non-oil-based energy sources, or maintain our present business models and let the market lead.

Market Morality

If, as is generally accepted, business is meant to be responsive to consumer choices, it then follows that business is a conduit for buyers' demands, referred to as *market morality*. The idea is that while there may be a great deal of talk about environmental concerns or climate change, whatever purchasers espouse can be discounted as essentially meaningless, since what matters is where they spend their money. If it turned out, for example, that consumers refused to buy water in plastic bottles, it would send a market signal to manufacturers. On the other hand, if there was a great deal of media coverage and public censure but consumers nevertheless still continued to buy the product, we can draw the conclusion that people do not care that much about that feature after all.

Signals from the market are crude, however: Either people buy goods or they do not, and so consumer reaction to moral issues can easily be conflated with other factors. A more accurate picture would recognize there are a constellation of reasons why consumers make a particular purchasing decision beyond, say, whether it was union-made or the packaging will end up in landfill. The point is that consumers and shareholders have a very unsophisticated mechanism by which to signal their moral beliefs and preferences to corporations. If sales of the product go down or the shares lose value, the company will take notice. A regular shareholder may sell shares, say, because the company has dealt with a corrupt regime overseas, but the signal that the company gets is blunt and undifferentiated – the company has no way of knowing what the shareholder's reasons are for selling. The company is only aware that its stock has been sold.

A further implication of thinking that the market system is primarily driven by consumer demand is that it will have no independent moral duties other than obeying the law and serving its clients. If customers are willing to buy pornography, drug test detoxification kits, or chewing tobacco, then an effective business will fulfill those demands without internally sanctioning its own behavior or questioning consumer values.

In addition, the assumption that consumers are considered sovereign in the marketplace implies that producers and marketers ought not to be held responsible for trying to influence them by promoting unrealistic or irrational claims. For example, women are often told through advertising that they should aspire to an ideal body type and that the effects of aging should be disguised and remedied. This message, echoed by media that lionizes the young and beautiful, may create a desire for unnecessary and overpriced goods and services – for example, in 2019 the global high-end cosmetics market size was estimated at over \$52 billion, and the luxury watch industry at over \$7 billion.⁹ It appears many of our purchasing decisions are significantly manipulated or directed, reflected in huge corporate spending on marketing and advertising.

Moreover, the very business model of most social media platforms has been based on highly individualized, targeted, advertising. Although nominally free, applications such as Facebook collect information as individuals click on various sites, and then use those profiles to connect users with specific goods and services. For example, Facebook has more than 2 billion users and gets over 95% of its revenue from businesses which pay for the information Facebook collects to allow them to target using various categories such as gender, interests, age, education and so forth. It turns out to be a highly effective means of advertising because, for example, a gym might selectively direct its advertisements to females of a given age range who have a college degree and have clicked on sites dealing with physical fitness.

This is an important moral finding because it means that any ethical analysis in business should look beyond consumer buying patterns and also consider the way the firms shape our desires to fulfill their objectives rather than our own. It is especially true in the case of luxury goods. Consider that there is very little advertising of fruits, and vegetables, whereas cosmetics, soda, and fast food are regularly promoted and tied to attractive images.

⁹ B. Thorat, S. Bhandalkar, and R. Deshmukh (2019). “Luxury Cosmetic Market Outlook.” Allied Market Research, August, www.alliedmarketresearch.com/luxury-cosmetics-market; Statista (2019). “Luxury Watch Market Value Worldwide from 2018 to 2025,” <https://bit.ly/3SOKxTh>.

Market Failures

When ideal conditions are relaxed, certain problems called market failures arise. Here we will highlight *consolidation*, *negative externalities*, and *exploitation of commons*. These are morally significant because they can lead to injustices and exploitation that may require correction by an external force, such as government legislation.

Consolidation is the tendency for firms in a competitive environment to form oligopolies (small groups of companies that control a market) or monopolies (single firm control). Once they have acquired a significant market share, they use their wealth and influence to maintain dominance. For example, take an airline that is the only one to fly between two cities. If a new airline starts up and attempts to compete on that route, the established, well-capitalized firm may sell tickets at a loss for as long as it takes to force the less well-capitalized newcomer out of business.

There may also be prohibitive costs to starting up a company, or the advertising and distribution systems may be controlled by a parent entity. In aviation, Airbus and Boeing dominate the market for new planes, just as Coca-Cola, Pepsi, and Keurig Dr Pepper (maker of RC Cola and Snapple brands) dominate the lucrative soft drinks market. It would be unrealistic to think that a new company could easily enter either of these markets or, if it did, that it would not meet stiff competition from the market leaders. Another example of such dominance shows up in manufacturing firms in the United States where the top 1 percent hold over 80 percent of the manufacturing assets, and four major appliance makers have 98 percent of the market. And although over 1,200 firms are engaged in beef processing in the United States, the top 4 have captured approximately 85 percent of the market.¹⁰ Think of the brand leaders that come to mind when considering items such as ketchup, copying machines, or computer operating systems. Several brands have come to dominate the market so completely that

¹⁰ B. Deese, S. Fazili, and B. Ramamurti (2021). “Recent Data Show Dominant Meat Processing Companies Are Taking Advantage of Market Power to Raise Prices and Grow Profit Margins.” The White House blog, December 10, <https://bit.ly/3c1aZrD>; R. Du Boff (2015). *Accumulation and Power: An Economic History of the United States*. New York: Routledge.

their names – Kleenex or Xerox – have become eponymous with the product itself. Additionally, some industries, such as mobile phone networks and search engines, have such high initial costs and huge overheads that it is not surprising that the markets have consolidated.

Once a firm has cornered a market, it can maintain artificially high prices and restrict innovation. Moreover, moral concerns about consolidation center around the possibility of a few large firms developing disproportionate power and influence, which can be employed to the benefit of shareholders at the expense of the common good. For example, some pharmaceutical companies have a monopoly on certain drugs: The evidence appears to point to the fact that they use their position to maximize profits and restrict the market.¹¹ In stakeholder terms, this is a moral problem because it directly favors one specific group, shareholders, while unduly hurting others, such as patients.

Externalities are costs or benefits that are not borne by the owner or producer. Think of a homeowner who spends a great deal on landscaping. The value of all the houses on the street are likely to go up and one could argue that, as a result, the other homeowners should subsidize the costs involved. Similarly, if another homeowner parks rusty cars on their front lawn, the street becomes less attractive, and the value of the adjoining houses goes down. Perhaps the resident parking the derelict autos ought to recompense the neighbors for losses brought about by their actions. The first case is a positive externality in that the homeowner receives a benefit that they did not pay for. In the second case there is a negative externality because costs are imposed on a third party. In business terms, we are most often dealing with negative externalities, where the costs of production not borne by the company or its consumers are instead imposed on others. Although these costs may be spread among many more people and therefore become imperceptible or slight, they are often incurred without the permission of those who will be forced to pay. People living near a coal-fired power plant, for example, may get soot on their laundry when it is hung out to dry. Strictly speaking, the problem would not have arisen but for the

¹¹ See, for example, D. Blumenthal, M. Miller, and L. Gustafsson (2021). “The U.S. Can Lower Drug Prices without Sacrificing Innovation.” *Harvard Business Review*, October 1, <https://bit.ly/3Pe2xTM>.

presence of the power plant, and the extra cost of cleaning ought to be either incorporated into the cost paid for the power – with the effect that the higher but more realistic price would lead to lower consumption and less pollution – or the facilities improved to remove the dust, with the same effect.

Let us put this in the context of climate change. There is little doubt that human actions are having dramatic effects on the world around us. It is hard to calculate exact numbers but the idea itself is straightforward. Consider that producers of coal-generated power charge consumers for the raw material, overhead, and profit, which leads to a given price that may be lower than the cost of wind-generated electricity. However, the discharge from the plant may cause local and distant pollution that is deleterious to human life because it contributes to depletion of the ozone layer. In economic terms this ought to be included in the price of the power, which would likely make it cost more. In other words, imposing costs on nonconsumers or future generations gives current buyers an artificially low price.

A curious thing to many people is that the difference between the lower cost and the higher one that includes the externalities, known as the *shadow price*, does not have to be used to compensate those harmed: It could be imposed in the form of a tax that then goes to other uses. For the purpose of the market, all that is required is that the price of goods and services to the consumer accurately reflects their true costs, all things considered, and consequently sends the right signal to consumers. That is, if we were truly aware of the real costs of our purchases we might make more judicious choices.

To illustrate the point, imagine that a car has a leaky oil pan that would cost \$600 to repair. The owner may have to put in a pint a week, with an annual cost, say, of \$120.¹² At first glance it seems that the owner should just keep topping up the oil rather than fixing the problem. On the other hand, the hidden cost is the environmental burden placed on the general community and future generations by the leaking oil contaminating the groundwater, which could easily cost millions to clean up. If we were to

¹² This example is derived from M. Sagoff (1988). "At the Shrine of Our Lady of Fatima" in *The Economy of the Earth*. Cambridge: Cambridge University Press, pp. 24–49.

incorporate the new cost, the balance swings dramatically back to getting the car fixed (say, \$600 vs. \$1 million). If the government wanted to reinforce the total costs, it could impose a regulation to get owners of such cars to fix them or face a million dollar penalty. Whether or not those fines later go to environmental cleanup, creating a more accurate economic signal would likely diminish the effect of hidden externalized costs and cause these cars to be rapidly repaired.

Negative externalities are widespread and tend to skew discussions about ethics in business. Take, for instance, apparel made in a poor country where wages are very low. Very often consumers are indifferent to where clothes come from and how they arrive at the local store. So, for example, a shirt may well be made in one of the world's poorer countries, perhaps under harsh labor conditions. It would be unusual for the workers to have health benefits, unemployment insurance, or pensions and the pay may only be sufficient to barely maintain life. The retailer finds it more economical to have the article assembled there and pay for shipping instead of having it made closer to the final sales point. In sweatshop debates, people often say that labor is more expensive in the first world, which is clearly true. However, some of the costs of labor in developed nations include items paid by the employer such as unemployment insurance or maintenance of health and safety standards. It is not as if these costs disappear completely overseas. Externalities do not show up in the price of the garment, but the burden is nevertheless real and falls elsewhere – in this case, on the workers and their dependents. If those costs were considered equally in calculating labor costs, there might be much less difference in manufacturing costs across the world than is often claimed.

As with many other issues in business ethics, there will often be tension between what is in our immediate personal interest and the long-term good. This is compounded by the psychological fact that, sometimes, despite knowing what we ought to do, we are inevitably influenced by the behavior of others. In market dynamics this complication is exhibited with resources described as *commons*. Think of oceanic fishing: We all do well if fleets restrict their catch, thus allowing the fish to replenish. However, if one fleet decides to catch and sell as much as it can, in all probability others will follow suit and the area will be overfished.

The idea is that without restrictions we will maximize our own welfare even at the cost of future mutual losses, a spiraling effect known as the *tragedy of the commons*. One answer to this dynamic has been to privatize the resource – in effect, charge for a license that limits exploitation. This might work if there is international cooperation and policing, but we can see there will be issues when the resource is global and its use cannot easily be restricted, as is the case with the sea, fresh water supplies, and the air. For example, if a nation decides that it is willing to develop industries that emit deleterious sulfur into the atmosphere, the only recourse beyond asking for voluntary restraint will be for other countries to pay compensation equivalent to the benefit they would have achieved if they had halted production.

Regulation of the Market

Governments often intervene in the workings of capitalism, either to correct market failures or because of concerns about aggregate welfare. A government may intervene directly or indirectly, through regulation, taxation, and government spending. As a result, capitalism as manifested in contemporary society represents a considerable modification of the ideal model. Some advocates of the free market, such as Ayn Rand or Robert Nozick, believe that the government's role should be as minimal as possible – perhaps just to maintain national defense and enforce contracts.¹³ They would say that any attempt by government to adjust the distribution of wealth by a centralized administration is bound to fail.

Governments often see virtue in intervention. Capitalism has a history of business cycles, since firms often take time to react to market signals: During boom times resources are inadequate to fill demand, while during a downturn resources are underutilized. A government may set forth economic priorities that give clear indications of favored sectors of the economy, or it may invest directly, for example, in government-subsidized housing, road construction, or military spending. While this is not planning in the sense of direct mandates about the number of shoes or cars that may

¹³ See, for example, A. Rand (1966). *Capitalism, The Unknown Ideal*. New York: Dutton Signet; R. Nozick (1977). *Anarchy, State and Utopia*. New York: Basic Books.

be produced, nevertheless the significant amount of government spending in the gross domestic product may stabilize a national economy. As a point of contrast to Nozick's position of minimal interference, we can point to the fact that activities by the US state and federal governments currently account for a third of the nation's gross domestic product, while this figure is two-fifths in Canada, New Zealand, and Australia and almost one-half in the UK.¹⁴ Among other things, this means that government is a huge player in the marketplace and can sustain or ruin companies by how it awards contracts.

Just as a government protects certain political rights such as freedom of speech or assembly, it can also be involved in maintaining personal rights in the workplace. These include minimum wage laws, unemployment insurance, social security systems, restraint on the number of hours that can be worked, limits on child labor, immunity from many forms of discrimination, and entitlements to privacy and safety. In an unrestrained market, these would likely be part of the terms of employment that could be negotiated – for example, a worker might command higher wages if there were no restrictions on the number of hours that the employer might demand without overtime payments. Legislators have often imposed minimum standards on a market, especially where they feel there is unequal bargaining power and individuals may be subject to exploitation.

Globalization and Its Implications

Government intervention has the potential to moderate the tendency in capitalism toward market failures and social injustice. It may also be politically popular to promote products manufactured in the home country. Much production and trade, however, is now global and producers may be forced to draw on multiple sources and wide supply-chain systems. A laptop computer or smartphone, for example, will likely have components from multiple countries as diverse as China, Russia, and Peru.¹⁵ A major ethical concern, as business activities expand around the world, is how we can

¹⁴ Data Lab (2021). "In 2021 the Government Spent \$6.82 Trillion." U.S. Department of the Treasury, Fiscal Service, <https://datalab.usaspending.gov/americas-finance-guide/spending/>.

¹⁵ U.S. Geological Survey. (2019). "A World of Minerals in Your Mobile Device," <https://pubs.usgs.gov/gip/0167/gip167.pdf>.

restrict potential harms – local laws may become less effective and we may have to rely on the businesses themselves.

International business describes business done between different countries, and the practice is as old as human activity. In contrast, *globalization* refers to the integration of national economies to form a single market. Globalization takes the liberal market approach worldwide, promoting an unchecked flow of capital and goods along with the paramount motivation of profit maximization.

International markets have historically been protectionist, in that nations try to preserve and promote domestic industry by altering the market through tariffs and taxes. So, if Australia had a domestic auto parts industry threatened by cheap imports from China, the government could impose a tax that artificially increases the price of the imports and, consequently, makes the local product more competitive. This dynamic is not new: Adam Smith's *The Wealth of Nations* (1776) discusses the imposition of tariffs. This has the political benefit of maintaining employment and safeguarding an industry domestically, but at a cost to the consumer, especially if other countries retaliate by instituting tariffs of their own. At present very few economies are self-sustaining, and the fundamental idea behind globalization is that unconstrained capitalism without any national barriers will make business more efficient by opening markets and boosting fair competition, leading inevitably to greater prosperity worldwide. As Smith maintained: "In every country it always is and must be in the interest of the great body of the people to buy whatever they want of those who sell it the cheapest . . . nor could it have been called into question had not the interested sophistry of merchants and manufacturers confounded the common sense of mankind."¹⁶ This is reflected in purchasing decisions online, where the country of origin is one factor but often a minor one.

Globalization was fueled by the formation of the World Trade Organization (WTO) in 1995. By 2020, it had 164 member states that accounted for more than 98 percent of the world's trade.¹⁷ It administers WTO agreements on trade and provides assistance to member nations and

¹⁶ Smith, *Wealth of Nations*, Book 4, Chapter 3 (II), p. 211.

¹⁷ World Trade Organization, "What We Stand For," www.wto.org/english/thewto_e/whatis_e/what_stand_for_e.htm.

developing countries. Nominally, it helps exporters and importers conduct business, although it has taken on an increasing role as an unelected international trade manager and arbiter of disputes. As with capitalism in general, there is a presumption that consumption is a good thing, growth should be encouraged, and trade should be on a *laissez faire* (“let it happen”) basis. In general, WTO supporters believe regulation and intervention should be kept to a minimum and limited to the governance of contracts and breaking down trade barriers.

The logic behind this approach is that if jobs are lost, say, in Canada, because a manufacturing firm can find cheaper labor in Mexico, this is actually a net advantage. The Mexican economy benefits through the new development and consumers do well because of the lower cost of goods. If Mexico has an expanding economy, then the workers will have more money to spend and demand higher wages, leading to an increase in aggregate welfare. The company does well because of the increased efficiency. The apparent losers are the workers in Canada. However, they are part of a cycle of a developing economy where there will be a greater demand for higher-skilled and service workers rather than low- and semi-skilled ones, and once they have adapted to the transition they will prosper as well. The problem, from this perspective, is that countries may try to protect industries that are no longer efficient. It requires unilateral free trade for the system to work.

Free trade implies a level playing field where companies can compete based on their efficiency. However, if a country has a developed infrastructure that imposes costs on businesses, we should expect that firms will relocate wherever costs are lower. Many developed countries dictate minimum wage rates, safety regulations, and environmental protection, which could all be seen as unfair and costly restrictions on trade. Given the incentive for business to relocate to lower its overhead, governments may be tempted to loosen local controls in order to remain competitive in the world market. Any country that remains committed to maintaining a certain standard of living and security for its citizens through regulation and taxation will face challenges from countries where such values are not a priority.

Multinational companies have also become increasingly adept at shifting their headquarters to take advantage of tax concessions – Apple moving to Ireland, for example. Nevertheless, large consortiums, especially firms

associated with the United States, still have inordinate weight and influence in the global marketplace.

The motivation for business to become ever more efficient also means that low-skilled work inevitably takes the form of a *race to the bottom* where producers are willing to relocate anywhere they find lower overheads. Some developing countries may be desperately poor and in such need of hard currency that they will tolerate practices that might be considered unconscionable in the developed world.

One response is that this dynamic has existed since the time of the industrial revolution. If we trace the low-skilled apparel industry from the appalling slum conditions of Manchester, England, we can see that it followed developing economies – from England to the northeast of the United States, before transferring to Japan and China at the time of the Second World War and finally to the developing economies of Southeast Asia. Some commentators have associated these movements with increasing labor activism and emergent skill levels in the local labor force.¹⁸ The argument goes as follows: Unskilled or low-skilled jobs are the necessary first rung on the ladder of economic development and, in their historical context, they will bring an overall increase in welfare.

A tenet of globalization is mobile capital, where money is easily transferred across national borders and can be invested wherever the potential yield is greatest, so that jobs can be moved to where there is available labor. However, there is currently no correlative freedom for labor to move to the jobs. Borders are open for trade, but often closed for aspirant immigrants. Depending on the skill level involved, this has meant that firms are more likely to relocate or outsource than go through the difficulties associated with work permits. Thus, an American telephone company may find it easier to route service calls to India rather than sponsor relocation of the workers. Moreover, rigorous border controls have often resulted in a significant undocumented labor force, ripe for exploitation by unscrupulous employers, in many developing nations.

¹⁸ See, for example, P. Rivoli (2003). "Labor Standards in the Global Economy: Issues for Investors." *Journal of Business Ethics*, 43 (3), pp. 223–232.

Despite attempts to set international standards, industrial pollution is still generally governed nationally. As controlling waste is an expense, a firm is faced with the decision whether to spend money conforming to local regulations or move to a country with fewer controls. So, although there is domestic accountability for individuals and companies that pollute, industry might hunt for a host country with fewer restrictions.

This discussion includes an important historical element as well. The industrial revolution in Europe and America caused massive pollution at the same time that it spurred dramatic economic development. Other countries still in the midst of rapid development, such as China or India, may claim that pollution is the price of industrialization and it is not appropriate for Western countries to deny it to them –pushing away the ladder to development once they have achieved it and preventing others from reaching the same level. One difficulty with issues involving pollution is that it knows no borders, and it is typically easier to prevent it than to clean up after it has happened. Still, if consumers are more concerned about lower prices than environmental health, practical global regulation may be unrealistic. Moreover, if market forces govern pollution, it is not surprising that poorer nations will be more willing to compromise their standards or accept pollutants. Some of these nations may be under the control of a despot who is more interested in personal aggrandizement than general welfare, and if companies are dealing with these heads of state they may reach deals that have a deleterious effect on the country's citizens, especially those with fewer resources or standing.

Globalization has also been criticized on the grounds that it transfers power to undemocratic and unelected bodies such as the WTO. When member states join the WTO they agree to abide by its rulings. As with the tragedy of the commons, if one country imposes tariffs, then others will follow suit until everyone has trade barriers. Therefore, for the WTO to have any leverage, members must initially agree to set aside their partisan programs and abide by the WTO's decisions. For example, in 2015 the WTO ruled in a dispute between China and the United States and the European Union (EU). China is the source of 97 percent of the rare earth elements used in many electronic devices. In 2010, the Chinese government imposed export quotas that restricted the supply of these elements, which led to

increased prices. China claimed it was necessary for environmental protection, whereas the purchasing countries contended that the move unfairly advantaged internal Chinese firms who were unaffected by the restrictions. The WTO ruled against the Chinese, arguing that environmental concerns should have no bearing on whether the material was subsequently exported.¹⁹ Similarly, the EU imposed a ban on seal products in 2009 that was challenged by both Canada and Norway. The WTO upheld the ban but modified it to apply only to commercial purposes.²⁰ Notably, the member countries deferred to the authority of the WTO. These judgments angered many who felt that their national interest was compromised because their domestic policy was being dictated to by an undemocratic transnational authority. An additional concern is that WTO hearings are typically closed to both the public and the media, which adds to an appearance that it is antidemocratic.

There are at least two responses to the claims of usurped national authority: One is that although some sectors may be hurt in the short run, the widespread benefits of free trade in promoting jobs and trade serve as a counterbalance. The second is that joining the WTO has always been voluntary, and the terms of membership are open and transparent. Thus, the time to raise the sovereignty issue has now passed for present members – if it was a real issue it should have been fought over in national political discussions before the country applied for membership. Moreover, supporters note that the rules of the WTO are written by member states and its leadership is selected by members through open competition.

Another criticism is that although the WTO is nominally neutral, it will inevitably reflect the power of its member countries and, since it is run by the rich, smaller and poorer countries will fare badly. The argument is that developing countries are unable to compete fairly with richer trade partners and may need time and internal protections to mature their commercial enterprises before they can take on international competitors. For instance, it is difficult and expensive to develop a domestic automotive manufacturing

¹⁹ C. Yap (2015). “China Ends Rare-Earth Minerals Export Quotas.” *Wall Street Journal*, January 5, <https://on.wsj.com/3pbyBNr>.

²⁰ Council of the EU (2015). “Seal Products Trade: The EU Ban Adapted to WTO Rules,” October 1, <https://bit.ly/3Q9iX0V>.

capability, and it might be appropriate for that capability to be established before allowing open and free competition with multinational companies.

In short, national governments have traditionally taken it upon themselves to moderate the effects of unrestrained capitalism. Some believe that this leads to its own problems, and the best means to achieving human happiness is to let the system operate unchecked. With the rise of global capitalism, however, the power of individual nations will continue to be severely limited. It would not be surprising to see, for example, a company shop around for a base with the least constraints on its ability to pollute. In the absence of enforceable international regulations, the ultimate responsibility for ethical standards may well rest with consumers who will have to make decisions about what they are willing to tolerate in return for cheaper goods and greater convenience.

Capital

It is worth reflecting on the nature of capital. The term “capital” can refer to assets, property, or currency. Currency, at heart, is based on trust. Banknotes and coins have little value in themselves but become valuable as vehicles for property exchange. That is, we could barter for goods and services, but it is much easier to use a financial instrument such as currency to facilitate exchanges. Paper currency was once backed by gold reserves held by governments, but most now rely on faith that the national economy is robust enough to maintain solvency. If that faith is undermined then hyperinflation can occur. Between 2007 and 2019 the Zimbabwe dollar cratered and it is estimated that monthly inflation rose to an astonishing 231 million percent. In practice, people stopped using the local currency and used others deemed more stable, such as the US dollar or UK pound, or reverted to bartering.

Consider that when individuals render a service they might be paid in cash. The person can then use the cash to purchase other goods or services. If the person travels abroad, then they will be able to exchange money at a floating rate based largely on bank benchmarks. However, two major developments have highlighted the evolution of banking in the twenty-first century. First, imagine that a Canadian manager of a Saudi firm has

a credit card and uses it on a trip to New Zealand. What is immediately striking is that a magnetic strip on the back of a small card initiates a series of capital transfers that rely on mutual trust and reliance: A hotel in New Zealand gets reimbursed from a card company such as Visa or American Express, which in turn has arrangements with the issuing bank. That bank in turn has established a line of credit with the employer, which may be paid by yet another customer through credit via an electronic service, and we can see how the chain could be extended even further. In essence, the information on the card is sufficient to prompt international trade, but the exchange no longer depends on cash or gold on hand in a vault. The second element is the evolution of so-called cryptocurrencies. In very broad terms, we can think of a new country emerging, say as a result of independence from a former colonial power. The new state then might issue its own currency, backed by the faith that it can be exchanged for goods, services, or other currencies. But rather than issuing paper notes the bank gives out the unique serial numbers that are on those notes using a code only known to the customer. In essence, cryptocurrencies are similar, with the significant difference that the bank is not usually backed by a governmental institution. Nevertheless, currencies such as Bitcoin can be bought with regular currency and are increasingly accepted as a means of exchange. The advantage for users is that it avoids central authorities and regulations, but it also means that the lack of oversight creates a huge potential for speculation and fraud.

Summary

Less than thirty years ago an ambitious hedge fund manager believed that the future of retail shopping lay in developing software platforms that would create “an online everything store.” Starting with book sales, Jeff Bezos created Amazon, which successively sold video games, music, and electronics. In 2000, he launched Amazon Web Services, allowing third party vendors to advertise on the site. Through highly efficient warehousing and distribution systems and its subscription Prime Membership program, Amazon can offer one- or two-day service on almost any item in countries across the globe at low cost. The convenience means that many people

prefer to order online and have doorstep delivery rather than visiting a traditional brick and mortar store. Its technology has also been adept at tracking customers, providing reviews, and customizing its offerings. As a result, Amazon has outgrown Walmart in America, had revenue of over \$460 billion in 2021, and more than 1.5 million employees worldwide.²¹ In many ways, the Amazon story reflects the capitalist ideal: It started with a visionary idea, caught the tide of an emerging technology, and created a new business model that fulfilled a market need.

Amazon has also attracted considerable criticism. As part of its sophisticated use of technology, workers in its warehouses and fulfillment centers extensively use scanners, which track the minutiae of their work activities. Workers are typically given strict productivity quotas and the scanners not only track packages but also give direct feedback to management about how long it takes for employees to fulfill each order and pinpoint where they are in the building. One worker described how each hour she was required to pick 400 units within 7 seconds of each other.²² Amazon also employs many so-called flex employees, independent contractors who use their private vehicles to make deliveries according to programmed schedules; although they are paid for their time, they have no access to benefits and are usually personally liable for accidents or incidents that may occur. In addition, although it is not technically a monopoly, Amazon has developed its own brand name goods and, using customer data, it can identify popular and trending items and then promote its own product with a competitive advantage. It has also been accused of denying presence on its platform to specific lines or producers that might encroach on its own market.

Using language originating with Karl Marx, we might say that workers who are paid only a fraction of the value they add to goods and services come to realize that they are the means to someone else's enrichment and become alienated from their labor: They have no real investment in the endeavor and work becomes a commodity, something that can be bought

²¹ Retail Insight Network (2022). "Amazon Reports 22% Increase in Full-Year Net Sales for 2021," February 4, www.retail-insight-network.com/news/amazon-results-2021/.

²² M. Sainato (2020). "I'm Not a Robot': Amazon Workers Condemn Unsafe, Grueling Conditions at Warehouse." *Guardian*, February 5, <https://bit.ly/3Scs2Yw>.

and sold without any personal fulfillment or satisfaction. Often they work to survive but cannot hope to better themselves.

This perspective on capitalism raises two important ethical concerns that are particularly pressing when we consider its global spread. First, it forces us to confront the nature of work itself. Many people are in fact alienated from what they do for a huge proportion of their lives and cannot wait for the end of the workday. They have little interest in doing more than they are paid for, do not care about the product or its application, and resent time away from their “real lives.” While there have been some movements to engage workers in profit sharing or more horizontal management systems, these are rarely adopted wholeheartedly and owners often revert to traditional work hierarchies if they feel vulnerable or threatened. The challenge, then, is how to adapt the capitalist model to make work more meaningful and fulfilling.

The second concern is that greater efficiency in business does not necessarily translate into better working lives for employees. For instance, computers have revolutionized office and retail operations. Banking was once largely a matter of personal interactions and transferring paper materials. Nowadays, it is very much a matter of electronic transactions often completed in seconds. Increasingly, employees are able to work remotely, but with the downside that they may never truly be “off the clock.” Similarly, robotic machinery now completes assembly-line tasks more quickly and more accurately than human factory workers did just a few years ago. Yet the dramatic increase in productivity has not led to a shorter working week or to a more relaxed work environment. Indeed, it has had the opposite effect: People are working longer hours and are constantly on call through connective technologies. Fewer workers are required, but their output needs to match ever greater expectations.

While capitalism undoubtedly provides us with a high standard of living and material goods, we should reflect on the fact that it also encourages us to work ever longer and harder, leading to a paradox where it affords us a quality of life that we may have little time to enjoy, and where the constant urgency of work demands may jeopardize our opportunity to benefit from meaningful and fulfilling lives.

Issues for Reflection

1. Should there be any restraints on capitalism?
2. Are businesses amoral, in the sense that they only reflect the values of their customers?
3. What do you see as the main ethical issues arising from globalization?
4. Do you consider sweatshops and industrial pollution to be a necessary stage in the development of a capitalist economy?
5. How free are consumer choices? How free do you believe workers are to determine their own terms and conditions of employment?

Case: Terminator Seeds

In 1998, the US Department of Agriculture and Delta & Pine Land Company, the world's largest cottonseed producer, received a patent for "Control of Plant Gene Expression." The process is sometimes referred to as genetic use restriction technologies (GURTs). There are two major forms. The first creates seeds or plants that are sterile, so that a farmer could not harvest the next generation of seeds for future use. The second requires specialized treatment by a chemical that effectively acts as a genetic switch that turns on the enhanced qualities of the crop. The nickname "terminator" has entered common use in describing these technologies, after the movies starring Arnold Schwarzenegger as an unstoppable robot.

Agriculture companies see this as a way of protecting their intellectual property. They spend millions of dollars in research and want to assure that they have an income stream from their products, since without any restrictions new varieties could be widely reproduced and disseminated from just a few original plants. The technology also holds the promise of greater control on the farm – for example, a farmer could trigger harvesting at an optimal time, or ensure that windblown seeds do not interfere with crop rotation. The United States has generally supported GURT on the basis that it will stimulate the private development of crop breeding and more adaptable plant varieties.²³

²³ E. Stokstad (2020). "United States Relaxes Rules for Biotech Crops." *Science*, May 18, <https://bit.ly/3JE7Evx>.

GURT, then, promises adaptation for farmers faced with the uncertainties of climate change.

Opponents suggest the technology will affect a centuries-old way of life and hold farmers hostage to big firms – which would be the only suppliers of viable seeds and could charge whatever they choose. They also maintain that it risks global food security and may reduce biodiversity. This has become a highly sensitive issue in developing nations, especially India, where most farmers capture the seed from crops for future use while, at the same time, Monsanto and other companies are trying to increase their influence in the agricultural market. Some farmers seek out loans to buy these products and are then unable to repay them if the crop fails anyway. One vocal opponent, Vandana Shiva, claimed:

High costs of cultivation and low returns have trapped Indian peasants in a debt trap from which they have no other escape but to take their lives. More than 40,000 farmers have committed suicide over the past decade in India – although the more accurate term would be homicide, or genocide . . . These seeds kill biodiversity, farmers, and people's freedom – for example, Monsanto's Bt cotton, which has already pushed thousands of Indian farmers into debt, despair, and death.²⁴

These claims have been vigorously contested by the biochemical industry.²⁵ Bayer, the drug company that acquired the lead producer Monsanto, claims the technology would be safe if and when it is marketed, and has the potential to increase protection from pests and drought resistance.²⁶

A worldwide moratorium was imposed in 2000 after the United Nations Convention on Biological Diversity recommended against field testing or commercializing seed sterilization technologies. This has been successively challenged. Australia, Canada, New Zealand, and the UK have all supported GURT, and have backed language that suggests the applications should be assessed on a case-by-case basis. This would bring international regulation

²⁴ V. Shiva (2006). "Resources, Rights and Regulatory Reform." *Context*, 3 (1), pp. 85–91.

²⁵ R. J. Herring (2010). "Epistemic Brokerage in the Bio-Property Narrative: Contributions to Explaining Opposition to Transgenic Technologies in Agriculture." *New Biotechnology*, 27 (5), pp. 614–622.

²⁶ Bayer Global (2022). "Genetically Modified Crops," June 8, www.bayer.com/en/agriculture/transparency/GMO-crops.

in line with existing rules governing the already widespread use of genetically modified organisms (GMOs). In the United States, over half the soybeans and a third of the cotton and corn planted each year are genetically engineered to resist pests or herbicides; about 70 percent of processed foods contain GMOs. Nineteen members of the EU including France, Germany, Austria, Greece, and Italy have adopted a total ban on GMOs.²⁷ The EU also requires labeling of foods containing GMOs, whereas the United States does not.

Questions from the Case

1. Capitalism spurs innovation through financial rewards. Is there any reason to restrict the market in GURTs?
2. Should governments interfere with the operation of the free market?
3. Do you think it would ever be acceptable for impoverished farmers to steal the seed from rich suppliers? Or for a poor country to have its scientists synthesize and reproduce proprietary formulas?
4. Genetic modification could make barren areas fertile and result in an end to world hunger. Why should we restrain that potential?
5. Should investors be concerned about the products or services that a profit-generating business is involved in?
6. How should we value intellectual property rights?

²⁷ European Commission (2022). “Several European Countries Move to Rule Out GMOs,” <https://bit.ly/31Pq2ur>.

4 Responsibility

The term *responsibility* is commonly used in business ethics and, properly understood, it will help us shape discussion of the scope and limits of appropriate corporate action and how we attribute praise and blame. Businesses are often held responsible for the goods and services they provide and the conditions under which their products are made; they are said to be responsible for their employees and the environment. They are encouraged to be responsible citizens and acknowledge they are members of the community. There are master's degree programs in responsibility and business practices.¹ Some investment portfolios limit their purchases to "socially responsible" companies. A useful starting point will be to look at a few real cases to distinguish some of the various ways the term is used.

Case: The Volkswagen Diesel

Volkswagen (VW) is the world's largest manufacturer of vehicles. In the mid-2010s, the company started a major marketing push to promote diesel cars, especially in the United States. A prominent element of the appeal was VW's claim that their cars were more environmentally friendly than regular petrol-driven equivalents.

Both diesel and petroleum are derived from mineral extracts processed in refineries. In a regular engine, petrol is mixed with air under compression and ignited by a spark. A diesel engine has no spark plugs and relies on

¹ For example, the MSc in Corporate Social Responsibility at London Metropolitan University, the MA in Responsible Management at Steinbeis University at the Berlin Institute, the MBA in Social Responsibility at the Haas Business School at the University of California-Berkeley, or the MBA in Social Enterprise at the Harvard Business School.

compression of air and fuel alone. Generally, this means that it must be engineered to tighter specifications and is heavier. Nevertheless, the weight is offset by the extra mileage it can achieve for the same amount of fuel. Given that about 20 percent fewer hydrocarbons are used, diesel engines are considered environmentally friendly. Moreover, the CO₂ emissions from a diesel engine are roughly equivalent to or less than an engine fueled by petrol.

Promotion of diesel-powered vehicles in the United States was significant as environmental regulations were more stringent than those in other parts of the world, including Europe, and success in America would signal a major step forward in addressing rising concerns among consumers about pollution levels. The testing authority responsible for monitoring emissions in America is the Environmental Protection Agency (EPA). At the time, companies supplied test vehicles and mileage and emissions were tested on a stationary platform, much like a treadmill. The vehicles were tested under varying conditions such as engine heat and road speed. Unfortunately for VW, it turned out that while the so-called clean diesel engine emitted target levels of CO₂ it also put out large amounts of nitrogen oxide (NO_x), a gas that not only contributes to global climate change but acts as a catalyst, effectively multiplying its deleterious effects. Excess NO_x can be lowered by injecting unburned fuel into the exhaust system, but while this goes some way to solving the NO_x issue, it reduces the much heralded extra mileage.

Modern cars are equipped with a range of computer chips, and software helps them to achieve maximum performance. In this case, some 15,000 algorithms were integrated into the vehicle. Realizing that the test simulations could be distinguished from regular driving by, for instance, the steering wheel not being turned, VW engineers utilized software as a “defeat device” to minimize pollution levels under testing conditions, but then resumed original settings on the road. This enabled the car to provide desirable emissions data under testing conditions, and the publicized mileage in road use.

In May 2014, researchers at West Virginia University and the independent nongovernmental organization (NGO) the International Council on Clean Transportation published research findings showing that VW cars, under normal driving conditions, led to NO_x pollution levels up to forty times above regular testing. The company responded that this was the result of unusual technical issues which could be fixed. However, none of the

statements by VW seemed to explain the results. The following year, the EPA refused to certify VW's 2016 diesel vehicles, which halted sales. At this point, VW admitted to the presence of the defeat devices. The EPA responded by saying diesels with this feature should never have been sold. The following month, VW acknowledged that the issue affected some eleven million cars worldwide and committed to fixing the problem.

The head of the VW group, Martin Winterkorn, commented that the company had "broken the trust of our customers and the public." Despite his assurances that he knew nothing about the defeat devices, it appears he received a memo in 2014 from an executive tasked with solving technical emergencies warning that regulators were likely to check whether VW had implemented a test detection system in the engine software.² Winterkorn subsequently resigned and his successor Matthias Muller released a statement saying "My most urgent task is to win back trust ... by leaving no stone unturned and with maximum transparency ... Volkswagen will do everything it can to develop and implement the most stringent compliance and governance standards in our industry."³ Muller announced plans for a worldwide recall with an assurance that the repairs would be completed by the following year.

At the time, Michael Horn was the head of VW America. In response to the emerging scandal he admitted, "We've totally screwed up," while maintaining: "This was not a corporate decision, from my point of view, and to my best knowledge today ... This was a couple of software engineers who put this in for whatever reasons." Horn claimed that he only learned of the defeat device two weeks before the scandal became public. At a Congressional hearing he announced, "Let me be clear, we at Volkswagen take full responsibility for our actions and we are working with all relevant authorities in a cooperative way."⁴ Asked whether it was credible that top management could be unaware

² A. Smale and J. Ewing (2017). "Ex-Chief of VW Holds Firm during Grilling on Emissions Deception." *New York Times*, January 19, <https://nyti.ms/3A8S6g2>.

³ S. Kim (2015). "Volkswagen Names Porsche's Matthias Muller as CEO," *ABC News*, September 25, <https://abcn.ws/3BSiBaN>.

⁴ Testimony of Michael Horn, President and CEO of Volkswagen Group of America, Inc., before the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations, October 8, 2015.

of a crucial factor such as a defeat advice, he admitted that it was hard for him to believe and a struggle for him to understand. Later, he returned an award for Eco-Friendly Car of the Year. Meanwhile, the VW associated brands of Audi and Porsche came under increased scrutiny. The company offered customers a \$500 debit card and rebates on future dealer services. The EPA, feeling stymied by VW's lack of action, sued the company for violations of the Clean Air Act. Under pressure, Michael Horn resigned, and the Federal Trade Commission sued for false advertising over VW's clean diesel claims. By April 2016, VW had abandoned attempted fixes and offered a buyback program to owners, giving them the purchase price and a compensatory bonus. It set aside over sixteen billion Euros as a loss.

In October 2016, James Liang, a VW engineer based in the United States, admitted to fraud and agreed to cooperate with the government based on his involvement in developing the software. He pleaded guilty and was sentenced to forty months in prison and a \$200,000 fine prior to being deported to his native Germany. Oliver Schmidt, a VW executive in charge of compliance, was arrested as he was about to aboard a flight out of the United States, convicted of leading the defeat device efforts; he received the maximum prison sentence of seven years and a \$400,000 fine. Five other indicted employees were outside the United States and not extradited.

Apart from the individuals involved, VW as a company pleaded guilty to conspiracy to commit wire fraud and violations of the Clean Air Act, customs violations, and obstruction of justice. It later emerged, as the scandal broke, that a corporate lawyer urged at least forty employees to destroy potentially incriminating documents.⁵

Eventually VW agreed to fines amounting to \$4.3 billion; the entire scandal probably cost the firm over \$36 billion.⁶ However, if the deception had not been revealed by a nongovernmental agency, it is likely that VW would have commanded and expanded the passenger diesel market. Despite the offsets for fines and reparations and the reputational damage involved, financial results show that VW is subsequently outperforming its pre-scandal figures and thriving, especially in Europe and in the Asia-Pacific

⁵ Smale and Ewing, "Ex-Chief of VW Holds Firm during Grilling."

⁶ Reuters Staff (2020). "Volkswagen Says Diesel Scandal Has Cost It 31.3 Billion Euros." *Reuters*, March 17, <https://reut.rs/3Pfb5d8>.

region.⁷ At the same time, consumer interest and research has significantly swung away from clean diesel technology toward hybrid and electric vehicles since 2015.

Unlike many industrial accidents where harm can be attributed directly, data on the social and environmental effects of excessive NO_x is hard to quantify. Nevertheless, some scientific estimates suggest that over 5,000 premature deaths in Europe could be linked to a time when over a third of passenger vehicles were high-emitting diesels.⁸

Meanings of Responsibility

Consider the following set of claims about the scandal discussed in the previous section:

1. Martin Winterkorn was a responsible person.
2. Michael Winterkorn was a responsible engineer.
3. Martin Winterkorn was responsible for altered test data being presented to government regulators.
4. Martin Winterkorn was responsible for his actions during his tenure as chair of the VW group.
5. Martin Winterkorn was not responsible for falsifying test data.
6. The VW group was held responsible for falsifying test data.⁹

Martin Winterkorn, head of VW at the time of the scandal, was a respected member of his community, had no criminal record, and had fulfilled his civic duties such as paying taxes. Based on this information, the first claim – that he was a responsible person – is true. The second claim suggests that he was a good professional. In general, professions have strict entry requirements based on education and qualifications, and members

⁷ Statista (2022). “Volkswagen’s Operating Profit from FY 2006 to FY 2021,” <https://bit.ly/3bJhAar>.

⁸ G. Chossière, R. Malina, F. Allroggen, et al. (2018). “Country- and Manufacturer-Level Attribution of Air Quality Impacts Due to Excess NO_x Emissions from Diesel Passenger Vehicles in Europe.” *Atmospheric Environment*, 189, pp. 89–97.

⁹ This analysis draws on H. Hart (1967). “Varieties of Responsibility.” *Law Quarterly Review*, 83, pp. 346–364.

are given autonomy and power. Doctors, for example, can prescribe drugs, accountants can certify findings, and judges can sentence criminals while the general public cannot do these things. Another aspect of professional standing is adherence to a code of conduct that addresses issues specific to the profession. These codes, along with professional qualifications, enable engineers to design and approve projects, and involve the correct use of materials, efficient mechanical solutions, and appropriate safety tolerances. Winterkorn had a PhD in metallurgy and had risen through the ranks as a highly competent technical expert. As such, he had additional duties of care beyond those of an unskilled worker or manager.

The third claim represents the doctrine that the captain of a vessel or the pilot of an airplane is ultimately responsible for everything that happens on board, whether or not they were directly involved. The same might be said for a military commander or university president: While they may be ignorant of what is going on they are held responsible by virtue of their rank and they should be held accountable for whatever happens on their watch, for better or worse. For instance, after a Japanese Airlines flight with 520 passengers on board crashed into the side of a mountain, the company president Yasumoto Takagi took responsibility, asked forgiveness from the survivors, and offered to resign. Similarly, it could be argued that Winterkorn should have resigned as a matter of course once the scandal broke, regardless of his personal involvement.

The fourth claim – that the CEO was responsible for his actions – focuses on the state of mind of the CEO: He was not delusional or ill but was rational throughout, and so cannot be excused on those grounds. He could understand the difference between right and wrong and was not acting from coercion, blackmail, or because voices in his head commanded him to. It is possible that he got caught up in the emotional dynamics of wanting to “win” by making the company immensely profitable during his tenure no matter what it took, but nevertheless it appears he was making autonomous choices.

The fifth claim points to the circumstance that it is unlikely that Winterkorn himself changed the software codes to mislead the testing equipment, and there may not be an apparent and obvious paper trail that spotlights his actions in a negative light. It becomes difficult to assign causal responsibility when the actions of those in charge of enacting the deception

are clouded in some ambiguity: If the CEO had said, “Don’t come back until you have a solution” or “Do what you have to and get it to work.” the subordinates may have taken the message as permission to engage in questionable behavior even though there was no clear order to do so. Finally, in the absence of individual responsibility, the sixth claim allows us to assign fault to the corporation itself, as a representative of the collective actions of its employees. This gets around the issue of not being able to find the specific individuals who perpetuated the deception, but it may also hurt members of the organization who were genuinely not involved.

What these statements highlight is the nebulous nature of the concept of responsibility when a corporation acts unethically; it suggests two main approaches we can take. Initially, we can look at the nature of the specific actor in question, and whether their behavior warrants praise or censure. In some cases, individuals delegate their values to those of the company and serve as agents – for instance, when an employee makes a representation or enters into an agreement in their capacity as a company manager. At other times, they may act as a fiduciary, where professionals such as financial advisors are obliged to place the welfare and interests of their clients ahead of their own. Additionally, in this vein we can broaden our perspective to assess the actions of the corporation itself when it acts as if it is a moral agent, which, like a human being, can bring about good or harm. Many companies promote themselves as responsible corporate citizens; typically, such claims include elements such as investment in the local community, environmental stewardship, and bringing a valuable good or service to market. These actions are intended to promote the character and culture of the firm as a moral agent.

In contrast, the second approach to evaluating responsibility analyzes causes, accountability, and reparations. We now turn to look at each in greater detail.

Role Responsibility

When an employee adopts corporate or professional values and judgments separate from their own, they can be said to be acting in role. Some roles may arise from special relationships. For example, parents have responsibility for

their children. In business there are formal and informal relationships with various stakeholders, each implying special duties. From this perspective, role designation in an organization limits the scope of individual discretion in making decisions and informs employees of corporate expectations. The organizational chart provides a guide as to who reports to whom and whose actions are under an individual's control. By virtue of rank, there is an associated mantle of responsibility overarching everything that happens under the remit of the role. As an example, if an employer signs a contract we don't think of it as personal correspondence. If the manager later leaves the position, the contract still holds between the customer and the firm. The terms of the contract may not be discretionary personal judgments by the manager, and in fact may be at odds with their individual values. Nevertheless, while working for the company the employee acts as its agent and works to further its aims. One approach to assigning responsibility for a corporate action, therefore, would be to examine the company's structure and determine who manages the employees involved.

There may be times when the decision-makers in business have multiple layers of responsibility and some responsibilities may even be incompatible. When the head of VW America Michael Horn announced, "I'm damn sincere about this. . . . The dealer profitability in this country is my first objective," we should not necessarily see this as reflecting his personal view or that he did not care about customers who had been duped or about the additional environmental damage.¹⁰ Instead, we should perhaps take the statement at face value – he is acting as an agent on behalf of the investors in a company and simply stating that he has a hierarchy of duties where the interests of the dealers should be held paramount.

Legal Liability and Moral Responsibility

We hold individuals morally responsible when they know what they are doing and the results of their actions are foreseeable. Legal accountability is not the same as moral responsibility, but it does provide a useful entry point

¹⁰ S. O'Kane (2015). "Volkswagen America's CEO Blames Software Engineers for Emissions Cheating Scandal." *The Verge*, October 8, <https://bit.ly/3Pc6hp1>.

in analyzing the concept. The legal notion of *liability* defines a range of relationships where responsibility is assigned due to *cause*, *non-compliance*, and *reparation*. A major form goes by the general term *vicarious liability*. In rather old-fashioned language, it refers to the “master-servant” relationship, where a business may be held responsible for everything an employee does while working for the company and means firms cannot distance themselves from wrongdoing. So, if a grocery store employee sexually harasses a customer while at work, the store may be liable, especially if it knew or should have known of the behavior. It also means that an unscrupulous manager cannot avoid blame by requiring subordinates to perform illegal acts and then claiming ignorance.

A related doctrine is *strict liability*. Here *all* responsibility rests with the manufacturer of a product without regard to faults. It is easiest to understand in the context of particularly hazardous cases. If a firm makes extremely dangerous explosives, or a zoo owns wild animals, they will be responsible for whatever harmful consequences occur. In other cases, strict liability requires a firm to pay compensation for something not directly under its control. This may initially appear unfair, but the practice sends a very clear message and ensures that compensation will be paid. For example, legislation may automatically hold a milk producer responsible if a shipment is tainted on arrival. Although there may be many reasons beyond the control of the producer why the milk is contaminated, the doctrine gives every incentive for producers to maintain the highest possible standards.

When society applies strict liability it is telling companies they need to give paramount concern to certain interests by imposing punishment without assigning moral responsibility – that is, an agent who is blameless may nevertheless still have to foot the bill.¹¹ A firm might have a strict policy about environmental dumping, hold seminars for employees, post procedures and rules all around the factory, and place reminders on the sun visors of all its vehicles. Yet if an employee disposes of used oil in a stream as part of their job because they are running late to pick up a child from day care, the

¹¹ G. Bernkert (1997). “Strict Products Liability and Compensatory Justice,” in T. Beauchamp and N. Bowie, eds., *Ethical Theory and Business*. Englewood Cliffs, NJ: Prentice Hall, pp. 210–215.

company will still be held liable. Although the company may say that it had done as much as it could, the economic signal strict liability sends is that there will be absolutely no tolerance for any wrongdoing at all, and thus the firm should work to prevent every eventuality, however unlikely. In the case cited, perhaps having two workers in each truck would mean that every action was monitored and they would not have dumped the oil.

Often, several different manufacturers share in putting a good on the market. The legal doctrine of *joint and several liability* means they may all be held liable even though they are only partially involved. For example, if someone was injured because of a defective bicycle, they could potentially sue the store that sold it, the bicycle manufacturer that made it, and any relevant subcontractors such as the firm that made the defective brakes. The doctrine of joint and several liability means that the injured person does not have to go through the detail of allocating percentages of blame but can recover from anyone involved in the cause of the harm who is solvent. Similarly, if several pharmaceutical companies have all produced the same drug and patients suffer ill effects, those harmed can sue *all* the manufacturers.

Cause

A key aspect of the term responsibility is that a person or firm is the *cause* of an outcome and therefore deserves appropriate praise or blame and the associated financial rewards or liability. There are some cases where cause and effect are quite easily discerned, but frequently there are a host of conditions, some involving wider systemic issues and some illustrating that events are often a result of many factors and are part of a causal chain. A company may cause harm through many avenues, including its acts, omissions, the situations it creates, or a set of events it initiates. In these cases, we tend to equate the company having responsibility for the harm as being the same as the company *causing* the harm.

The philosopher David Hume investigated the nature of cause and drew the conclusion that cause is based on three factors: contiguity, temporal precedence, and constant conjunction. *Contiguity* refers to the how physically close one event is to another; *temporal precedence* refers to the fact that

causes precede effects; and *constant conjunction* refers to the idea that one state of affairs is always present when the other occurs.¹² Hume maintained that causality is a function of human reasoning in that humans are the ones who make connections, and he argued that we often make false attributions.

A mistake we are all fall victim to is to confuse correlation or coincidence with cause. Although geese fly south in the winter, and snow often follows, it does not mean the geese cause the snow. This kind of faulty reasoning has the technical name of *post hoc ergo propter hoc*, which translates as “after which, therefore because of which.” A contemporary example of this may be found with the chemical company Dow Corning, which produced silicone gel breast implants. Many women who received the implants subsequently became sick and juries awarded millions in compensatory damages, resulting in Dow Corning going bankrupt. However, the latest scientific evidence suggests that the implants were safe all along. Juries were presented with the story of a powerful, rich company and a woman in obvious distress, and were told that she was well prior to having the implants and later became ill. They tended to side with the apparent victim despite the paucity of scientific data causally linking the two events.¹³ Moreover, it is almost impossible to prove a negative, so that when experts were asked on the stand whether they could definitively deny a link between the purported cause and its effect, they had to say they could not.

A similar dynamic may be involved with claims about the purported link between the use of talcum powder and ovarian cancer. Johnson & Johnson had been producing talcum powder for decades and was aware that some of its sources had trace amounts of asbestos. There is a known link between asbestos and mesothelioma, a form of cancer. In court cases, Johnson & Johnson had to pay significant damages to cancer sufferers who maintained they had regularly used the brands Baby Powder and Shower to Shower. At the same time, other juries have rejected a causal link and accepted Johnson & Johnson’s argument that the amounts of asbestos in samples were

¹² D. Hume (1779 [1748]). *An Enquiry concerning Human Understanding*, ed. L. A. Selby-Bigge and P. H. Nidditch. Oxford: Oxford University Press, Section vii.

¹³ USFDA (2018). “Update on the Safety of Silicone Gel-Filled Breast Implants (2011) – Executive Summary.” U.S. Food and Drug Administration, <https://bit.ly/3derO2X>.

negligible and could have come from background contamination. In 2021, the company split-off a division to resolve all the asbestos claims, effectively distancing the controversy away from their main business and it subsequently filed for bankruptcy.¹⁴

A further issue in assigning cause and consequent responsibility is our psychological tendency to lower our cognitive dissonance by isolating a single factor when faced with large amounts of information. In any given case, we should be cautious about pointing to any one cause without considering the constellation of other factors at work. When the space shuttle Challenger exploded shortly after takeoff, for instance, the brittle rubber O-rings leaked hot gases that ignited the main fuel tank. However, a closer analysis suggests that the launch could have been successful if the shuttle had not met high buffeting winds that stressed the joint at just the wrong time. In effect, when we seek causes there are usually multiple factors that come together, some intentional, some negligent, and some purely accidental, and so parsing out responsibility becomes very difficult. Philosophers use the term *sufficient condition* to describe elements that are causally efficacious and distinguish them from *necessary conditions*. Roughly speaking, a *sufficient* link exists when action *a* was enough to cause effect *b*, although other actions could have brought it about as well. The gas leak was enough to cause the crash, but many other risks were present that could have had the same result. In contrast, a *necessary* link points to a singular cause: if *a* had not happened, then *b* would not have either.

Take the case where a company makes a strategic decision to close a unit or outsource work. Local employees will lose their jobs as a result. In one sense, the company is causally responsible for some of the distress that will follow, since if it had not closed then things might have continued as before. Still, we can already see that the analysis must be more sophisticated: The “but for” condition must be qualified to include the broader context. Perhaps the industry had failed to adapt to changing markets – for instance, not anticipating the diminishing market for typewriters or pocket calculators – or outside competition, internal inefficiencies, or political influences could

¹⁴ Reuters (2021). “J&J Puts Talc Liabilities into Bankruptcy,” October 15, <https://reut.rs/3BraGRu>.

have been sufficient causes as well. The immediate cause of the redundancies was the relocation, to be sure, but at the same time we need to consider many other factors that led to it.

Joel Feinberg isolates three different types of causal analyses we employ depending on what we are hoping to resolve.¹⁵ First is a *handle*, which is a brief causal explanation looking at the immediate factors leading to the incident so we may prevent similar occurrences in the future. In the VW case, the causal explanation is described in engineering terms and the solution is obvious: Do not employ software designed to defeat government regulation. Likewise, do not authorize a shuttle launch with brittle O-rings.

Feinberg calls the second type of analysis the *stain*; this seeks out all the factors we can ascribe to human error and provides a basis for redress. So, for example, VW maintained the scandal was caused by a few rogue engineers working by themselves while somehow their managers were completely ignorant of what was going on. However, if the lead came from above, perhaps the company itself becomes the target of moral condemnation and claims for reparation.

Third is the *lantern*, which sheds light on the broader, more systemic factors that led to the immediate problem. One effect of our tendency to look at simple and easily identifiable causes is that we may miss the larger forces at work, such as management philosophy or lax government oversight, which are more difficult to assess and correct. For instance, the VW case may not be simply about fraud, but should be thought of in the context of the level of governmental oversight, the role of the press, the culture at VW, and consumer attitudes about the price of cars and their effect on the environment.¹⁶

We can also see some of the complications involved in ascribing responsibility in the case of the world's deadliest oil spill that occurred when the Exxon oil tanker *Valdez* ran aground in Prince William Sound, Alaska in 1989. The captain had apparently been drinking vodka all day and

¹⁵ J. Feinberg (1970). "Sua Culpa," in *Doing and Deserving*. Princeton, NJ: Princeton University Press.

¹⁶ See, for example, Reuters Staff (2016). "American Drivers Don't Care What Comes Out of Their Cars." *Fortune Magazine*, July 20, <https://fortune.com/2016/07/20/drivers-car-emissions-survey/>.

relinquished command to a junior officer while he went to his cabin. The ship was rerouted from its usual course and shortly thereafter hit a reef, causing the leak of an estimated eleven million gallons of crude oil. The captain was found guilty of negligently discharging oil, and eventually Exxon paid over \$900 million in damages and \$2.2 billion in cleanup costs, reflecting that the captain's actions were the direct cause of the crash and his employer bore the moral and financial responsibility. However, the Alaska Oil Spill Commission report did not lay the blame solely on the captain or consider it a freak incident. They concluded the crash and inept cleanup were part of a much wider pattern, "simply one result of policies, habits, and practices that for nearly two decades have infused the nation's maritime oil transportation system with increasing levels of risk."¹⁷ As a result of this finding, the Commission recommended that all large tankers should have a double hull to minimize the possibility of spills.¹⁸

Despite public outcry against the resulting pollution and devastation to marine life, there were few boycotts of Exxon by the public. This suggests a lack of public support for immediate action and signaled that consumers value cheap oil over marine animals. Moreover, a spokesman for the shipping industry noted that most oil pollution in the sea comes from the land, not from tanker spills, which only account for 11 percent. "More oil enters the sea from motorists draining their sump oil into the town drain than from all the world's tankers."¹⁹ The *Valdez* was a dramatic incident that highlighted concerns, but the reports focused on immediate and personal causes, public interest waned, and the wider problems over environmental protection largely went unaddressed. While it is undoubtedly true that the crew should take responsibility, we should also consider the background,

¹⁷ Alaska Oil Spill Commission, State of Alaska (1990). *Spill: The Wreck of the Exxon Valdez: Implications for Safe Marine Transportation*, p. 525, www.arlis.org/docs/vol1/EVOS/1990/21337991.pdf.

¹⁸ International Maritime Organization (1992). *International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto (MARPOL 73/78)*, www.edumaritime.net/imo/marpol-convention; International Maritime Organization. "Construction Requirements for Oil Tankers – Double Hulls," <https://bit.ly/3zpVeTo>.

¹⁹ Quoted in A. Kirby (1999). "Exxon Valdez: Tip of an Oily Iceberg." *BBC News*, March 23, <http://news.bbc.co.uk/2/hi/science/nature/299621.stm>.

including the compromises consumers are willing to tolerate in exchange for cheaper fuel prices and how much self-regulation the oil and transportation industries take on when we assign moral responsibility

It makes a difference if we are analyzing a potential situation before it has happened or if we are looking retrospectively at something that has happened in the past. Before something happens, it is very hard to see issues that might be obvious later. Indeed, as the adage goes, it is usually true that “hindsight is 20/20 vision.” It also matters if, once something does happen, things go well or badly: If they go well, many will want to take part of the credit and reap rewards even if their involvement is somewhat at arm’s length, whereas if something has gone wrong there is significant retrenchment and avoidance of the blame. In philosophical terms, we want to be heroes of our own narratives and so-called *egocentric martyrs* where we believe the harms we endure are much more damaging than objectively symmetrical benefits.

Codes and Compliance

Individuals may be held morally responsible for their acts when they are aware of what is going on and have the capacity to see how the acts will affect others for good or ill. In a wider sense of responsibility, individuals acting in a role may have additional duties – often spelled out in policies, procedures, or a code – and failing to live up to those expectations may be grounds for moral censure.

One aspect of working in role is that personal values become subsumed to those of the employee’s profession or organization. In broad terms, behavior at work has three layers: The bedrock layer is that of legal compliance, where all parties share a commitment to a common set of values reflected in the law. Then, beyond legal observance, companies establish their own codes of conduct that may be more stringent and address issues unique to their situation. Finally, professionals such as lawyers, accountants, or engineers will have duties that may supersede those of a firm.

In the 1990s, the US government enacted legislation that had set penalties, with the provision that they could be diminished or multiplied depending on whether the company was found to have proactive ethics programs.

The goal was to give firms an incentive to create an overall ethical culture rather than dealing with problems as if they were isolated incidents by corrupt individuals.²⁰

Codes may include an aspirational element, suggesting what the ideal standard would be and the level to which members or employees should aim. Although such standards may not always be attained as a matter of practice, they present worthy goals that may help guide discretionary acts. For example, a code might say that the firm expects that its employees will treat all customers with good humor. Even though employees may not always be able to fulfill this expectation, it still has value as an ideal.

Notably, codes exist not only for employees but also for the general public in that they announce the operational standard of behavior for a company: That is, as a moral minimum we might expect a company to abide by its announced standards and hold it responsible if it fails to adhere to them.

A key ethical finding is that compliance with the law or a code will inevitably not be enough, as employees face novel or difficult situations that are not spelled out directly. It would be unrealistic to believe these will always provide clear algorithms for determining ethical conduct. The nineteenth-century philosopher John Stuart Mill expressed this point when he said,

It is not the fault of any creed, but of the complicated nature of human affairs, that rules of conduct cannot be so framed as to require exceptions, and that hardly any kind of action can safely be laid down as either always obligatory or always condemnable . . . There exists no moral system under which there do not arise unequivocal cases of conflicting obligation. These are the real difficulties, the knotty points both in the theory of ethics and in the conscientious guidance of personal conduct. They are overcome practically, with greater or less success, according to the intellect and virtue of the individual.²¹

Although codes can give us considerable guidance, it seems that in order to help employees in difficult or discretionary cases they typically need to be

²⁰ United States Sentencing Commission (1991). *Federal Sentencing Guidelines Manual*, <https://bit.ly/3A79UIo>.

²¹ J. S. Mill (1971 [1863]). *Utilitarianism*. New York: Bobbs-Merrill, p. 33.

supplemented with reference to underlying values and made real by reference to everyday examples.

Naturally people enter organizations with their own set of values, and these typically will not clash, but there are times when individuals will compromise their beliefs to accommodate corporate policy. For instance, a bank may cash checks in order of the largest amount first rather than the time they arrive, with the result that if someone overdraws, the largest check will cause the account to go into the red and they will be charged for several bounced checks and not just one. It may be that employees feel the policy hurts the most vulnerable customers but that it may not rise to a level where it is the proverbial hill to die on. Still, there will be other cases where the corporate policy is so offensive that employees will refuse to go along with it and would rather quit. For example, a nurse with strong religious views about abortion might leave their job if asked to assist in the procedure even though it is legal and does not violate the nursing professional code.

Corporations as Moral Agents

At this point we should circle back to the issue of corporate personhood. Does it make sense to say that a company such as VW had moral as well as legal responsibility to all the stakeholders involved? Corporations are considered persons in a legal sense: They can make contracts and be sued just like individuals. On the other hand, they obviously are not living beings such as humans, and do not exist in the way people do. Edward Coke, the eminent judge, declared that despite the fact that “they cannot commit treason, nor be outlawed, nor excommunicated, for they have no souls,” nevertheless a corporation could own property in its own right rather than as a proxy for a human agent.²² The difficult question is the intermediate position of whether they are moral entities, that is, can they operate to cause harm or good?

Some commentators have taken what might be termed a *reductionist approach* to answering this question. This suggests that corporations are

²² CimplyFive. “1612: Sutton Hospital Case – The First landmark Case that Shaped the Corporate World,” <https://bit.ly/3zGEWGN>.

composed of people, and hence, when we ascribe moral terms to the corporation, it is, in effect, an abbreviated way of talking about the individuals involved; it maintains that having a moral sense is a uniquely human characteristic. Consequently, it would be a mistake to ascribe human-like qualities to a corporation or other artificial entity, except through the humans which comprise it. From this perspective, if we say that Exxon did something wrong when the *Valdez* tanker spilled oil near Alaska, this is shorthand for the actions of the human actors involved: the captain, the helmsman, the cleanup crews, the corporate executives, and so forth, reducing the moral debate to one about human behavior alone.²³ It has the benefit of being straightforward in that it focuses on the people who are morally culpable and assigns blame accordingly. However, the risk of relying on the responsibilities of human beings alone is that if no one can be named, the responsibility evaporates. If a company's corporate ethic is to beat analysts' expectations every quarter by whatever means necessary, as was the case with the European loan conglomerate Wirecard before its dramatic and scandal-ridden collapse in 2020, we would expect to find employees engaging in morally questionable activities even though no written policy or paper trail makes the expectation explicit. Wirecard was able to avoid government scrutiny for a prolonged period because book entries were altered, but not enough to reach thresholds that would trigger additional review. The practice was routine and pervasive in the company but could not be traced to any specific individual or directive.

The contrasting view suggests that corporations and institutions can be moral agents over and above their component members. It argues that at times an analysis of the moral acts of a corporation cannot be reduced to its members without residue or some remaining responsibility that doesn't adhere to any individual actor. To understand how this might work, consider an organization that has a strong identity, perhaps a long-standing corporation such as Sony in Japan, Ford in America, or Westpac in Australia and New Zealand. Each of these companies has a corporate culture reflecting values shared by its respective employees, and those that align

²³ M. Velasquez (1983). "Why Corporations Are Not Morally Responsible for Anything They Do." *Business and Professional Ethics Journal*, 2, pp. 1-18.

themselves with the values are more likely to succeed than those who ignore them. Some of these values are written down, for example, in codes and policy statements. Others, though, take the form of shared understandings that are passed along. This kind of corporate identity persists despite the coming and going of individuals. Theoretically, someone could return to the company after twenty years and find that even though there had been a complete turnover of personnel and buildings had been razed and rebuilt, the way that the company does its business is instantly recognizable and consistent. The effect of such a corporate culture is that there may be cases where no one person can be found responsible for an action, yet evidence shows there is a shared understanding that a given behavior is acceptable or appropriate. That is not to say that a wrongdoer would be excused – if there were evidence that pointed to an individual, then they would be held to account. However, this approach allows us to treat a corporation as a moral agent in its own right. Many commentators have pointed to the overall culture of valuing market dominance at VW as one factor that led to its emissions scandal. Individually, management and employees might not have done anything that could be pinpointed as wrong, but focusing on culture lets us judge the organization as well.

The idea that a corporation is sufficiently like a person to have moral responsibilities is not without difficulties. Responsibility, as we have seen, requires the capacity for framing intentions. Some commentators, notably Peter French, have suggested that the corporate organizational structure provides us with a way to assess a “corporate internal decision” (CID).²⁴ He believes that the CID can show us the workings of a firm, and in many cases the intention of a firm will be more transparent and rational than those of individuals: Firms have mission statements and explicit policies and procedures giving us a fair indication of their moral climate. Furthermore, in many cases their cultures are evident through such means as eyewitness statements and internal communications. So, if the CEO of a company emphasizes profit as the overriding concern, it would not be surprising to find a corporate culture stressing quick turnaround times, efficiency, and maximized carrying loads while downplaying safety concerns – whether or

²⁴ P. French (1996). *Corporate Morality*. New York: Harcourt Brace.

not there was a written policy encouraging such practices. Still, critics claim that French and his followers avoid a difficult ethical issue by creating fictitious entities rather than chasing down the real, but often elusive, culprits.

The principal issue in corporate personhood amounts to whether members of an organization are tainted by the actions of others within the organization. If the VW scandal were due to the unfortunate actions of, at most, several individuals, then the solution would be to separate and punish them appropriately without any other significant changes. The phrase “bad apples” might be used, drawing on an analogy where some rotten apples in a barrel tend to spoil others, with the implication that their actions are not representative of the organization generally, and getting rid of the bad actors will solve the problem. However, if we consider that the total corporation is morally accountable, then the repercussions would be wide reaching. For example, in the Exxon case, if the spill was the result of careless actions by the captain, there is no real stain on other members of the company. However, if employees feel they are associated with an organization that has engaged in morally questionable activities because of its culture or standards, then any remedies would have to be widespread, since many more people would be implicated in any wrongdoing. In essence, the entire company would have to reassess its values and practices.

The corporate personhood debate places more or less emphasis on the culture of an organization as opposed to individuals. Whatever view we take, it is undoubtedly the case that many CEOs set the tone for the ethical climate of a company, so the ethical posture is very much “top down.” This is especially evident when CEOs, such as Mark Zuckerberg at Facebook or Jeff Bezos at Amazon, essentially control the company as well. That is not to say that the culture might not survive beyond the presence of any single person, and it might be argued we should never ignore the general tone of the organization rather than focusing on individual acts or people.

In assessing a company we need to consider its proclaimed mission, and we should not hold it responsible if it fails to achieve standards beyond its remit. If, for example, senior executives have publicly declared that their main aim is to maximize returns to shareholders and everything else is secondary, then it would be a mistake to hold the firm responsible for not maintaining standards

above the bare moral minimums such as providing health and safety equipment and acceptable working conditions. On the other hand, they can be held morally culpable if they have been negligent in the sense of failing to meet those basic threshold standards of care or diligence.

Inalienable Responsibility

Moral responsibility often lingers even though we may believe we have absolved ourselves by paying the required compensation. This effect is evident in the Biblical story of Pontius Pilate. In the New Testament story, a crowd is demanding the death of Jesus: “When Pilate saw that he could prevail nothing, but that rather a tumult was made, he took water, and washed his hands before the multitude, saying, I am innocent of the blood of this just person: see ye to it.”²⁵ Despite his protestations, it was Pilate who authorized Jesus’ crucifixion, and he is commonly described as the person who had Jesus killed. The ritual hand washing did little to excuse him by transferring the blame to the crowd, although it may have had the formal effect of implicating them as well. The issue this incident raises is whether individuals or corporations can ever disassociate themselves from their actions or whether they remain accountable in some way even though they have disavowed responsibility or paid the required compensation. This could be termed *inalienable responsibility*, since it adheres to the agent involved regardless of the outcome or findings of liability.

The notion that we were just obeying orders has little moral traction. It explains but does not excuse our actions, and we must realize that we ultimately bear responsibility for what we do. In Stanley Milgram’s famous research dealing with individual obedience to authority, volunteers were set up in an experiment that appeared to give learners electric shocks if they failed to answer questions correctly, although they were, in fact, confederates of the psychologist and received no punishment at all. The volunteer controlled a voltage generator and administered shocks at the command of a person in a white coat who, unbeknownst to the volunteers, was only posing as a researcher. Although presented to the volunteers as an experiment about the relationship between learning and punishment, the

²⁵ The Holy Bible, King James Version, Matthew 27, v. 24.

volunteers were actually the subjects of the research, which was investigating how far individuals would go in obeying orders even at the risk of hurting, and indeed torturing, other people. Milgram found startling deference to authority. Although the volunteers were often conflicted and reluctant about continuing to give ever greater shocks, they nevertheless complied. Milgram gives the transcript of one session:

- SUBJECT: I can't stand it. I'm not going to kill that man in there. You hear him hollering? . . .
- EXPERIMENTER: The experiment requires that you continue . . .
- SUBJECT: Aaah, but unh, I'm not going to get that man sick in there . . .
- EXPERIMENTER: Whether the learner likes it or not, we must go on, through all the word pairs.
- SUBJECT: I refuse to take responsibility . . .
- EXPERIMENTER: I'm responsible for anything that happens to him. Continue please . . . (Learner gives wrong answer; the subject administers what he believes is a 285-volt shock and hears screams).
- SUBJECT: Something's happened to that man in there. You'd better check on him. He won't answer or nothing.
- EXPERIMENTER: Continue. Go on, please.
- SUBJECT: You accept all responsibility?
- EXPERIMENTER: The responsibility is mine. Correct. Please go on.
- (Subject works through to 450 volts, the end of the board).²⁶

In the post-experiment interview, when it was revealed that the shocks were fake, the subject was asked about his reaction to causing pain. He admits that he was anxious and wanted to stop but felt the experimenter would not let him. Milgram asks him directly who was pushing the switches on the generator, to which he responds that he was, but that he always wanted to discontinue.

The experiment is instructive because it illustrates the way that we can easily drift into the role of a minor assistant and feel we are not in control – and

²⁶ Extracts taken from S. Milgram (1974). *Obedience to Authority*. New York: Harper & Row, pp. 73–76.

hence not responsible – for our behavior. It turns out that we rarely question authority when we believe it is coming from a legitimate source. However, the important lesson is that moral responsibility cannot be avoided, but inevitably lingers with us from the time the initial action is taken.

Agency, Commission, and Omission

It would seem natural to think that we should not be accountable for actions we do not take or even actively avoid. However, this line of reasoning only works up to a point. To illustrate this dynamic, consider the case of vaccination, where many parents are reluctant to inoculate their children even in the face of statistics that show a child is more likely to die from a disease than potential side effects of the injection. In technical terms, the parents are not being fully rational. However, we must recognize a very real psychological dynamic: In one case, getting sick is a fluke of nature, whereas if there are any ill effects from the shot we consider that we are the active agents of harm. We are naturally disposed to think that our intervention is more morally culpable than doing nothing and letting things happen.²⁷

The other distinction highlighted in vaccination cases arises when people claim that deaths from the disease are natural, whereas we are effectively killing people who have rare but fatal reactions when the vaccine is administered. This claim has some force but needs to be seen in the context of what humans do all the time in order to survive. We fertilize the land, use medicines such as antibiotics in case of sickness, and build shelters for ourselves. Seen in that light, all human actions are a function of nature and thus “natural.” Appeals to the natural can also have a pernicious side if taken to an extreme – for example, the Nazis appealed to a “natural order” to justify some of their genocidal acts. This is not to say that we cannot meaningfully distinguish between, say, man-made artifacts and a pristine environment – clearly there is a distinction between a concrete car park and a stand of old-growth trees. Instead, we need to question the moral defense

²⁷ J. Baron (1995). “Blind Justice: Fairness to Groups and the Do-No-Harm Principle.” *Journal of Behavioral Decision Making*, 8, pp. 71–83.

that humans choose not to act in some cases because they believe noninterference is a preferable course of action, even in the face of harms that could easily be mitigated.

One way to explain the default to leaving things to nature is as a reflection of the human tendency to not want to get involved in some issues since once we do we become associated with them, often at some personal cost – the so-called *bystander effect*. A witness to harassment in the office may find it easier to say nothing than to report it to the appropriate authorities, or a firm that has heard reports of rain forest destruction of by one of its subcontractors may believe that it is best not to look into it too closely so that it can disassociate itself if necessary. However, as we have seen, moral responsibility is a function of both our actions and our failures to act, and we must recognize that our personal reluctance to become a direct agent of change does not necessarily absolve us of moral responsibility.

In general, the law punishes a positive act but does not require intervention to prevent harm, especially if it involves risks. In moral discussions this is often a weak distinction, as choosing not to act is itself a moral decision and therefore the intentions and consequences that follow from that choice have moral ramifications. A recycling company that is aware of the presence of a growing number of used hypodermic needles in the trash and fails to warn its employees or take precautions might be seen as just as culpable as someone who deliberately stabs an employee with a hypodermic, because the resulting harm is equivalent. Similarly, a firm that buys extra insurance because it learns that a building it owns is in an earthquake zone but does not tell the workers or train them on emergency earthquake procedures is making a conscious decision not to act and cannot subsequently avoid moral censure by pointing out that it did nothing affirmative to cause harm.

The law creates a similar distinction between *commission* and *omission*, framed as the difference between *intentional acts* and *negligent* ones, and the penalties are generally more severe in cases where harm is the result of someone deliberately trying to hurt someone else. If an angry driver deliberately aims their car at a pedestrian with the intention of causing grievous harm, the charges will be more severe than if they had accidentally run someone over while searching for a map on the passenger seat. Nevertheless, the consequence is often identical, and intentions are hard

to establish. Perhaps we could reimagine the concept of *fault* and consider driving without due care and attention as equivalent to attempted battery, with the only significant difference being that the victim is not known ahead of time: It could be that the search and attribution of intentions may simply serve to cloud the issue since whatever the mental state of the driver, the act happened, and the consequence followed. That is, part of our moral assessment may be socially constructed, in that we accept carelessness, sloppiness, or negligence as an excuse in some settings although there is nothing necessarily less culpable in the act. A society could, for example, decide that *any* drivers causing deaths from being distracted by their cell phones should be charged with murder as a matter of social policy.

In the business context, manufacturers clearly do not set out to deliberately hurt people through their products and services. Still, if a producer is aware of a design flaw that will inevitably lead to injuries and deaths and does not remediate it or warn consumers, we might question whether the difference between positive acts and failure to take steps is as sharp as it initially appears in discussions about moral responsibility.

An example is the export of blood clotting medicines by American companies to Asia and Latin America in the mid-1980s. The blood agents used in the medicines that helped create clots for people with hemophilia were drawn from thousands of individual donors, without testing the donors for HIV. The presence of HIV-infected blood could have infected all the blood that commingled in the production process. Cutter Biological apparently sold off their stockpiles that carried a high risk of transmitting HIV/AIDS, while delivering a safer heat-treated product to their markets in the West.²⁸ Internal company documents purportedly showed that the company had several fixed-price contracts and thought it cheaper to offload drugs that they had voluntarily withdrawn from America, while assuring Asian customers that it was “the same fine product we have supplied for years.” The company failed to tell distributors and hospitals that they had reached an agreement with the Food and Drug Administration to take the drug off the American market before it was required to do so. In this case, the deliberate

²⁸ W. Bogdanich and E. Koli (2003). “2 Paths of Bayer Drugs in the 80’s: Riskier Type Went Overseas.” *New York Times*, May 22, A1, C5.

omission turns out to be a positive act, and therefore, almost paradoxically in moral terms, we can still consider it an act of commission.

The Doctrine of Double Effect

A traditional philosophical doctrine, derived from St. Thomas Aquinas, is called *double effect*.²⁹ The doctrine remains somewhat controversial, but those who find it persuasive apply it extensively in discussions about responsibility. The doctrine relies on knowing the deliberative process of the individual prior to the act, and traditionally looks to intentions combined with an assessment of potential outcomes. In these cases, the goal is a good outcome, but there will be at least one unintended but foreseeable bad effect as well. An example is so-called collateral damage in wartime, where it is evident that firing weapons is likely to cause innocent casualties. The doctrine suggests that as long as the harm caused is (a) not deliberate, (b) not a means to the good, and (c) less than the good produced, then the action may be acceptable.³⁰ It has often been employed in medicine, where, for example, a doctor might administer pain relief to a terminal cancer patient, realizing that this may hasten death. Proponents of the view would suggest that such action is acceptable because the intent is to lift the pain, not euthanize the patient. In business, pollution externalities are often thought of in this way: People want convenient and inexpensive transportation and the consequent harm to the environment is an unfortunate, foreseeable, but unintended result. From this perspective, the agent is causally responsible, but morally justified as the harmful outcome is a by-product of the targeted action.

Under this doctrine we might consider that some business decisions are less culpable if there is a benign intent that aims for overall benefit. For instance, a likely consequence of making cars is that some people may die as a result of driving them, or in putting any drug on the market it is predictable that someone will abuse the product and come to harm. However, if

²⁹ T. Aquinas (1988). *Summa Theologica* (II-II Qu. 64, Article 7), in W. Baumgarth and R. Regan, eds., *On Law, Morality and Politics*. New York: Hackett.

³⁰ Catholic University of America (2003). *New Catholic Encyclopedia*, 2nd ed. Washington, DC: Thomson/Gale Research, p. 1021.

your motive is to provide affordable transportation or beneficial over-the-counter drugs, then you need not be held responsible for any consequences of the product being used even though they are foreseeable. On the other hand, critics of the doctrine suggest that the stress on intentions does not absolve the agent from being morally blemished by bad outcomes. They maintain that although the injury or distress may come indirectly, it is still harm and the agent has caused it. In a layoff, for example, we can imagine that the survival of the firm and continued production of its goods is an overall benefit, and perhaps in order to preserve the firm its executives believed they needed to trim surplus overhead by shutting a factory. Their aim is all for the good of the company, its investors, and its customers, yet some employees will lose their jobs and suffer distress as a result. Proponents would argue that the layoffs are an unavoidable side effect of an otherwise benign move, whereas critics maintain that whatever the motive and other circumstances, management remains responsible for the closure and everything that follows.

Three Dimensions of Business Responsibility

Finally, consider three cases where responsibility is a crucial feature although it has different dimensions. In the first, the company appears to have taken away fundamental rights to health and safety in the workplace and hence is morally responsible for the consequences. In the second, the company seems to have foreseen an issue but failed to prevent it. The third deals with whether a company is obligated to follow through when its products are being misused.

In the early 1990s, the Imperial Foods chicken processing plant in Hamlet, North Carolina, caught fire. In order to make large batches of chicken nuggets it had vast open fryers. A maintenance worker had shortened a hydraulic hose so that people wouldn't trip over it, but the new fitting burst under pressure and sprayed hot oil around the kitchen. The hot oil created a fireball and dense noxious smoke. As the workers ran to the exits, they found the doors blocked by delivery trucks or padlocked from the outside, an apparent attempt by management to minimize employee pilfering. Of the ninety workers that day, twenty-five died, and fifty-six were

injured.³¹ While we may say that management did not deliberately intend to cause those deaths, clearly they carry responsibility for the effect of chaining the fire exits closed.

In the second example, a firm could be considered responsible through deliberate omission, in much the same way as a partygoer who reassures a drunk friend that they are still capable of driving might not be liable for a subsequent accident but might nevertheless be morally responsible. A 2020 British court case, *Kalma v. African Minerals*, held that a company was not legally responsible for abuses arising from their support of a local police force.³² Inhabitants of Tonkolili, a remote district of Sierra Leone in West Africa, had protested the activities of mining companies, which included being evicted from their traditional lands. The Sierra Leone Police (SLP) suppressed the protests with considerable force, opening fire on women performing a peace dance, then used gas, sexual assault, and imprisonment in squalid conditions.

The mining company had supplied the police with cash, vehicles, and accommodation and human rights groups and local victims claimed in court that the police actions would have not been possible without the firm's support; furthermore, it was easy to anticipate how the SLP would react. Lawyers for the protesters had drawn on a document, "Voluntary Principles on Security and Human rights," a voluntary set of guidelines drawn up collectively by governments, companies, and NGOs. One section dealt directly with corporate actions in these kinds of circumstance:

Although governments have the primary role of maintaining law and order, security and respect for human rights, companies have an interest in ensuring that actions taken by governments, particularly the actions of public security providers, are consistent with the protection and promotion of human rights. In cases where there is a need to supplement security provided by host governments, Companies may be required or expected to contribute to, or otherwise reimburse, the costs of protecting Company facilities and personnel borne by public security. While public security is

³¹ W. Haygood (2002). "Still Burning: After a Deadly Fire, a Town's Losses Were Just Beginning." *Washington Post*, November 10, F01.

³² *Kadie Kalma & Others v. African Minerals Limited, African Mineral (SL) and Tonkolili Iron Ore (SL) Limited* (2020), EWCA Civ 144, February 17.

expected to act in a manner consistent with local and national laws as well as with human rights standards and international humanitarian law, within this context abuses may nevertheless occur.³³

Nonetheless, the court decided that the company itself was not an accessory to the violence, since while it may have been able to foresee the resulting violence, it was not part of the company's intention and could not be inferred by them helping the police. One judge concluded in part that

A party who calls on the services of the police to restore law and order cannot be liable in tort for the actions of the police simply because it is foreseeable that the police may use excessive force to achieve that result . . . If it were otherwise, anyone who called the police in a tense situation where over-reaction is foreseeable (which would be the sort of situation in which the police's assistance would be of paramount importance in the first place) would be liable for the actions of the police once they arrived at the scene. That is not the law.³⁴

The rationale was that the company would not only have to foresee the use of excessive force, but also that there was some physical proximity, and so the judges thought it a stretch to expect the company to oversee the actions of the SLP. Moreover, the court maintained that the company could not be held responsible for omissions such as not assessing the risks involved in supplying the police with resources or not monitoring their behavior, placing the onus squarely on the SLP. The court also rejected the appeal to the Voluntary Principles, saying that companies operating abroad are not liable for the unlawful acts of local police forces, but rather, governments and the established authorities bear primary responsibility for the promotion and preservation of human rights.

The third kind of issue about responsibility involves the question of whether a company can ever be acquitted of responsibility for its goods,

³³ The Voluntary Principles Initiative (2022). "The Voluntary Principles on Security and Human Rights," www.voluntaryprinciples.org.

³⁴ England and Wales Appeal Court (Civil Division) Decisions. *Kalma & Others v. African Minerals Ltd, and Others* [2020], EWCA Civ. 144 (February 17, 2020), para. 103, www.bailii.org/ew/cases/EWCA/Civ/2020/144.html.

especially if the product is misused in some way – as most can be. There are legal minimums that a firm necessarily adheres to, but then we should ask whether the firm is obliged to test the product more thoroughly than the law requires or to advise consumers of its potential hazards. Furthermore, there may be a point at which the producer's moral responsibility is released, whether by its actions, by time, or by some other party taking on the moral burden. It is well known, for example, that some aerosol products can be abused when they are deliberately inhaled in confined spaces. Falcon Safety Products, one of the world's leading producers of computer cleaning sprays, prides itself on its proactive stance against abuse – it prominently displays warnings on its products and has partnered with US government agencies to promote awareness of the dangers of misuse through public service announcements on television and the provision of educational materials for parents and educators.³⁵

A contemporary example of abuse is the ill-advised ingestion of detergent. Laundry detergent pods contain ethanol, hydrogen peroxide, and soap, a combination that is caustic to eat. If left untreated, the detergent will eat away at the gastric system causing intense diarrhea and vomiting and can lead to coma and death. One specific brand, Tide Pods, was introduced by Proctor & Gamble in 2012. Their bright coloring had a remarkable similarity to candy, and there were multiple reports of young children and adults with dementia trying to eat them. One estimate is that one child a day ended up in hospital as a result of ingesting them in the first two years after they were introduced. In response, the company made the container harder to open, changed the attractive coloring, and added a bitter taste.

At first glance the idea of eating a pod seems foolish. However, what started as a joke turned into an internet meme called the "Tide Pod Challenge," where people posted videos of themselves biting into the pods. Some online references described them as forbidden fruit implying that the advice not to eat them disguised the hidden pleasure they could provide. Mostly, biting into the pods was something of a dare that attracted

³⁵ Falcon Safety Products, "Inhalant Abuse," <https://falconsafety.com/product-information/inhalant-abuse/>.

sufficient viewers on social media to create celebrities. The downside was that the pods are poisonous.

The popularity of the stunt posed a problem for Proctor & Gamble. As a response, the company took aggressive proactive measures. It negotiated with YouTube to have the videos removed on the basis that they violated its policy prohibiting content described as “challenges that pose an imminent risk of physical injury.”³⁶ Additionally, Proctor & Gamble used the same platforms that were promoting the challenge to inform the audience about its hazards. The company drew on influencers such as football player Rob Gronkowski to connect with teenagers, as well as peer-to-peer social media messaging.

Significantly, as Wharton Professor Robert Field pointed out, “It’s definitely the way to go, both in terms of public relations and legally.”³⁷ Proctor & Gamble validated public concerns, he noted, yet made it clear they did not consider themselves responsible. Its posture was that the company had done what it could to deal with the apparent problems encountered with children and those living with dementia, but it could not be held morally or legally responsible for intentional abuse of the product. As CEO David Taylor explained: “Ensuring the safety of the people who use our products is fundamental to everything we do at P&G. However, even the most stringent standards and protocols, labels and warnings can’t prevent intentional abuse fueled by poor judgment and the desire for popularity.”³⁸

We can see how a company might disavow wanton abuse, but there may be more involved. In the 1990s, H. B. Fuller produced a glue that was rampantly misused by street children in Honduras. In this case, they were not just getting high, but the stupor the vapors produced allowed them to feel warm and sleepy when they were cold, homeless, and hungry. When Fuller became aware of the problem it accepted its product was involved and attempted several remedies including reformulating the product and

³⁶ YouTube (2022). “Harmful or Dangerous Content – Community Guidelines,” <https://bit.ly/3bGF6ox>.

³⁷ Wharton staff (2018). “Brand Crisis Management: Responding to the Tide Pod Challenge.” *Knowledge at Wharton*, January 25, <https://wharton/3QwF8hG>.

³⁸ Proctor & Gamble (2018). “Safety Is No laughing Matter.” CEO blog, January 22, <https://us.pg.com/blogs/KeepingUsSafe/>.

increasing the price. At the same time, the company maintained that the reasons behind the abuse were social ills such as rampant poverty and homelessness, and their product was an incidental factor in the overall picture. For a while, Fuller took it upon itself to support UNICEF and other agencies in addressing some of the wider issues but eventually left the market altogether.

Summary

The concept of responsibility underlies much of the discourse in business ethics, but it is a complex notion that is used in a variety of ways and often not well understood. Still, when we look at it more closely, we can see that it is a very powerful and persuasive tool in working out the nature and extent of moral accountability in the business world, as well as informing us as to our expected duties. As our discussion suggests, the responsibilities of a business go far beyond its legal obligations and affect all aspects of its operations. By using a philosophical approach, we can see the basis for various types of responsibility and then apply these ideas to a wide range of business applications beyond our current examples. It will also give us a better normative guide as to how a corporation *should* behave.

Issues for Reflection

1. Do you think strict liability is ever justified?
2. Some products – cars or pharmaceuticals, for example – will inevitably cause harm unintended by the manufacturer. Can a business ever be absolved of responsibility, especially in cases where the firm could have made the product safer?
3. If there are multiple causes of an incident – say, an industrial accident that injures hundreds – how do you think we should isolate the key factors?
4. Do you think the “captain of the ship” doctrine should apply to corporate executives? If not, do they deserve high salaries for actions for which they were only nominally responsible?

5. In what ways do you think a corporation may be a moral agent? How do it differs from human agents?
6. What is the role of consumers and the political process in mitigating corporate harm? For example, we could pay more for oil transported in more secure ships, or we could enact laws that would hugely increase fines for spills. How do we create the right balance that will not stifle business while at the same time affording us a high standard of living?

Case: The Boeing 737 MAX

The Boeing 737 is a narrow-body, single-aisle medium range and medium capacity aircraft. It was conceived in the 1960s when many airports it served were rudimentary, and so it was designed to be low on the ground, making passenger and cargo loading easier. The engines were mounted under the wings to facilitate servicing. The plane entered commercial service and became a workhorse of short- and medium-haul routes, to the point today where there have been almost 10,000 delivered and Boeing claims that, around the world, one takes off or lands every two seconds. Over the last fifty years the basic shape has not changed, although successive variants have incorporated updated cockpit equipment and greater passenger capacity. The main differences have come about by including winglets to reduce drag and, importantly, ever more powerful and efficient engines.

The 737 turned out to be something of a cash cow for Boeing, and it enjoyed a duopoly with the European conglomerate and its comparable A320 aircraft. In 2010, however, American Airlines, one of Boeing's loyal customers, announced that it was considering buying the A320 NEO (new engine option) because of its superior performance. This prompted top management to consider whether to create a new design altogether, or further refine the established airframe. Largely because of the urgency involved, Boeing opted to stick with the 737, naming it the 737 MAX.

The most striking change was the bigger engine. The ground clearance for a 737 is about eighteen inches, and previous engine cowlings had a squashed appearance on the bottom to maintain as much clearance as possible. The MAX engine, called LEAP (Leading Edge Aviation Propulsion) is

energy efficient, cleaner, and has about twice the thrust of the earlier model 737. However, to fit it on the airframe it was necessary to move it forward on the wing. The result is a shift in the center of gravity, so that under thrust the nose pitches up more than previous versions did; an analogy might be the front wheel of a motorcycle lifting when it accelerates. The gradient of climb is measured by an Angle of Attack (AoA) indicator which remains level during flight. Lift in airplanes is achieved by the wing slicing through the air at speed so that the curve on the upper edge forces air to move more quickly creating a difference in air pressure. The dynamic fails if the plane is going too slowly or the angle of the wing is too steep, a condition known as a stall, and the basic correction is for the pilot to lower the nose and increase speed. Under certain conditions the 737 MAX would pitch nose up in flight, and to correct this tendency Boeing crafted a software fix known as MCAS (Maneuvering Characteristics Augmentation System) that sensed the problem and took over control from the pilot.

The first 737 MAX rolled out in November 2015. One of the attractions to buyers highlighted by Boeing was that pilots could easily transition to the new plane after a few hours instruction on an iPad, in contrast to the hours that would have to be spent in a simulator for a new model. In the words of one designer, “The company was trying to avoid costs and trying to contain the level of change. They wanted the minimize change to simplify the training differences ... to reduce costs, and get it done quickly.”³⁹ Orders flowed in, and it seemed that Boeing’s main problem would be keeping up with demand. By April 2019, Boeing was making fifty-two a month.

Things changed when a year-old MAX belonging to Lion Air, an Indonesian airline, crashed 13 minutes after takeoff, killing all 189 on board. Initial reports pointed to the airline’s poor maintenance record and questioned the qualifications and experience of the pilots. Seven weeks after the crash, Boeing reported to the Federal Aviation Authority (FAA) that there was “[n]o process violation or non-compliance” in the certification process. Five months later, Ethiopian Airlines flight 302 crashed 6 minutes after takeoff, killing all 157 on board. The aircraft was less than

³⁹ D. Gelles, N. Kitroeff, J. Nicas, and R. R. Ruiz (2019). “Boeing Was ‘Go, Go, Go’ to Beat the Airbus with the 737 Max.” *New York Times*, March 23, www.nytimes.com/2019/03/23/business/boeing-737-max-crash.html.

six months old at the time. One disaster could be thought of as an accident, but two involving almost new planes within a few months pointed to a critical flaw. China grounded its fleet immediately, followed by several other countries, and unusually the FAA did so only after a few days had elapsed.

There were some suspicions that the MCAS was implicated in the crash. In their response to the accident's final report, Boeing announced:

Over the past several months Boeing has been making changes to the 737 MAX. Most significantly, Boeing has redesigned the way Angle of Attack (AoA) sensors work with a feature of the flight control software known as Maneuvering Characteristics Augmentation System (MCAS). Going forward, MCAS will compare information from both AoA sensors before activating, adding a new layer of protection . . . These software changes will prevent the flight control conditions that occurred in this accident from ever happening again.⁴⁰

Many pilots were incensed to discover that there was a system on board which could take control out of their hands. The MCAS was not mentioned in any training material and only appeared in the operating manual as an entry in the list of abbreviations. Moreover, it turned out that prior to certification Boeing had made a representation to the FAA that MCAS was not a new technology. The company had also made rosy assumptions in risk assessments, believing that flight crew action would deal with any issues that arose. A Boeing executive justified not telling pilots "due to concerns about inundating average pilots with too much information . . . than they needed or could digest."⁴¹

As it happened, there was only one data input to the onboard computer from the AoA sensor. Normally engineers recommend at least two so that the information feeds can be contrasted. Once incorrect information was fed into the computer, the MCAS was triggered and the plane went into

⁴⁰ PR Newswire (2019). "Boeing Statement on Lion Air Flight 610 Investigation Final Report," October 25, <https://prn.to/3QbHy5s>.

⁴¹ A. Pasztor and A. Tangel (2018). "Boeing Withheld Information on 737 Model, According to Safety Experts and Others." *Wall Street Journal*, November 13, <https://on.wsj.com/3BMpsCK>.

a nose-down attitude. If the plane was already level, the effect would be a dive toward the ground. There was an easy fix by turning off various circuits in the cockpit. However, many pilots were unaware of the system, did not know that they would lose control once it was initiated, and that there would be multiple and confusing alarms going off. As pilots had no simulation training that dealt with the novel software, it is hardly surprising that in both crashes they fought to level the aircraft by pulling hard on the yolk, which unfortunately restimulated the MCAS.

Boeing's chief technical pilot, Mark Forkner, was described in company emails as employing "Jedi mind tricks" on foreign regulators to omit MCAS from pilot training, a decision he justified on the grounds that MCAS only functioned "way outside the normal operating envelope."⁴² CEO Dennis Muilenburg acknowledged in Congressional hearings that he had received a whistleblower complaint that read, in part: "Schedule pressure (combined with fatigue) is creating a culture where employees are either deliberately or unconsciously circumventing established processes . . . For the first time in my life, I'm sorry to say that I'm hesitant about putting my family on a Boeing airplane."⁴³ Other emails indicate a business where efficiency overrode other concerns. One employee wrote, "I don't know how to fix these things . . . it's systemic. It's culture. It's the fact that we have a senior leadership team that understand very little about the business and yet are driving us to certain objectives."⁴⁴

Muilenburg initially resisted demands to resign, saying, "I feel responsible to see this through . . . I grew up on a farm in Iowa. My dad taught me that you don't run away from challenges."⁴⁵ In response, families said they had heard about his humble beginnings "one too many times" and he should

⁴² D. Gates, L. Kamb, and S. Miletich (2019). "In Five-Hour Grilling over 737 MAX Crashes, House Panel Reveals Boeing Memos, Calls on CEO Muilenburg to Resign." *Seattle Times*, November 8, <https://bit.ly/3uQyD0z>.

⁴³ P. Defazio and R. Larsen (2020). *Final Committee Report: The Design, Development & Certification of the Boeing 737 MAX*. House Committee on Transportation and Infrastructure, Washington, DC, <https://bit.ly/3oAnf5A>.

⁴⁴ A. Pasztor and A. Sider (2020). "Boeing Workers Made Light of MAX Safety." *Wall Street Journal*, January 10.

⁴⁵ House Hearing, 116 Congress (2019), "The Boeing 737 MAX: Examining the Design, Development and Marketing of the Aircraft," October 30, prepared statement by

“go back to the farm.”⁴⁶ In December 2019, he resigned, the Boeing board saying that new leadership was needed to restore confidence in the company.

In November 2020, the FAA allowed the MAX to return to the skies after it was satisfied that suitable modifications had been enacted. In January 2021, it was announced that the company would pay \$2.5 billion to settle criminal charges by the US Justice Department over claims that regulators were misled by company employees. Most of the settlement will be used as compensation to the 346 killed in the crashes, as well as a \$244 million punitive fine. As a result, fraud charges would be dropped, which will allow Boeing to continue working on federal contracts. It is estimated that Boeing lost over \$20 billion in lost sales and production. Another clause of the settlement has Boeing admit that it delayed and refused to cooperate with initial investigations after the Lion Air incident. However, the government decided that future outside monitoring of company behavior would not be necessary as it was “neither pervasive across the organization, nor undertaken by a large number of employees, nor facilitated by senior management.”⁴⁷ Separately, Mark Forkner, Boeing’s chief MAX technical pilot, was charged with fraud due to deliberately minimizing the scope of MCAS in reports to the FAA and omitting it from manuals so that it did not trigger additional costly simulator training for pilots – as much as \$1 million per plane.

Questions from the Case

1. How would the terms “mirror,” “lamp,” and “stain” as used in the text apply to this case?
2. Is it fair to say that Boeing was responsible for the 737 MAX crashes?

Dennis Muilenburg. Congressional Committee Prints, Washington, DC, p. 17, <https://bit.ly/3voLW8I>.

⁴⁶ Gates, Kamb, and Miletich, “In Five-Hour Grilling over 737 MAX Crashes.”

⁴⁷ United States Department of Justice (2021). “Boeing Charged with 737 MAX Fraud Conspiracy and Agrees to Pay over \$2.5 Billion.” Press release, January 7, <https://bit.ly/3JcQp40>.

3. What is the role of government in regulating business? Would lax oversight imply that the government shares responsibility for the outcome when things go wrong?
4. What are the major characteristics of a responsible company?
5. For a business, does moral responsibility go beyond legal liability when unforeseen consequences occur? How far does the concept of fault apply in such cases?

5 **Autonomy**

Case: Herbal Weight Loss

The only reliable way to lose weight is through diet, exercise, or surgery. Some estimates have a quarter of the American population trying to lose weight at any one time, and the domestic industry is worth over \$7 billion. Many unproven or even dangerous products are on the market, and scams involving purported weight-loss products are the number one complaint to the Federal Trade Commission in America. As herbal supplements are not regulated by the government, they are not routinely monitored for quality or efficacy.¹

Marketers have adopted a wide range of approaches to selling their wares, including taking out advertisements in newspapers that look like legitimate articles and can only be distinguished by the word “sponsored” in small print at the top. As well as regular ads, they include apparent celebrity endorsements, false claims about government research, the promotion of “miracle” drugs, and news about rediscovered ancient secrets. Additionally, they use so-called “infomercials” that appear to be regular television programs where authoritative sounding actors promote a product. They have adapted to social media, using influencers and posting false stories, often targeted at a specific audience based on their previous web searches. Many offer money-back guarantees that are hard to claim or enroll people in long-term subscriptions that are difficult to cancel. Given the reach of telephones and the web, the supplier may well be based in a different country.

¹ “Weight-Loss Scams” (2021). AARP, June 21, www.aarp.org/money/scams-fraud/info-2019/weight-loss.html.

Some products are harmless, but others include drugs such as sibutramine and other stimulants that suppress appetite but raise blood pressure with the attendant risk of stroke or heart attack. They also may stress kidney function and lead to gastric distress. Typically, these kinds of drug should only be taken under medical supervision, and overdoses can be lethal. Cases in Canada, the UK, and America all found that products such as “Payouji tea” or “Fruta Planta” contained stimulants despite being labeled as herbal and natural.

Autonomous Agency

Are we wrong to restrict the sale of goods to people who are willing to pay? Is it wrong for us to tell others what is in their own best interest? Should we constrain businesses and managers from offensive or immoral actions? Would it be more appropriate to let individuals make their own decisions and live with the consequences? The philosophical concept that deals with the ability to make your own choices is known as *autonomy*, and intervention that blocks autonomous action is called *paternalism*. The free market gets its name from the ability of consumers and producers to make autonomous choices. Consequently, we should take self-governance very seriously and be clear about the times when the principle may justifiably be violated, perhaps for a person’s own good or the good of society as a whole.

Autonomy literally means self-government, and when we use it in reference to people it typically refers to independence or absence of external constraints. It is an important concept in business ethics because capitalism asserts liberty, choice, and personal responsibility as paramount virtues; hence, a number of topics arise from failure to grant or recognize the autonomy of businesses and individuals, whether as employees, consumers, owners, or community members. In this chapter, we will first look at the basic concept of autonomy and then see how valuable it can be by highlighting three different cases where it applies. The first involves purchasing decisions, where we hold autonomy to be dominant, and the morality of advertising, where the craft of the marketers is to get us to choose the product they have to sell. The second case illustrates the tension between the private life of the employee and the interests of the business through the issue of drug testing. Finally, the third case highlights the

constraints on employer autonomy by their being forced to follow appropriate nondiscrimination guidelines. These cases do not exhaust the concept, of course, but do demonstrate how a philosophical framework can be applied to a range of topics.

One of the axioms of the capitalist system is freedom: Ideally, individuals are free to allocate their resources as they see fit, and producers are free to enter or exit markets based on the rewards they anticipate. Similarly, prospective employees may bargain for the best terms and conditions, while employers will negotiate for the most efficient and profitable deal they can get. If consumers want to buy a do-it-yourself tattoo kit, purchase scalding hot coffee to drink while driving, or constantly eat diet high in saturated fats, then they should not be constrained in their choices. If one person wants to spend money on poetry or philosophy books while another buys tickets to mud wrestling competitions, that would be perfectly acceptable. The consumer is held to be sovereign since the system is ultimately driven by aggregated individual purchasing decisions. In the words of the nineteenth-century philosopher John Stuart Mill

But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it. He is the person most interested in his own well-being: the interest which any other person, except in cases of strong personal attachment, can have in it, is trifling, compared with that which he himself has . . . with respect to his own feelings and circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by anyone else.²

Autonomy Defined

We describe a decision as autonomous as long as it fulfills a number of conditions. They include: (a) *intentionality*, (b) *understanding*; and (c) *voluntariness*.³ Let us examine these individually.

² J. S. Mill (2015 [1859]). *On Liberty, Utilitarianism and Other Essays*, ed. F. Rosen. Oxford: Oxford University Press, p. 74.

³ Drawn from R. Faden, T. Beauchamp, and N. King (1986). *A History and Theory of Informed Consent*. New York: Oxford University Press.

To act *intentionally* means that we frame a plan and purposefully put it into action. We can see a difference between putting goods in a shopping cart at a grocery store and having a can fall into it after we have knocked it while reaching for something else. The first was a planned act, and we willed movements to bring it about. The second was a mere accident. Typically, we place more moral responsibility on the results of intentional acts – for instance, bumping into someone in a crowded shop is considered unfortunate but normal, whereas deliberately jostling someone would be thought inappropriate and, conversely, we are much more likely to excuse someone who did not mean to intend harm.

Intentions are not always easy to frame ahead of time and, in fact, most often we reconstruct them when looking back through the process of rationalization. However, we often have a bias that attributes the most favorable intentions to what we have done and so first-hand reports of intentions may be unreliable. Moreover, we usually have mixed motives for doing things, so there may be more than one spur to any given act. Sometimes philosophers have used the notion of *authenticity* to examine whether an act was truly intentional. Authenticity in this sense examines whether any given decision is consistent with the general life plans of an individual. Hence, if someone with no other bodily decoration enters a tattoo parlor, appears to be intoxicated, and demands to have the name of a new female acquaintance emblazoned across their chest, we might question whether the act is consistent with the general drift of their other life choices. Similarly, a construction worker who voluntarily disdains wearing a safety harness and hard hat may be refusing them impulsively on a dare thinking it may impress their fellow workers, but alternatively it might be consistent with their other daredevil habits. Generally, the closer actions are to a lifelong pattern, the more authentic they are and, correspondingly, the more autonomous.

Understanding requires full information and informed consent. Sometimes consumers can find data overwhelming, and therefore we employ agents or sales representatives who may not always have our best interests in mind. On the other hand, producers may withhold pertinent information that might deter sales: For instance, some portable music players have a limit to the number of times their batteries can be recharged,

thus shortening their life, or the design of some sports utility vehicles (SUVs) means they are more likely to tip over when doing sharp turns. Furthermore, people may fail to grasp information for several reasons – for instance, the information may not be available, may not be pertinent, or it may be inaccurate or unfathomable to a nonexpert. Consider cell phone service where one provider promotes less latency time: The typical buyer will have to do some research to find out if this feature makes any practical difference and what the terms indicate.⁴

We might think of understanding as having two components, one where we are able to describe the nature of an act or decision and the other where we are able to predict the likely consequences of the decision. This is not to say that an individual has to be omniscient or always make correct predictions, but rather the standard speaks to what a reasonable person might expect when presented with the relevant information. Hence, someone who chooses to smoke tobacco products is alerted by prominent warning labels about the dangers involved, whereas many household products such as cleaners or paints contain dangerous chemicals that most of us would be oblivious to unless the information were highlighted in some way. Thus, while a smoker has made a choice despite the clear dangers, the person using cleaners is often exposed unknowingly.

Being presented with information is not necessarily the same thing as understanding it, however. For example, to many smokers the risks are distant and abstract, and it is easy for them to discount the warning labels.⁵ Educational research suggests that an interactive test would be more effective in getting the message across. If we really wanted to inform potential tobacco consumers about the dangers, it might be appropriate to have them tour a cancer ward where the potential consequences are more visceral before being allowed a license to smoke. This leads to the questions of how much information is sufficient and what feedback mechanisms might be appropriate. For instance, if a consumer buys a powered chain

⁴ “Speed Is a Feature,” High Performance Browser Networking, <https://hpbn.co/primer-on-latency-and-bandwidth/>.

⁵ D. Hammond, G. T. Fong, A. McNeill, R. Borland, and K. M. Cummings (2006). “Effectiveness of Cigarette Warning Labels in Informing Smokers about the Risks of Smoking.” *Tobacco Control*, 3(Suppl 3), pp. 19–25.

saw, we might imagine that it would come with a code that unlocks the engine only after the purchaser has answered a short true/false quiz and signed an affidavit in which they accept the named risks, similar to many current software agreements.

Many people think that the autonomous individual ought to be able to accept risks by being willingly ignorant. This is perhaps more common than we realize – very often we are faced with contracts such as those computer software licenses, which have a great deal of small print, and we are asked to sign to indicate that we are aware of the conditions and agree to them. Demanding full disclosure may also have a chilling effect on commerce, and so there is a fine line between requiring consumers to be aware of the material risks and dissuading them from something they want to do. For instance, eating red meat and drinking alcohol are both potentially harmful, and yet we as a society put few restrictions on them. Constraining behavior may also run afoul of discrimination laws. In the United States, Canada, Australia, and New Zealand, if an apparently pregnant woman asks for alcohol in a bar, the bartender would be unlikely to ask if she is aware of the dangers of alcohol for the fetus – even though such warnings are routinely posted on the labels of alcoholic beverages – and would probably not refuse her order.

Information is not necessarily unbiased or readily available. The Internet has certainly increased the amount of information accessible to individuals, but its information is unfiltered and largely unchecked. The stimulant ephedra, for example, is promoted as safe and reliable, but it may be deadly to people with heart problems. At the time of writing, the search engine Google lists multiple articles under “ephedra” warning about the dangers on one side of the screen and sponsored links to easy access on the other.

The greater anonymity and impersonal nature of communication made possible by web-based technology also means that it can be more easily abused. Typically, only national websites can be regulated by their own government, and it is difficult for users to tell how genuine or trustworthy any given site may be. Some vendors such as eBay or Amazon have feedback mechanisms to reflect user satisfaction, although these are subject to manipulation (sellers may post false positive feedback, for example) and most sites do not rate particular vendors. The rise of telemedicine means

that prescriptions are more regularly dispensed without a personal visit to a healthcare professional, and an unscrupulous vendor of products for concerns such as weight loss actively promote remote consultations.

Often we believe that minors are not capable of informed consent. However, age is a very rough measure – years of education or psychological profiles would probably be more accurate. If we take the notion of full understanding seriously, then we have to address questions about the reasoning capacity and maturity of the population involved. The rise of web access also means that restrictions are harder to enforce; for example, in New Zealand, while the authorities could restrict sales of physical DVDs containing violence or pornography, they have moved to advisory classifications as most content is streamed or downloaded.⁶

The *voluntariness* condition asks whether someone is working from their own free will rather than under some kind of duress, which may include highly charged emotions. A bank teller who hands over money during a robbery at gunpoint may be in control of their physical actions, but is not self-directed, and we would not think of them as complicit in the crime. However, there are more subtle ways in which our behavior is not completely voluntary, such as peer pressure to conform with a group or being forced to make a decision very urgently, situations where we may have made other choices in a calmer and more reflective environment.

We might feel we have the freedom to do as we choose, whereas we face both external and internal constraints. Externally, there are physical limitations to what we can do, and there may be political barriers that control free movement and employment. Realistically, we cannot talk about the notion of voluntary choice without acknowledging its intimate links with issues of *power* and *liberty*. For example, saying that a worker can take or leave a job may be true, but if there are more people than jobs, and people cannot live off the land, then the power will favor the employer. After all, without the liberty to migrate to a better job market, the freedom to leave a job may translate to the freedom to become destitute. Therefore, in discussions about workers at shipbreaking yards or apparel sweatshops, it is vital to

⁶ New Zealand Government, Department of Internal Affairs (2022), “Online Safety Policy,” <https://bit.ly/3BW3YDp>.

investigate whether the employees made autonomous choices in the sense of fully understanding what they were letting themselves in for and whether they had any meaningful alternatives.

We are also subject to perceptions about our own environment. Famously, in his “I have a dream” speech, Martin Luther King talked about those denied the vote and those who felt their vote would not count toward anything. If we are constantly told we are poor performers or are not worthy in some way, then we are likely to lower our ambitions and expectations. In short, it is necessary for someone to initially realize that there are pathways available in order to set appropriate goals. In that sense, the individual nominally has freedom and the ability to craft their own fate but may be hampered by their perception of the situation, and hence not really free in the full sense of the word. Additionally, we are subject to a variety of powerful psychological influences that may encourage us to act against what we would, in a reflective moment, consider to be our best interests: For example, one of the reasons why auctions are successful is that bidders become more focused on winning by outbidding each other than on the objective value of the goods.⁷

Some kinds of influence are more direct than others, and we can list them under three broad headings: (a) *coercion*, (b) *manipulation*, and (c) *persuasion*. Coercion occurs when someone is threatened with consequences so severe that they preclude other choices. A worker whose job is threatened if they fail to wear protective garments when handling food is not literally forced to do so, but the possibility of being fired will outweigh any desire not to comply. Manipulation is more difficult to describe but usually involves alteration of someone’s perceived choices so that the person is strongly encouraged to act in a desired fashion. In some firms, managers are urged in clear terms to contribute to favored charities through payroll deductions, and the fact that senior executives have access to lists of donations effectively makes giving a necessary element for anyone aspiring for promotion.

Persuasion may not strictly offset autonomy, in that it functions by promoting a set of reasons that an individual may then adopt. A manager

⁷ T. Stafford (2012). “Why Do We Pay More Than We Should at auctions?” BBC, September 10, www.bbc.com/future/article/20120907-why-we-overpay-at-auctions.

may change an employee's mind by presenting a case for adopting a certain view. For instance, in the case of the space shuttle *Columbia* disaster in 2003, insulation chunks had broken off during launch and damaged the wings. Managers considered the available data and successfully persuaded their colleagues that there was no significant risk to the mission, a conclusion that was well reasoned but unfortunately deeply flawed.⁸ Still, if those who were undecided chose to adopt one set of arguments as more reasonable than another, autonomy was not compromised since they voluntarily accepted the case that was made.

Decisions take place within particular circumstances, and when we talk about persuasion we also recognize that there are often elements of coercion and manipulation mixed in. Think of meetings: An advocate typically tries to convert listeners to a different position and basic facts are rarely presented in an entirely neutral manner. Some facts will be emphasized, while others will be downplayed. The audience also has explicit biases and more subtle so-called implicit biases, where their entrenched beliefs serve to filter and discriminate the messages being heard. We find people with varying degrees of power promoting and defending positions, and the listener will be affected by the perceptions of validation and conformity within the group. Elements such as the prospect of future contracts, personal advancement, being perceived as a team player, and many others inevitably come into play and affect individual autonomy.

There may be times when we think we are in control of our actions, but like the subject in Milgram's obedience to authority experiment (Chapter 4, "Inalienable Responsibility") we find ourselves complying with others despite our initial convictions not to do so. These influences are significant in philosophical terms because they serve to compromise our autonomy, and sometimes they encourage us to act contrary to our espoused values. Among the dynamics involved is reciprocation, where we are given something and then feel obliged to the donor. This accounts for the success of solicitors who send uninvited gifts such as address labels to potential donors because the recipient then unconsciously feels that any gift needs

⁸ Center for Chemical Process Safety (2020). "Self Evaluation Tool: Key Lessons from the Columbia Shuttle disaster (Adapted to the Process Industries)," <https://bit.ly/3zAAati>.

to be repaid. Another is the power of consistency: Solicitors will often ask potential donors to sign petitions and only after doing so do they ask for money, since people feel a natural obligation to demonstrate that their values are consistent.⁹

The upshot of these findings is that we may fall short of our own moral aspirations. The failure may not be due to weakness of the will but to the systematic way that we lapse into ways of thinking that can interfere with our best judgment, and, in effect, take away from our personal autonomy. For instance, many of us do not make the best decisions under time pressure or in an atmosphere of charged emotions, conditions that take away from the voluntariness condition. Think of advertisements that claim an offer is for a limited time, involves the last available item, or a proposition that declares “take it or leave it.” All rely on barely conscious psychological triggers that impel us to agree in the heat of the moment. The general lesson is that it is useful to be aware that we may be subject to unconscious forces and to make sure that we arrive at decisions that are truly our own.

Limits on Autonomy

There are several morally justifiable reasons to limit autonomy. These include benign paternalism, prevention of harm or offense, and upholding moral standards.¹⁰ *Paternalism*, literally acting like a father, involves interference with an individual’s autonomy by a person or institution that has the ability to do so. Paternalism has two aspects: first, it interferes with the liberty of another; and second, the interference usually has a benign intent.

In business terms, a firm may believe that it knows what is best for others and act accordingly. It may require workers to not smoke or engage in hazardous hobbies such as parachuting. It could demand that they keep up a certain level of professional training or keep to a dress code. None of these may have bad effects and may actually serve to improve the lives of employees. Businesses may also act to restrain the free choice of consumers by putting conditions on purchase – say, automatically equipping a vehicle

⁹ R. Cialdini (2006). *Influence: The Psychology of Persuasion*. New York: Collins.

¹⁰ J. Feinberg (2006). *Harmless Wrongdoing*. New York: Oxford University Press.

with side air bags or choosing not to exploit a potentially lucrative market such as cheap malt liquor. The moral issue, however, is not whether the outcomes are of some benefit, but whether the kind of interference that overrides personal decisions is ever acceptable.

Here again, it is worthwhile to turn to John Stuart Mill. He suggested that the only justifiable reason to interfere with another's liberty is for our own self-protection. Consequently, it would be morally acceptable for someone to engage in risky and dangerous activities as long as those actions posed no hazard to others. He asserts:

His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with evil in case he do otherwise. . . . The strongest of all the arguments against the interference of the public with purely personal conduct, is that when it does interfere, the odds are that it interferes wrongly, and in the wrong place.¹¹

Mill allows restraint, though, where he thinks the person is unaware of the consequences of an act and would want to know that information before proceeding:

It is a proper office of public authority to guard against accidents. If either a public officer or anyone else saw a person attempting to cross a bridge which had been ascertained to be unsafe, and there was no time to warn him of his danger, they might seize him and turn him back without any real infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river. Nevertheless, when there is not a certainty, but only a danger of mischief, no one but the person himself can judge of the sufficiency of the motive which may prompt him to incur the risk: in this case, therefore, (unless he is a child, or delirious, or in some state of excitement or absorption incompatible with the full use of the reflecting faculty) he ought, I conceive, to be only warned of the danger; not forcibly prevented from exposing himself to it.¹²

¹¹ Mill, *On Liberty*, p. 13. ¹² Mill, *On Liberty*, p. 93.

Mill was a liberal in the classic sense of believing that the individual ought to be self-governing unless it interferes with the liberty of others. As he later notes, warning labels for poison would be appropriate, but he is against undue restriction. He realizes that someone might use it maliciously, and in that sort of case he would allow items to be traceable – for example, the purchaser of a potential poison might have to sign a register so that there is a disincentive to commit a crime, but he would not go as far as a ban on selling the product.

Consider the case of Sildenafil, a prescription drug that may increase male sexual potency, but with sometimes dangerous cardiovascular side effects. Because the risk is to the person alone, Mill would probably allow sales on the open market, perhaps with an indemnity clause for the producer. On the other hand, Mill would consider it appropriate to restrict the sale of alcohol to drivers because of the attendant risks to other people.

Most products carry some risks: The widely available nonprescription drug aspirin may cause a reaction in some people and is not recommended for young children. Similarly, there are significant dangers associated with mothballs, household cleaners, and even eating hot dogs. The questions that we must confront are whether a product should carry information about its risks, whether it should come with an explicit warning, and whether its sale and use should be monitored or regulated.

There are also issues about the competence of consumers – should we protect people from themselves? What if a person is quite willing to eat nothing but high fat and high sugar fast food, and realizes, at least dimly, that doing so could lead to an untimely death? And what should we do about people subjected to high-pressure sales tactics when they may not have the ability or competence to resist – for instance, a funeral home selling expensive caskets or elderly people being solicited for inappropriate life insurance? Mill would likely say interference is unwarranted if the harm is confined to the individual alone. Practically speaking, though, there are few cases where it is just one individual that is hurt. Someone who dies prematurely because of arteries clogged by a fast-food diet may have dependents, may be depriving the workforce of a valuable worker, or may cause health and life insurance rates to rise for the population at large. Similarly, some commentators have suggested that there is a link between private use

of pornography and the individual's objectification of women in general.¹³ Both cases serve to illustrate that the line between harming self and harming others is far from distinct and that arguing for completely free markets is less straightforward than it initially appears.

Society may want to restrict some behavior on the grounds that it goes against morally accepted standards. Pornography or prostitution may be highly lucrative, but society may not want to let the market be the sole arbiter of standards and it is appropriate to restrict individual choices. Likewise, patients may have a preference for the gender of their doctor, a taste for torture game movies, or a restaurant chain could cater to clients who prefer sexually provocative female waitstaff and the question remains as to how we as a society determine whether regulation should override individual preferences.

The counter argument derives from *market morality*. That is, despite what we may espouse or aspire to, the market shows us what people really value by their purchasing decisions, and it is no one's business but their own how they spend their money. For example, although many people might think baiting and killing animals for sport is cruel and inhumane, it may not harm the spectators and should be allowed as long as there is a market. If societal values change, then the market will dry up, and, for example, bull fighting would no longer be a national sporting event. Given the risks of interfering in the wrong way even with the best of intentions, libertarians, following Mill, argue that other than the market there is no warrant for outside regulation of personal liberty.

Let the Buyer Beware

One standard of personal liberty that people in business often appeal to is summed up by the Latin phrase *caveat emptor* or *Let the buyer beware*. Whereas in strict liability a manufacturer or provider is responsible for all the consequences arising from a product or service, here the consumer

¹³ See, for example, R. Langton (2009). *Sexual Solipsism: Philosophical Essays on Pornography and Objectification*. Oxford: Oxford University Press; H. E. Longino (1980). "Pornography, Oppression and Freedom: A Closer Look, in L. Lederer, ed., *Take Back the Night: Women on Pornography*. New York: William Morrow, p. 278.

appropriates all liability at the time of purchase. Thus, someone buying a car may choose to have it inspected or may just kick the tires and is free to make any offer based on their assessment of its value. However, once the deal has been completed, they cannot complain that they have got a bad deal. The same would hold if someone buys a smart phone on the Internet or an apparent antique at a garage sale.¹⁴

However, *caveat emptor* is not unconditional since some actions breach autonomy. If the seller uses deceit to promote the virtues of the item, or if it turns out to be faulty, then there are grounds for redress. Moreover, the buyer has to be in their right mind and aware of the consequences of the transaction. Barring these concerns, individuals are generally thought to be capable of making rational decisions, and so if the deal ends up disadvantaging one side there are few moral ramifications. If it turns out the garage sale purchase was a worthless fake, the buyer nevertheless made a free choice and struck the best bargain they could. In essence, they were gambling and lost.

As we have seen, an aspect of consumer autonomy is that choices are voluntary. Producers spend vast amounts of money on persuasive and pervasive advertising that successfully influences individual preferences or can manipulate our “free” choices. Advertisers and vendors sometimes capitalize on our tendency to not look too closely at items. For instance, spray-on cooking fat is labeled “fat-free” because the serving size (one-third of a second) falls below the mandated reporting level. As one reporter was told, coffee packages were reduced by 20 percent as “we fluffed up the beans to expose each little granule. And it just doesn’t fit in the can anymore! We had to put less in”; and toilet paper was now more luxuriant with the result that the roll had to be shortened.¹⁵

The logic of *caveat emptor* is that the vendor will try to maximize returns and will prey on the gullible. If there is sufficient negative feedback in terms

¹⁴ C. Wong (2021). “A Bronze Vessel Sold for US\$8.6m at Christie’s New York, Gunning for the Top Lot Position of Spring Asia Week 2021.” *The Value*, March 18, <https://bit.ly/3zXafxg>. In this case, an ancient Chinese bowl bought for \$35 at a yard sale sold for over \$700,000. No mention is made in the article of additional reimbursement to the original vendor.

¹⁵ V. Greenwold (2018). “The Food You Buy Is Really Shrinking.” *BBC*, May 13, <https://bbc.in/3dhKxuC>.

of lowered sales because of a reputation for sharp dealing, then the vendor will change its behavior. We can see this dynamic operating with a number of “no-haggle” car dealers, where customers are willing to pay a premium to avoid some of the traditional gamesmanship when purchasing a vehicle.

Although *caveat emptor* seems to cleanly remove the seller from responsibility, the reality is more complicated. As we have seen, many deals are not a one-time affair: Vendors want their customers to return repeatedly, and so the real cost of avoiding any and all responsibility for sold goods may become significant when it translates into lost potential sales in the future. For instance, in iterated encounters, there is little value for a vendor to do sharp deals as building a relationship and reputation matter more than an individual contract.¹⁶ Furthermore, given the ubiquity and speed of social media, reputational effects are more magnified than they were even a decade ago.

Advertising and Autonomy

The language of autonomy gives us a way to assess the morality of advertising. For better or worse, advertising is part of our environment and represents a significant proportion of the stimuli to which we are exposed – think about walking down a street and the number of posters and signs that encourage us to buy products and services, or the bombardment of ads on social media. We should be clear that the reason we have so much advertising is that companies believe that it works despite the fact that there are huge problems in scientifically assessing its effectiveness. Nevertheless, US companies alone spent over \$641 billion to promote their products in 2021.¹⁷ Apparently, GenZs, those born between 1997 and 2012 who grew up with the Internet available, generally find ads annoying on music and gaming platforms but are more sympathetic to personalized advertising messages from influencers that are seamlessly integrated into their social

¹⁶ A. N. M. Waheeduzzaman and E. Myers (2010). “Influence of Economic Reward and Punishment on Unethical Behavior: An Empirical Study.” *Business and Professional Ethics Journal*, 29 (1–4), pp. 155–174.

¹⁷ J. Berr (2021). “Advertising Spending Roars Back After Pandemic Pause.” *Forbes Magazine*, September 30, <https://bit.ly/3BStadX>.

media.¹⁸ Proponents suggest that the practice serves to help people make decisions and stimulates competition, leading to a maximally efficient marketplace. Critics of advertising in general claim that it creates unnecessary demand, manipulates and confuses the market, and creates illusions of the good life for people who will be subsequently disappointed when their consumption choice fails to make them happy.

It will be useful to make a couple of distinctions. First, advertising is often described as either informative or persuasive. Informative advertising merely announces, say, that a good or service is available but makes no other claims, and we can consider it morally neutral. In contrast, persuasive advertising attempts to influence the audience.

The second distinction is between first and second-order desires. As humans we have both needs and wants. Needs are those things necessary for us to survive – food, shelter, clothing, and so forth. Wants are things we would like but are not vital. It may be important that we have clothing, but not that we should own designer label jeans. Within the scope of wants are a general level of goods and services we hope to have – children want toys, people want to be fit and healthy, and we want to have safe, reliable transportation. These are first order desires. What many advertisers do is to try to get us to fulfill those desires with particular commodities – a Ponytail Barbie doll, a membership to a certain gym, or a given make/model car. In this sense, marketers have a double job. The first is to promote the general want and then to persuade us that their product is the ideal way to realize it. Sometimes advertisers work from the second order to the first: Often we have first order desires to see ourselves in a certain way, perhaps as a handyman or a sportswoman, and advertisers tell us that if we buy a certain product, such as a particular drill or treadmill, then it will transform us into the person we want to be.

The morally questionable aspects of advertising come when it confronts personal autonomy – for example, when it is deceptive, affects vulnerable populations such as children, or appeals to inauthentic desires. People have a natural first order desire to be healthy, but there are a number of routes to

¹⁸ S. Mazumder, H. Patel, and B. Auxier (2021). “Memorable vs. Annoying: How Consumers Experience Ads on Digital Platforms.” *Deloitte Insights*, November 4.

that end: more exercise, better nutrition, less stress, and so forth. In many ads, the job of the marketer is to persuade us that we could achieve our legitimate goal without making any significant changes to our lifestyle, and they sometimes convey that message through morally problematic means that affront autonomy – for example, by going as far as to pose as legitimate news broadcasts with actors pretending to be scientists.

Puffery is a form of advertising that uses subjective, exaggerated, or humorous claims to promote a product.¹⁹ Thus the soft drink Snapple uses the slogan, “Made from the best stuff on earth,” and Burger King boosts its food with the claim, “It just tastes better.” Often these ads are in the form of a comparative – “faster and more effective” – without presenting a contrasting product, and sometimes they use strained analogies – “solid as a rock.”²⁰ But as long as the advertisement is transparent enough that a reasonable person can see that it is not making a factual claim, it does not offend autonomy.

As we have seen, persuasion has the effect of giving someone sufficiently good reasons so that the person adopts them as their own, whereas deception, manipulation, and coercion all give bad reasons or force a decision in such a way that it is not really a choice. Thus, if a commercial claims that “the most beautiful women on earth” use a cosmetic, we might regard it as subjective puffery, whereas if it claims to be effective in reducing cholesterol and invites the audience to research the claims in scientific journals, that would be persuasion. On the other hand, if it seeks to promote the product by suggesting that it is endorsed by the government when in fact it is not, or that failure to respond to a mailing will trigger a tax audit, then it becomes morally questionable.

Many people who have grown up surrounded by commercials approach them with a degree of skepticism and a reasonable consumer may not take all claims at face value without confirming their veracity. Still, there are some populations that are more easily exploited than others. For example, some financial institutions that cater to low-income groups that have a poor credit rating by offering ready cash actively promote their services but are

¹⁹ The term “puffery” arises from a rigged auction where a confederate of the seller would make sham bids in order to inflate or “puff up” the price.

²⁰ N. Amini (2020). “The Best Article about Puffery Ever.” *Amini and Conant*, November 28, <https://aminiconant.com/the-best-article-about-puffery-ever/>.

not always forthright in explaining the details of their short-term loans; or some overweight people may repeatedly purchase diet pills despite evidence that the only effective weight-loss programs involve regular exercise and restricting calorie intake. Additionally, there may be cases where, like nicotine, a product is addictive. The argument would be that only the first few cigarettes or puffs are a matter of personal choice, and after that the nature of the addiction precludes autonomy. The moral issue frequently returns to whether the individual has the wherewithal to make a truly autonomous decision.

Advertisers target children: Between the age of 2 and 11 the average child in the United States watches an average of 3 hours of television a day and has up to 7 hours a day of total screen time.²¹ Children are typically incapable of the kinds of discernment necessary for autonomy. Thus, many children cannot tell the difference between cartoon characters in shows and those used to promote goods during commercial breaks, and many associate sugary cereals with the cartoon characters on the boxes.²² While it is true that most spending is by adults rather than children themselves, studies suggest that “pester power” is highly effective, and parents often buy children specific products to lessen domestic tension.²³ One answer might be to make parents more aware of the effects of advertising on their children. Another is to use the power of government to ban certain types of pernicious advertising, such as tobacco campaigns with cartoon characters that children find attractive. The advertising industry has moved ahead of government in this area and has drawn up codes that discourage certain types of advertising, including those that exhort children to make demands on their parents or take advantage of their credulity.²⁴

²¹ W. Chen and J. Adler (2019). “Assessment of Screen Exposure in Young Children 1997–2014.” *JAMA Pediatrics*, 173 (4), pp. 391–393.

²² D. Schumann and S. Neeley (2004). “Using Animated Spokes-Characters in Advertising to Young Children: Does Increasing Attention to Advertising Necessarily Lead to Product Preference?” *Journal of Advertising*, 33 (3), pp. 7–23.

²³ R. Lavuri and V. Aileni (2021). “TV Advertisements: Assessing the Moderating Effect of Children’s Pester Power on Parents Purchase Decision.” *Journal of Promotion Management*, 28 (5), pp. 625–649.

²⁴ Advertising Standards Authority (2022). “10 Prohibited Categories,” www.asa.org.uk/type/broadcast/code_section/10.html.

We should also recognize that there might be times when commercials produce a societal good through a breach of autonomy. For example, we could imagine an anti-smoking commercial that is deliberately shocking and manipulative yet successful. These ads raise questions about advertising in general, as it would be inconsistent to claim these techniques are only morally suspect when they encourage ends we disapprove of.

Workplace Restrictions on Autonomy

The very nature of contractual employment restricts personal autonomy. The employer demands a level of productivity, has certain attendance requirements, and may have further restrictions such as the wearing of clothing or logos promoting political candidates or with respect to taking breaks. These restrictions are typically accepted as part of the nature of work. The challenge to autonomy comes when the values of the individual employee clash with those of the company to the point where the company intrudes on one or more of the conditions for autonomous action: The individual employee's liberty may be restricted, the employee may not be given appropriate information, or the employee may be coerced in various ways. Moral issues may arise if, for instance, an employee is forced to give up legal activities that have no bearing on workplace performance, is not warned of potential dangers, or is trapped by practices such as debt bondage whereby the person cannot leave the job until the employer is paid off.

The traditional understanding has been "a fair day's work for a fair day's pay" and that what happens "off the clock" is not the employer's business. However, developing technology has altered the nature of the relationship, as measures of success including ability, motivation, and personality can be tested with increasing accuracy prior to employment. Moreover, whether working in a traditional office or remotely, employees may now be monitored for a variety of reasons, chiefly to measure productivity, but also to discourage internal theft and fraudulent compensation claims, to identify troublemakers, and to maintain workplace health and safety. Employers can eavesdrop on telephone calls, often with the disclaimer that they are doing so for training purposes. Software also enables employers to surveil employees by monitoring their location, recording their keystrokes,

capturing screenshots, and through the use of optical character recognition.²⁵ Employer concerns are not unfounded and a term has emerged for surfing the Internet at work: cyberslacking. In one survey, 60 percent of employees admitted routinely spending up to an hour during every workday on the Internet, mostly shopping, blogging, gaming, messaging, personal investing, and visiting auction sites.²⁶ Companies also feel there are moral and legal ramifications if firm equipment is used improperly or workers visit inappropriate websites.

Employers can legally intrude on worker's private lives on several grounds and the question remains whether there are correlative moral justifications. The framework of autonomy will help us make some useful distinctions and analyze the ethical issues involved.

In the case of *substance abuse*, potentially catastrophic consequences may justify mandatory testing, when, for example, bus drivers or crane operators may subsequently be affected. Pilots are not allowed to consume alcohol for eight hours before a flight and are restricted from using some over-the-counter medicines. These seem morally uncontroversial as the potential harms would affect more than the individual. However, in other cases, there are three types of justification that are usually invoked.

The first is a productivity claim. Here, the contention is that a worker will be less efficient and therefore deprive the employer of their due. It has been estimated that drug abuse drains more than \$400 billion from American businesses every year and that substance abusers are one-third less productive.²⁷ Appropriate testing can discover abusers and make the workplace safer and more productive. Undoubtedly, there is some truth to the claim. Still, the argument boils down to an empirical one of whether the testing provides the benefits that it purports to. That is, if the test is accurate

²⁵ R. Blackman (2020). "How to Monitor Your Employees - While Respecting Their Privacy." *Harvard Business Review*, May 28, <https://bit.ly/3vLOyOj>.

²⁶ C. Stokel-Walker (2020) "Cyberloafing: The Line between Rejuvenating and Wasting Time." *BBC*, February 7, <https://bbc.in/3BJEfOC>; J. Vitak, J. Crouse, and R. LaRose (2011). "Personal Internet Use at Work: Understanding Cyberslacking." *Computers in Human Behavior*, 27 (5), pp. 1751-1759.

²⁷ E. Goplerud, S. Hodge, and T. Benham (2017). "A Substance Use Cost Calculator for US Employers with an Emphasis on Prescription Pain Medication Misuse." *Journal of Occupational and Environmental medicine*, 59 (11), pp. 1063-1071.

and reveals 1 employee out of 200 will test positive, the question becomes whether the deterrent effect and the removal of the worker justify the costs involved. This could be a business decision and from a managerial perspective there need not be a moral component at all.

Some critics have suggested that it would be more effective to test workers for their abilities such as hand/eye coordination rather than their drug use on the grounds that if performance matters most, this is what we should test for, given that more workplace accidents are due to fatigue and illness than to substance abuse.²⁸ Furthermore, many over-the-counter products may have significant side effects – for instance, a worker could have taken a common antihistamine and be drowsy; or they could be suffering from a bad hangover. Both could cause poor judgment and lowered productivity even though they would not be detected by a routine drug test. The claim becomes muddier when we consider that an employer may use legal means to enhance productivity, such as providing unlimited free caffeine and sugary snacks to promote efficiency, even though they are potentially harmful. Similarly, a firm might play unavoidable background music on the grounds that it enhances productivity for workers engaged in repetitive tasks, even if it competes with machine noise.²⁹

Another line of argument in defense of drug testing is based on legality. Some drugs are illegal, and an employer has the right to fire a worker for breaking the law or lying on an application. While this is straightforward, the locus of concern is legality, and therefore it would not, by itself, address issues of abuse of alcohol or other substances. However, it is not unusual for laws to be variously interpreted, especially if the worker moves from one community to another. For example, marijuana use may be allowed in one state or province but illegal in another and being asked a question about it puts the candidate in a bind. If they had vaped legally in one place they may admit to what is locally forbidden, but at the same time lying at an interview would never be acceptable. The same might be true of other apparently

²⁸ T. Chamorrow-Premuzic (2020). “How Much Is Bad Sleep Hurting Your Career?” *Harvard Business Review*, July 27; National Safety Council (2021). “Top Work-Related Injury Causes – Injury Facts,” <https://injuryfacts.nsc.org/>.

²⁹ T. Lesiuk (2005). “The Effect of Music Listening on Work Performance.” *Psychology of Music*, 33 (2), pp. 173–191.

nonmaterial aspects of one's life; for example, in some places discriminating on sexual preference or medical grounds is not legally prohibited even though they do not seem to pertain to the job.

The third position that defends testing for drugs and other activities is based on the attitudes of the employer. If they disapprove of certain actions – use of soft drugs, smoking cigarettes, body piercing – they may discriminate on that basis. Here, the issue is not the legality of an individual's history or current activities, but whether their autonomy is infringed by the moral judgments of the employer. In the absence of due process, that is, some form of appeal and redress, an otherwise valuable candidate could be rejected.

Another potential problem with testing is that we have the technology to find out more than an employer needs to know. A simple internet search may reveal factors that might influence hiring and promotion decisions. Take a case where someone is arrested but subsequently released without charge, perhaps as a result of mistaken identity. That information can then become public and the person has little control over what is posted. Similarly, social media posts may be perpetual, so that a comment posted in a bad mood as a teenager could taint someone forever.

In many cases employers or insurers can demand drug testing. While bodily fluids or hair can be tested for the presence of drugs, they also yield information at the genetic level. Most firms confine their tests to illicit substances, but the possibility remains that samples could be screened for health traits that may be hidden from the individual – for example, the tendency to early neurological disease or diabetes. As firms put a premium on productive individuals, especially when they are involved with health care costs, there will be a temptation to use the available information to assess applicants as well as to monitor current employees.

Psychological Testing

Another form of compromised individual autonomy can come from psychometric testing. These are used extensively to assess aptitudes, skills, and personality traits. They are usually “bubble tests” that determine a personality profile and may include such apparently irrelevant questions as “Are you happy with the way you look?” or “Do you like looking at intricately designed

buildings?” They are designed to give employers more accurate insights than letters or interviews and are used by roughly 75 percent of companies in the United States and almost as many in India.³⁰ Psychological tests were originally used for military recruitment, and they can be invaluable in selecting appropriate personality types for careers such as police work. Reportedly some 30 percent of applicants are refused on the basis of their results. In business they can be a useful tool, although testers usually suggest that they should be used in conjunction with other information and firms are increasingly using simulation games to reveal traits and biases.³¹

One feature of these tests is that the answers themselves may not matter as much as the patterns that surface, and, notoriously, they may mimic mental health disability assessments that imply psychological issues such as bipolar disorder.³² If you have a sufficient sample size of a population with a specific trait, say, clinical depression, and they all answer particular questions in a certain way, those questions can then be embedded in another test; and if a subject's responses correspond with the sample group this provides evidence that the subject shares the trait. Tests, therefore, may be used to gauge more than basic characteristics like sociability or attention to detail: They may indicate psychological problems or histories that are not strictly related to the job. If such information surfaces, a prudent employer might err on the side of caution and decline to hire or move to terminate employment. Here again, the moral issue involved is whether an employer is entitled to use any and all the data from these tests, even in cases where it may be inaccurate or hard to verify.

Impure Data

Another hazard to personal autonomy is the potential misuse of data such as credit scores or mistakes in medical histories. A credit score is typically derived from information provided by credit bureaus or reference agencies

³⁰ T. Chamorrow-Premuzic (2015). “Ace the Assessment.” *Harvard Business Review*, July–August, <https://hbr.org/2015/07/ace-the-assessment>.

³¹ T. Alloway and H. Cissel (2017). “Psychometric Testing in the Workplace.” American Psychological Association, <https://bit.ly/3QfiZES>.

³² D. Meinert (2015). “What Do Personality Tests Really Reveal?” *HR Magazine*, June 1, <https://bit.ly/3Qa4PVf>.

who, in turn, get their data from financial institutions and public records. They can be useful in determining how risky it is to make a loan to an individual. Additionally, certain categories of consumers are given higher scores as credit card companies value those who accrue debt but pay the interest regularly. Unless legally prohibited, this information can easily be accessed by firms who then may derive unwarranted inferences from the score. For instance, a recently divorced woman who never used credit in her own name will have a low score, but that fact in itself may not be predictive of her work potential or trustworthiness with company funds. In another case, imagine that a company requests that an individual furnishes their medical history, which happens to include a test for HIV/AIDs. Whatever the result, a potential employer may draw inferences that bias their hiring decision.

One further factor is worth noting: Autonomy implies that an individual can be authentic in the way they present themselves to the world. That is, many corporate cultures either explicitly or implicitly expect employees to conform to the firm's requirements, including comportment, language, and dress. This can make some people want to hide their true selves and adopt a corporate persona – a word taken from the mask used by actors in ancient Greece. A recent move toward diversity and inclusion initiatives is to invite individuals to break down compartments in their lives so that they do not have to be afraid to integrate racial, gender, or national traits at work.

Whistleblowing

Finally, we should look at one more variation on the bridge analogy: In Mill's original example, bystanders should warn the person crossing in order to preserve their autonomy. If we reverse the conditions, so that the individual crossing realizes the bridge is unsafe, they will have a correlative duty to warn anyone else about to cross in order to maintain the other person's autonomy, too. In plain terms, if a company or employee discovers a dangerous or potentially immoral activity, they have a duty to warn other stakeholders (this is sometimes called whistleblowing). Correspondingly, it was morally suspect that several high-ranking managers in the notorious Enron bankruptcy seemed to take advantage of their insider knowledge and sold their

stock before the public found out that the company was insolvent and share prices plummeted. That is, denying the stockholders knowledge and benefiting by doing so is an affront to autonomous decision-making.³³ Because the stakes are often very high in these cases – for example, an employee could falsely accuse the company or there could be an unnecessary recall – it is incumbent on every party to follow regular reporting channels where possible, to make sure the information is correct, and that the issue is correctable. Still, if there is a risk of great harm or even death, then we may well have a duty to inform those involved, whatever the consequences turn out to be.

Summary

Autonomy is a powerful claim in human interaction, and in the developed West it is often thought of as a cardinal virtue. However, as we have seen, in a workplace setting individuals are often in the position of compromising their values with those of the employer in one form or another; conversely, employer decisions can be overridden if there are compelling societal reasons. The issue of autonomy may, oddly enough, oftentimes boil down to working out the specific situation at Mill's figurative rickety bridge. Recall that if the person is unaware that it is dangerous, Mill says we can only intervene if there is no alternative such as shouting a warning. However, there may be times when we as a society are unaware of the nature and consequences of our actions and need to be made conscious of the realities of practices such as racial discrimination before we are allowed to proceed.

In the case of consumer choice and the way advertising affects us, it is not immediately clear that there is much harm involved: If someone wants to spend their money on worthless weight-loss potions or other gimmicks, then they will pay accordingly for a lesson in being a discerning shopper. Nevertheless, this is often not the full story, since some products and services may violate the conditions of autonomy to prey on weak and vulnerable members of society. Here, we may have a duty to protect them, just as if the person on the bridge were hard of hearing.

³³ M. Swartz and S. Watkins (2003). *Power Failure: The Inside Story of the Collapse of Enron*. New York: Doubleday.

Issues for Reflection

1. What do you consider appropriate grounds for overriding someone's personal decisions? Would you, for instance, prevent the sale of home body piercing kits or child pornography and, if so, on what grounds?
2. If individuals want to live a life of thrills and indulgence that may lead to an early death – for example, eating fast food and drinking alcohol as a staple diet – should society restrict them? What is the role of the companies who cater to their whims?
3. Do you think employers should see any moral difference between an employee using marijuana at home on the weekends, say, as opposed to abusing over-the-counter medicines, if there is no perceptible difference in work performance? What are appropriate reasons for using drug tests at work?
4. Is it morally acceptable for companies to sell goods and services using high-pressure tactics to people who are most vulnerable to those techniques? What moral criteria are appropriate to guide company policy in this regard?

Case: Wells Fargo

Henry Wells and William Fargo established a bank that had its origins in the California gold rush in the 1850s, and still uses imagery today from its use of horse-drawn stagecoaches when it operated the pony express. Through a series of acquisitions it is now one of the world's largest financial institutions with more than 7,000 locations, 1,300 automated teller machines (ATMs), and offices in 31 countries. Notably, it serves one in three American households. It was ranked 30 in *Fortune* magazine's 2020 largest US corporations, with \$1.92 trillion in assets.

Considered a stable institution with sound management, the company weathered the 2008 financial crisis and, as *Fortune* magazine commented shortly afterwards, it had "a history of avoiding the rest of the industry's dumbest mistakes."³⁴ The world financial crisis had come about in part because of an inflated housing market in the United States, and institutions

³⁴ A. Lashinski and D. Burke (2009). "Riders on the Storm." *Fortune*, May, pp. 72–80.

being willing to issue risky loans. As the price of houses seemed to be constantly increasing, banks could lend to otherwise unqualified borrowers and in the case of default the housing stock would still recoup the loan. The mortgages were often bundled into other financial instruments and sold on in the global market. However, it turned out that the market in real estate was overheated with the result that many of the cheap and risky loans became liabilities instead of assets, and as they had been redistributed they tainted every other component they became part of.

Wells Fargo had prudently avoided making loans to unqualified buyers and so came through the crisis virtually unscathed. In 2008, it bought out the troubled financial giant Wachovia Corporation, which provided Wells with a national customer network of consumer and commercial services. However, takeover also meant that Wells was relatively undercapitalized.

Wells had done well by sticking to its core banking business and one of its remarkable features was that it was successful at encouraging customers to buy a range of services, a practice known as “cross-selling.” For example, the bank offered products such as checking, savings, credit cards, mortgages, and insurance. There were obvious advantages to the client as they could deal with various services either in person or online and given minimal differences in costs or returns they would likely stick with the bank they knew. Strikingly, Wells customers had an average of six different products, far more than their competitors. A loyal customer also cut down on the bank’s transaction costs, in the sense that if someone was looking to open a certificate of deposit or buy shares, an in-house prospect was much less costly compared with marketing to the general public, leading to greater profitability. Moreover, each new product gave the bank more information about the individual, like their asset base and spending habits, which in turn helped in crafting sales to existing customers.

In 2013, the *Los Angeles Times* exposed sales tactics inside Wells Fargo where unrealistic sales quotas had created a “pressure cooker” culture.³⁵ Managers apparently met their sales staff in morning meetings and set goals for selling customers extra products such as overdraft protection and those

³⁵ E. Recard (2013). “Wells Fargo’s Pressure-Cooker Sales Culture Comes at a Cost.” *Los Angeles Times*, December 21, <https://lat.ms/3SvLuzD>.

failing were required to stay late or work weekends. If quotas were not met after two months, the employee would be fired. In response, salespeople would open credit cards on a customer's behalf without their permission, open duplicate accounts, and forge signatures. If customers complained, they were often told there had been a computer error or slipup over similar names. In one case described by the *Los Angeles Times*, a homeless person had an account in order to receive direct Social Security deposits but was persuaded to open six checking and savings accounts with their associated monthly fees. Although the exact numbers are hard to track, it appears that at least 3.5 million fake accounts were created between 2009 and 2016.³⁶ Wells also had a mandatory arbitration clause with its customers that limited criminal charges of fraud – which effectively prevented actions as a class and required individual cases to be settled confidentially without appeal.³⁷

In response, the chief financial officer denied that these were routine or widespread practices. However in the wake of the scandal Wells fired over 8,000 low-level employees for questionable behavior, with the implication that shady dealing was endemic in the company and senior staff must have been aware that it was going on. Nevertheless, managers continued to encourage their sales staff to aim for the “Great 8” – that is, eight products per customer household.

Wells had an ethics hotline, but stories emerged that users were tracked and subsequently fired for minor infractions.³⁸ Workers in the finance sector receive a form when they leave a position which lists the reasons they were let go. It has no associated due process appeal, and so an employee terminated for cause (such as poor record-keeping or tardiness) may find it difficult to be hired again in the industry.

The Office of the Comptroller of the Currency filed a 100-page report which detailed some of the allegations by employees, including being told

³⁶ U. Berliner (2017). “Wells Fargo Admits to Nearly Twice As Many Possible Fake Accounts – 3.5 Million.” NPR, August 31, <https://n.pr/3P5NGL3>.

³⁷ M. Corkery and S. Cowley (2016). “Wells Fargo Moves to Smother Lawsuits Over Sham Accounts.” *New York Times*, December 7.

³⁸ M. Egan (2016). “I Called the Wells Fargo Ethics Line and Was Fired.” *CNN Money*, September 21.

that they had to “hit their targets or they would be transferred to a store where someone had been shot and killed.”³⁹

In Senate hearings in 2016, then CEO John Stumpf was questioned by Senator Elizabeth Warren, who commented:

Here’s what really gets me about this, Mr. Stumpf. If one of your tellers took a handful of \$20 bills out of the crash drawer, they’d probably be looking at criminal charges for theft. They could end up in prison. But you squeezed your employees to the breaking point so they would cheat customers and you could drive up the value of your stock and put hundreds of millions of dollars in your own pocket. And when it all blew up, you kept your job, you kept your multi-multimillion-dollar bonuses, and you went on television to blame thousands of \$12-an-hour employees who were just trying to meet cross-sell quotas that made you rich.⁴⁰

Stumpf resigned two weeks later, succeeded by Tim Sloan, a longtime Wells executive. Subsequently, Stumpf was fined \$17.5 million and agreed to a lifetime ban from the banking industry. In a government hearing Sloan said, “We have more work to do and that is an ongoing commitment by all of Wells Fargo’s 260,000 team members – starting with me – to put our customers’ needs first.” And, he continued, “to act with honesty, integrity, and accountability.” Largely seen as ineffective in dealing with the scandal, Sloan resigned in 2019, with one report saying the bank “has not fixed its culture of fear and intimidation.”⁴¹

In another twist, as the investigations continued it found almost 500,000 auto loan customers were signed up for additional insurance without their knowledge – in some cases leading to unjustified defaults that affected credit scores and unwarranted repossessions. In 2021, regulators fined Wells \$250 million for failing to address issues identified in 2018 about the bank failing to advise struggling mortgage customers about loan modification possibilities which could potentially save them from losing their

³⁹ S. Cowley and E. Flitter (2020). “Former Chief of Wells Fargo to Be Penalized with Rare Fine.” *New York Times*, January 24, B1.

⁴⁰ M. McGrath (2016). “Elizabeth Warren to Wells CEO Stumpf: You Should Resign and Face Criminal Investigation.” *Forbes*, September 20.

⁴¹ J. Puzzanghera (2019). “Wells Fargo CEO Tim Sloan Steps Down As Bank Struggles to Get Past Scandals” *Los Angeles Times*, March 28, <https://lat.ms/3QN5Rqr>.

homes.⁴² Under President Trump, many bank regulations were loosened, but he singled out Wells Fargo, tweeting, “Fines and penalties . . . for their bad acts against their customers and others will not be dropped . . . but will be pursued, and if anything, substantially increased. I will cut Regs but make penalties severe when caught cheating!” However, there is no evidence that Trump was directly involved in the investigation or settlement.⁴³

In 2020, Wells agreed to pay \$3 billion to settle both criminal and civil investigations, including \$500 million to be used as compensation to fraud victims. The charges centered around the executive Carrie Tolstedt, head of its regional bank division until 2017 and one of *Fortune* magazine’s “Most Powerful Women.” She was fined \$25 million as she was controller of the sales practices under her watch. Although she technically retired, she was retroactively fired from the bank, which took back over half of the \$125 million she received on her departure.⁴⁴

The Federal Reserve, which governs banking in America, put Wells on probation although it eased those restrictions in 2021 following the economic slowdown due to the COVID-19 pandemic. Partly as a result of the scandals, the bank closed branches, laid off workers, and faced a decline in business. As Charles Scharf, the fourth CEO since the scandal broke, commented: “Our results continue to be impacted by the unprecedented operating environment and the required work to put our substantial legacy issues behind us.”⁴⁵

Questions from the Case

1. It appears that many of Wells Fargo’s actions were unnoticed by customers and they were remediated once the sharp practices were discovered. If this was the case, what moral grounds are there for criticizing the bank and its employees?

⁴² B. Eisen (2021). “Wells Fined over Mortgage Business.” *Wall Street Journal*, September 10, B3.

⁴³ K. Sweet (2018). “Wells Fargo Fined \$1B for Mortgage, Auto Lending Abuses.” *The Reporter*, April 20, <https://bit.ly/3p6y6o4>.

⁴⁴ J. Wiczner (2017). “How Wells Fargo’s Carrie Tolstedt Went from Fortune Most Powerful Woman to Villain.” *Fortune*, April 10, <https://bit.ly/3zYw1de>.

⁴⁵ M. Egan (2021). “Wells Fargo Can’t Seem to Escape Its Troubled Past.” *CNN Business*, January 15, <https://cnn.it/3SmyFYl>.

2. How transparent should a company be about its business practices?
3. Should customers be responsible for knowing the terms of their accounts?
4. Does context matter in our moral assessments of this case?
5. At what point ought someone speak up if they are aware of immoral actions by an employer?

6 Justice and Equality

Consider these facts. The most reliable predictor of success in life is not ability, hard work, or life choices, but your parents' wealth.¹ The top 0.01 percent of the richest people own 11 percent of the world's wealth.² In 2018, the twenty-six richest people in the world held as much wealth as half the global population.³ In 46 out of 57 countries that reported, the share of income going to the top 1 percent has increased. The wealth gap between the top 10 percent and the bottom 50 percent of individuals has almost doubled in the last twenty years.⁴

All around the world men tend to earn about 14 percent more than women. Although women have earned the majority of undergraduate degrees for the last thirty years, they represent fewer than 40 percent of managers, 30 percent of vice presidents, and 20 percent of corporate executives. Women also take on the majority of household duties. The United Nations has noted that women and girls put in 12.5 billion hours of unpaid care work, contributing three times the worth of the global tech industry. Over 40 percent of working women report that they have experienced gender discrimination and most feel that taking time away from work after birth or adoption has negatively affected their careers.⁵

¹ D. DesRoches (2019). "Georgetown Study: Wealth, Not Ability, the Biggest Predictor of Future Success." *Connecticut Public Radio*, May 15, <https://bit.ly/3A9FRQc>.

² N. Goodkind (2021). "World's Richest People Now Own 11% of Global Wealth, Marking the Biggest Leap in Recent History." *Fortune*, December 7, <https://bit.ly/3Pb0DDi>.

³ United Nations (2020). "Inequality: Bridging the Divide," www.un.org/en/un75/inequality-bridging-divide.

⁴ J. Myers (2021). "These Charts Show the Growing Income Inequality between the World's Richest and Poorest." *World Economic Forum*, December 10, <https://bit.ly/3dhY3y5>.

⁵ Pew Research Center (2017). "An Inside Look at Family and Medical Leave in America," <https://pewrsr.ch/3lMia3m>.

Black and Hispanic workers face routine discrimination. In 2021 there were only five Black CEOs running a Fortune 500 company – in its sixty-six-year history there have only been nineteen. In 2021 there were no Black chairs, CEOs, or financial chiefs in UK FTSE 100 companies.⁶ In the United States, Black workers earn about 20 percent less than comparable white workers and are disproportionately underrepresented in many industries – for example, although 10 percent of computer science degrees are awarded to Blacks, they account for only 3 percent of engineers in Silicon Valley.⁷ Hispanic women with college degrees earn only about two-thirds of similarly educated white men.⁸

The LBGTQ+ community may account for almost 5 percent of the population. Almost half of LBGTQ+ people feel they have to remain closeted at work, and a third report discrimination based on their sexuality.⁹

There are many complex reasons for these disparities, of course, but clearly there are trends that suggest injustice, and systemic reasons that may prevent individuals at work having a “fair go” where talent is duly rewarded.

Justice claims are basic and compelling. Think of a toddler deprived of their toys who senses that something is wrong that ought to be remedied and clearly communicates the grievance. Some studies suggest that this dynamic may occur as early as eighteen months of age.¹⁰ Similarly, at least one of two children sent to their room after a squabble will feel that they have been badly treated. When thinking about justice and injustices, it can be helpful to be familiar with the language and terms that can be used to

⁶ C. Robertson (2021). “Are Businesses Really Tackling Racial Inequality?” *BBC News*, May 30, www.bbc.com/news/business-57287362.

⁷ E. Porter (2021). “Black Workers Stopped Making Progress on Pay. Is It Racism?” *New York Times*, July 1, <https://nyti.ms/3A8nHyl>.

⁸ M. Mora and A. Dávila (2018). *The Hispanic–White Wage Gap Has Remained Wide and Relatively Steady*. Economic Policy Institute, July 2, <https://bit.ly/3zdqqGq>.

⁹ R. Gattuso (2021). “The Risks of Coming Out at Work.” *BBC News*, June 1, <https://bbc.in/3bE00EI>.

¹⁰ J. Hamlin (2013). “Moral Judgment and Action in Preverbal Infants and Toddlers: Evidence for an Innate Moral Core.” *Current Directions in Psychological Science*, 22 (3), pp. 186–93, <https://doi.org/10.1177/0963721412470687>.

empower or disempower individuals, and therefore we will move to examine the frameworks and specialized terminology involved.

Parsing out simple “It’s not fair!” claims show us there are at least three elements at work: (a) the idea that there should be a level playing field – in other words, that there are unprejudiced and unhampered opportunities for all parties; (b) that distribution of resources and rewards is governed by some principle; and (c) that there is some authority capable of redress.

It is also important to note that justice claims have to be credible to the listener. Often a person’s or group’s claims are dismissed because they not taken seriously due to prejudices based on race, gender, education, and a host of other intersecting factors. For instance, in a business meeting a woman may speak up with an idea that is ignored at the time but endorsed when a male colleague repeats it later on. The contemporary philosopher Miranda Fricker has coined the terms *credibility deficit*, *testimonial quieting*, and *testimonial smothering* to describe some of these dynamics. She also points out that in other cases people simply lack the conceptual framework to describe the injustice. For instance, we can think of someone in an office where sexual jokes and innuendo are prevalent but they are not able to articulate that it constituted harassment. She believes that we have an active duty to sensitively engage others in what she describes as unbiased “virtuous listening.”¹¹

Philosophers have been concerned with notions of justice since the time of the ancient Greeks. Aristotle (398–322 BCE) argued that equals should be treated equally. In his words, “For if the persons are not equal, they will not receive equal shares; in fact quarrels and complaints arise when equals receive unequal shares in an allocation, or unequals receive equal shares.”¹²

In short, the overriding principle is that we should treat equals equally. However, applying that in practical terms raises even more questions. We are all unique persons varying in age, nationality, gender, aptitudes, experiences, and in many other ways. Aristotle himself goes on to discuss how certain social classes deserve preferential treatment, and in the

¹¹ M. Fricker (2011). *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford: Oxford University Press.

¹² Aristotle (2014). *Nicomachean Ethics*, ed. R. Crisp. Cambridge: Cambridge University Press, p. 84.

contemporary environment we can see that some people enjoy privileges that are unavailable to others. At the outset, then, we should be conscious that we are not starting from the same place, as we all arrive with different histories.

In this chapter, we will briefly look at different forms of justice, first concentrating on *distributive justice*. Subsequently, we will look at some inherent challenges to notions of equality by looking at gender issues and discrimination more widely. Finally, we will note the emergent literature on biases, diversity, and inclusion and its implications for business.

Types of Justice

Questions about justice are about redressing harms that can take different forms. *Retributive justice*, as the name suggests, speaks to punishing those who have caused damage or injury: In the Bible there is the adage “An eye for an eye” that advocates equivalent penalties for the harm involved. We should note that it is restrictive as well as being punitive – the hurt party can demand retribution, to be sure, but only to the extent of the harm and no more. In criminal cases retribution may take the form of fines or incarceration. *Tort law* deals with civil harms, and there the guiding principle is to attempt to redress so that things go back to how they were before an incident – for instance, paying to rebuild when a fire was started through negligence or compensating for medical bills incurred from a violation of health and safety rules. Retributive justice may also involve deterrence or other forms of penalty. For example, juries may award relatively minor actual damages, but then want to send a message about poor business conduct by imposing large discretionary fines. Monetary redress is often a poor way to compensate those harmed, though, especially for cases such as personal injury or environmental damage where we can never properly restore things to the way they used to be.

Recently the disciplines of *restorative* and *reparative justice* have emerged. These attempt to fill in some of the gaps in the legal system by addressing accountability and making amends. Restorative justice typically involves having the offender work toward healing the harm they caused, whereas reparative justice often has the offender meet with the victim. Interestingly,

research on forgiveness has shown that redress in the form of making amends is most effective in reestablishing working relationships, but sincere apologies are almost as successful in allowing people to move on with their lives.¹³ The point is that accepting a process or outcome as just may involve understanding the circumstances that led to the harm and what it would take for the hurt party to feel that the issue was resolved, which may not be limited to a cash payout. Imagine, for example, a case where a fast-food restaurant super-heated its coffee and a woman subsequently suffered burns when it spilled in her lap. It may be important to the victim that the company acknowledge and apologize for not anticipating what could happen. In other words, she might be more interested in psychological reconciliation than financial recompense. Additionally, it might be appropriate to make sure that root causes and future preventive measures are put in place, things that are not assured through litigation for damages.

The third form of justice is *distributive justice*, which deals with the allocation of resources. Resources take the form of money, time, energy, and raw materials, among other things, and justice concerns arise when demands exceed supply. In recent literature, there are three main bases for resource claims: *equity*, *equality*, and *need*. Equity is usually described in terms of merit or desert. Equality attempts to provide equal shares for all parties. Need looks to what people require – generally necessities, but it may also include wants.

Consider an example where an individual is moving locally and wants to hire casual workers to carry boxes. One of the hires is a rugby player who has no difficulty in taking on heavy loads. Another is less strong, but nevertheless eager. The third has just been laid off from their job and is having a hard time making ends meet. The owner could pay based on a range of principles: Merit, in this case, could most easily be judged by the work performed, and they could reward the laborers based on the number of boxes moved, an equity approach. On the other hand, they could simply offer an hourly wage and expect each person to give their best effort, which would be a case more of equality. We might think that it is lucky that the rugby player has natural talents, but nevertheless each person is uniformly

¹³ W. Bottom, K. Gibson, S. E. Daniels, and J. K. Murnighan (2002). "When Talk Is Not Cheap: Substantive Penance and Expressions of Intent in Rebuilding Cooperation." *Organization Science*, 13 (5), pp. 497–513, <https://doi.org/10.1287/orsc.13.5.497.7816>.

deserving. In a similar vein, the employer could seek out those who would most benefit from the job, even if the work is suboptimal. For instance, it could be that there are people at a rescue shelter who could do the job, but not quite as efficiently, and it might make a world of difference for them to have the opportunity to work. In this example, the employer has discretion to hire and pay as they see fit, which at first glance seems to be acceptable. However, this presumes the employer is principled and has scruples about not discriminating on irrelevant grounds or exploiting the powerless.

We can see that the intuitions we have as infants are echoed here. Some philosophers are most interested in the processes while others concentrate on the outcome, or end state. There is a biblical parable which illustrates some of the issues. Workers are hired to help in a vineyard. During the day the owner hires additional hands. When they are all paid at the end of the day, it turns out that everyone is paid the same, and not surprisingly the ones who have been working longest grumble as a result. They are told they have no reason to complain as they were hired under certain terms and conditions which were met, and they should be indifferent to the actions and rewards of others.¹⁴ However, in modern parallels we must consider the broader context of contracts, since an outside evaluator may not be able to assess justice by the agreement of the parties alone. In many cases, the prospective employee will take whatever is offered as they have no alternative, and so relying on the employer to be reasonable and generous is not a sufficient gauge of justice. One response might be to have the state intervene by imposing regulations such as a minimum wage or nondiscrimination regulations, but doing so is at the risk of creating other injustices such as foreclosing the employer's autonomy.

A *libertarian* view suggests that the paramount virtue is personal choice in a context of maximum liberty. That is, everyone should be free to decide their own fate, and we are only responsible for others as far as we choose to be. It is often linked with a strong belief in personal property rights, so that we can give and receive freely but have no entitlement to make demands on others. We choose to train as poets or plumbers but cannot complain if the market rewards one more than the other and have no right to subsistence at the expense of others. Advocates such as Robert Nozick would say that we

¹⁴ Holy Bible, King James Version, Matthew 20, 1–16.

should not preconceive outcomes as long as the system itself is fair.¹⁵ Thus, it would be fine if Bill Gates, one of the world's richest men, won the lottery since he would have bought his ticket like everyone else. The fact that it strikes us as unfair that a rich man gets richer is incidental and no cause to penalize him for the benefit of others who were not as lucky. Nozick feels intervention that rebalances resources has to be along the lines of a formula "from each according to x" and "to each according to y" where "x" and "y" are terms such as "ability" and "need." He calls these attempts "patterning" as they try to create an artificial end state, and he feels each will inevitably fail unless based on personal preference, that is, from and each according to their choice and to each as they are chosen.

Similarly, libertarians would say that if we make capitalism as fair as possible by removing as many barriers as we can – such as taxation and regulation – then a free market will serve us best by allowing as many individuals as possible to maximize their own choices. If people choose to attend monster truck rallies rather than go to the opera, that is a reasonable outcome, and certainly no reason to subsidize the arts. Inequalities are thought of as differential rewards reflecting applied talent that ought to be encouraged, rather than an incentive to redistribute personal holdings.

In contrast, an *egalitarian* view starts from the premise that we all share in one another's fate, and we should not be unduly rewarded for attributes that are, after all, a function of genetic luck. Consequently, it actively promotes redistribution of rights and property to give everyone equal opportunities. Egalitarianism's most famous recent articulation has been through the work of John Rawls.¹⁶ He devised a highly abstract set of thought experiments through which we might have insights in developing social policy.

Rawls asks us to imagine that we are behind what he terms a *veil of ignorance* where we know the basic facts of human psychology and economics, but we do not know who we are as individuals, and then asks us to propose general guidelines for a just society. His aim is to get us away from advocating things that would extend our own privileges. We might be aware, for example, that there are almost eight billion people in the world and slightly more men than

¹⁵ R. Nozick (1977). *Anarchy, State and Utopia*. New York: Basic Books.

¹⁶ J. Rawls (1972). *A Theory of Justice*. Cambridge, MA: Harvard University Press.

women. He believes that we would be rational, but risk-averse, and under these anonymous conditions we would design a society that provides the maximum opportunities for everyone: because we do not know whether we would be men or women, have physical or mental challenges, or the nature of our family background once the veil is lifted, he thinks any reasonable person would advocate policies that give everyone the best shot at a fair chance.

It is very important that we do not make the mistake of saying that Rawls wants wholesale equality; rather, he believes that it is perfectly acceptable if differences arise, as long as they make everyone, including the least advantaged, better off. We can imagine that society would benefit if there were a selection system that led to those with the right aptitudes and interests becoming doctors or software designers, for example, since it is rational to use disproportionate resources and training to reward those people for their potential to improve society as a whole. Rawls would endorse social and economic differences emerging on merit and through processes that were open and fair to everyone. In his terms, justice is a matter of fairness, and given his background condition of ensuring quality of life for everyone in society, equality of opportunity rather than equal shares becomes the paramount consideration for framing social policy.

When reading Nozick and Rawls it is useful to think of their work as if they were creating a stylistic rendering rather than an exact blueprint. They are working at a highly abstract conceptual level, and so it is hard to criticize them for not presenting concrete recommendations. However, there are at least two major concerns that emerge, even in their own terms. The first is the assumption of impartiality and the second is the thorny issue of rectification. Nozick and Rawls both presume that it is possible to at least imagine that we are impartial bodies absent knowledge about our gender, histories, culture, and other manifestly influential biases. Inevitably, we come at our intuitions through various lenses, and much as we might try to empathize completely with others our individual perspectives are likely to color our thinking. For example, far more male than female executives believe there is already equal opportunity at work.¹⁷ Having men simply imagine, say, that they might be

¹⁷ S. Florentine (2017). "How Workplace Equality Perceptions Are Shaped by Gender." *IDG Tech Talk*, January 10, <https://bit.ly/3p7eSPe>.

women may be insufficient, as they are likely to retain a host of inadvertent assumptions in the exercise and many such findings would need to be acknowledged for participants to make truly impartial recommendations. Nozick's work also portrays neutral persons without much consideration of how they came to have their current property or purchasing power.

Additionally, we have to consider how we might go about creating a fair initial state, given present injustices. Rawls suggests a form of progressive taxation that will redistribute wealth within a society. This would still require some form of assessment of who has been systematically disadvantaged and how best to provide redresses. Nozick faces much the same problem. His response is to appeal to historical evidence and what he describes as subjunctive information – that is, what would have happened if things had been just when the wrongs were committed. But quite how and who should investigate these issues and make amends is left vague. If there are systemic issues or ones that cross generations, it is hard to know where to place a marker and say that is where we count forward from. In particular, rectification issues tend to involve groups and cultural context, which are challenging for notions of individual entitlement like Nozick's.¹⁸

Despite these shortcomings, both Rawls and Nozick offer key insights for business. The veil of ignorance is a valuable tool in thinking about what constitutes equal opportunity, and Nozick lets us consider how we judge and reward merit and to what extent business and government should override individual preferences expressed in market choices. In the next sections we will examine how two archetypal instances of injustice – sexism and racism – may be analyzed.

Discrimination

We discriminate by assessing differences. It is not intrinsically bad – we use the phrase “discriminating palette,” for instance, to describe someone who has good taste and one of the jobs of a teacher is to give grades to students based on their ability. Discrimination is also manifested in a manager's

¹⁸ R. Litan (1977). “On Rectification in Nozick's Minimal State.” *Political Theory*, 5 (2), pp. 233–246, <https://doi.org/10.1177/009059177700500207>.

promotion of the most able or qualified candidate for a position. The reason that we may choose one over another is that there is a *material difference* – that is, some factor pertinent to the decision at hand. Discrimination becomes immoral when it employs irrelevant factors. Thus, all other things being equal, applicants for a job that requires data entry may be screened on the basis of their clerical accuracy, doctors need to have diagnostic skills, and firefighters need strength and dexterity, which are all measurable qualities which would make one candidate preferable to another; but at the same time it would be inappropriate to refuse to hire on the basis of race or gender. Moreover, although some classes of people have certain abilities in general, we ought not to look to the class but to the individual. Men usually have greater upper body strength than women, for example, but in looking for manual laborers we ought to look for the ability to lift and carry and not exclude women at the outset. In effect, the moral issue is whether we are discriminating by looking at a category rather than individual attributes and aptitudes.

It is plausible for a business to claim it is a neutral conduit of consumer preferences, and so it would be legitimate for an employer to choose employees on grounds not necessarily related to job performance. Perhaps female students at a university health clinic prefer women gynecologists, for example, or bank customers in a given neighborhood prefer someone of a similar heritage and the employer risks business by not catering to the demands of the clients. There may also be demand for a service that many would find morally objectionable – perhaps a restaurant with a beach theme that only employs skimpily dressed young women or one that has an Old South plantation theme where the waitstaff are treated as slaves. If the workers themselves have no issues with their jobs, is discrimination necessarily harmful – and should the market be the right place to decide the issue? The argument goes that if people truly disapprove of discrimination they will not patronize those businesses and the market will react accordingly to align itself with the values people signal through their pocketbooks.

In the United States, the UK, and many other countries, the issue has been answered politically instead of relying on the market – largely on the grounds that those who are hurt by discriminatory practices do not have sufficient market power to create the correct signals. In response, governments have

enacted legislation that prohibits discrimination on certain grounds, including race, gender, religion, national origin, marital status, age, and disabilities.¹⁹ Typically, the laws are designed to protect traditionally unempowered groups, and consequently firms are legally prohibited from selectively hiring only men, or routinely ignoring applications from Hispanics, and must make reasonable accommodations for religious observance. There is an important exception when jobs are very specific: For example, a theater hiring for a female lead is allowed to only audition women, or a police department may require that street officers are physically fit. These conditions are technically known as *bona fide* (in good faith) occupational qualifications (BFOQs).

The protection against discrimination is not absolute, though. Many countries do not prevent an employer from firing someone on the basis of sexual preference, obesity, or political allegiance, for example. Ninety percent of Americans work under a doctrine known as Employment at Will (EAW), which means that both employers and employees may sever their contract for any reason at all, or even without a reason. Nominally, it balances the rights of both sides, although a worker fired with no due process or reason may become tainted when looking for new employment – a new employer will often suspect that someone was let go for a reason, even if it was never openly stated, and shy away from hiring that person. An employer may still fire someone from a protected group, say, women or minority group members, for any reason except explicit discrimination, and the onus will be on a member of a protected group to show that there has been a pattern of selective discrimination. The philosophical issue, in contrast to the legal regulations, will turn on whether there are sufficient moral grounds to compromise the cardinal principle of self-determination by an employer when those choices lead to unjustifiable discrimination.

It is difficult to categorize people, and although American law has sought to protect certain classes, it became evident that many individuals belong to more than one group. Legal scholars such as Kimberlé Crenshaw examined ways that these overlapping and crosscutting classes were dealt with, using the term *intersectionality*.²⁰ For example, in a seminal case, General Motors

¹⁹ U.S. Equal Employment Opportunity Commission (2021). “What Laws Does the EEOC Enforce?,” <https://bit.ly/3PNywuV>.

²⁰ K. Crenshaw (2015). *On Intersectionality: The Seminal Essays*. New York: New Press.

did not initially hire any Black workers, but after it did so the company hit a slump and instituted last-in, first-out layoffs that disproportionately hurt Black women. They sued, but the judge was reluctant to go beyond the classifications in the law, so they would have standing on the basis of sexism or racism, but not both together. He opined: "The creation of new classes of protected minorities, governed only by the mathematical principles of permutation and combination, clearly raises the prospect of opening the hackneyed Pandora's box."²¹ The fear is that the protections afforded can also foster a culture of victimhood by admitting claims of discrimination based on pooling multiple factors such as race, sex, gender, class, age, national origin, and sexual orientation, among others.

Some commentators have suggested that this approach using terms such as white and lesbian, or Black males, will inevitably hurt the specific group often considered most privileged, that is, white males. However, this seriously misinterprets Crenshaw's project: It is not so much a case of clusters competing to see who will be top of the heap, but rather questioning how the categories emerged in the first place, and what social and political systems are at work in perpetuating these hierarchies. The idea of special interest groups jockeying for power ironically accepts that the categories are set and appropriate, and imagines a model that mirrors present structures but with different groups having more or less status in the hierarchy; intersectionality, however, dives deeper and asks about the historical and pervasive dynamics of privileged and marginalized groups. The value of intersectionality, then, is that it recognizes that everyone embodies a constellation of factors they have no control over and that these shape their identities and the way they are treated.

Sex and Gender Discrimination

While accepting that people have intersecting identities, it may nevertheless be useful to isolate sexual discrimination to set up an initial conceptual framework for discussion. Discrimination or prejudice that fails to recognize the rights, needs, dignity, or value of people on the basis of sex or

²¹ *DeGraffenreid v. General Motors Assembly Div., etc.* 413 F. Supp. 142.E.D. Mo. 1976.

gender is known as sexism. Sex refers to the differing physical and biological characteristics of men and women, while gender looks to social and culturally constructed differences that we attribute to the terms masculine and feminine.

Labor shortages during the two world wars stimulated women's entrance into the workplace. During the Second World War, over six million women took up work outside the home, many of them married and over the age of thirty-five. The rise of laborsaving devices, baby formula, and food storage technology contributed to their ability to take paid work outside the home. Women became more educated and a booming economy provided greater employment opportunities. The spread of the women's movement in the 1960s led to a shift in attitude against the "feminine mystique" of women being fulfilled as mothers and homemakers. Women tended to get married later and had fewer children. The majority of US, European, Canadian, New Zealand, and Australian households have been dual income since the 1970s.²²

In the United States and Europe, women now represent about half of the workforce, but spend about four hours a day doing unpaid work such as childcare and housework compared to just over two hours for men.²³ Over 70 percent of women with children and the majority of those with children under the age of six work outside the home.²⁴ For the last thirty years, women have earned more college degrees than men, but are severely underrepresented in the fields of science, technology, engineering, and mathematics (STEM), comprising less than a third of college educated STEM employees. When median earnings are calculated, women earn about 85 percent of men's wages, although such comparisons are complex because women tend to be employed in a narrow cluster of job categories. They undertake two-thirds of all part time work, are overrepresented in low

²² OECD (2017). "How Do Partners in Couple Families Share Paid Work?," <https://bit.ly/3P9kCma>.

²³ Catalyst (2021). "Women in the Workforce – Global: Quick Take," <https://bit.ly/3S2DVjN>.

²⁴ U.S. Department of Labor, Women's Bureau (1993). "Facts on Working Women," No. 93-2; M. Thewlis, L. Miller, and F. Neathey (2004), *Advancing Women in the Workplace: Statistical Analysis*. EOC working paper series no. 12, Equal Opportunities Commission, Manchester, UK.

paying jobs, and on aggregate get fewer benefits and are more likely to be laid off.

Some of these jobs have disproportionately high entrance requirements and low salaries, sometimes known as *pink-collar* professions in comparison to blue- or white-collar categories – for example, women make up over 80 percent of primary school teachers and 90 percent of nurses. Women have entered the professions, especially law and medicine, yet the vast majority are occupied in less than twenty job categories, notably clerical and service occupations. Even in medicine, women tend to specialize in certain areas such as pediatrics, public health, and rehabilitation, while they are underrepresented in surgery. In law, women are more likely to be involved in family law or trust and estates than litigation.

There are significant issues with women’s progress in management, too, sometimes referred to as a “leaky pipeline” or a “broken rung.” Women are promoted at a lower rate than men, and the effects of this are compounded as they go further in their careers. At the entry level, there are almost equal numbers of men and women, but that decreases to about 35 percent women at the senior director level and declines even further so that only 20 percent are in the executive C-suite. Only 86 women in management will be promoted for every 100 men, and the prospects are even more daunting for women of color. Women also spend more time helping their colleagues and putting effort into unrewarded diversity, equity, and inclusion (DEI) initiatives.²⁵

Dual burdens make it difficult for women to do the same work as men. Women have often been reluctant to take jobs that involve frequent travel or long hours because it conflicts with the view that they should be primary homemakers and child-rearers. Statistics support the notion of a so-called *glass ceiling* where women get promoted only to a certain level and find it very difficult to get beyond that plateau. Moreover, women who do get promoted to senior levels are at greater risk of being given difficult or precarious jobs, sometimes described as a *glass cliff*. Researchers have described the phenomenon as follows: “There seems to be an unwritten

²⁵ McKinsey & Company (2021). “Women in the Workplace 2021,” <https://mck.co/3A8wrEH>.

law that says ‘think female, think crisis’ . . . if a company is doing well, then the ‘jobs for the boys’ rules still apply, but if it is in trouble, no man wants to give the job to their friends, it seems, so for many the answer is to get in a woman.” They also found that women perceived they had fewer opportunities than men and were more willing to accept difficult assignments.²⁶

Clearly there are injustices based on gender. In addressing them it is useful to consider whether the inequalities arise from natural differences between the sexes, a more systematic problem with the way businesses have been structured and run, or issues that arise from personal interactions.

An initial question is whether sex differences are significant enough to deny equality in the workplace. The call for equality between the sexes is inherently problematic, though, since equality may not be equivalent to sameness. Women experience menstruation, pregnancy, childbirth, lactation, and menopause and any account of equality in business has to deal with the realities of their existence. This inevitably means that we cannot treat equality between the sexes as being gender blind, especially if we take male experience as the model of normality.

Women’s human nature has been characterized as distinct and the differences may be summed up in a number of conceptual dichotomies: mind/body, reason/emotion, permanent/unchanging, culture/nature. These are value-laden terms, and historically they have been associated with masculinity and femininity, with the more praiseworthy terms being male. For example, reason has always been highly prized in philosophy and other academic disciplines, and emotional or intuitive responses have been regarded as contaminating influences. The stereotype of women as being more emotional fixed their nature as being less rational. This led to two results: First, women were thought to have a natural domestic role and were thus taken less seriously as philosophers; and second, insights that were not rationally based were systematically dismissed.

The debate over whether men and women have essential differences continues in contemporary times, as some suggest that men and women

²⁶ M. Ryan and S. Haslam (2005). “The Glass Cliff: Evidence That Women Are Over-Represented in Precarious Leadership Positions.” *British Journal of Management*, 16 (2), pp. 81–90.

are “hard wired” to have differing ethical responses and personal values. Others accept that these differences exist but ascribe them to socialization. A third view is that the apparent differences are, in fact, illusory.

The dispute over the alleged difference in human nature between men and women has a long history. The philosopher Rousseau said in *Emile* (1762) that women have different aptitudes and talents from men and therefore ought to be educated differently. In contrast, Mary Wollstonecraft, in her *Vindication of the Rights of Woman* (1792), responded that although men are obviously stronger, there are no discernible differences between the sexes in character traits or ability to reason that are not the product of social conditioning and domination; and women should resist the pressures to conform to gender stereotypes. She wrote:

I earnestly wish to point out in what true dignity and human happiness consists. I wish to persuade women to endeavour to acquire strength, both of mind and body, and to convince them that the soft phrases, susceptibility of heart, delicacy of sentiment, and refinement of taste, are almost synonymous with epithets of weakness, and that those beings who are only the objects of pity, and that kind of love which has been termed its sister, will soon become objects of contempt.²⁷

Still many present-day male executives routinely link certain traits typically associated with masculinity, such as competitiveness, self-confidence, objectivity, aggressiveness, forcefulness, and ambition, to business success.²⁸ However, we need to be very careful not to fall prey to a logical fallacy here. It does not necessarily follow from the fact that many successful men exhibit these traits that someone needs those traits to be successful: It merely reflects a cohort similarity, not vital indispensable features. Given that the path to career success is often over twenty-five years, we may be seeing an echo of a favored group from decades ago rather than empirically verified correlations. Additionally, considerable evidence shows that traits exhibited by men considered as leaders are interpreted

²⁷ M. Wollstonecraft (2004 [1792]). *A Vindication of the Rights of Women*. London: Penguin.

²⁸ N. Tabassum and B. Nayak (2021). “Gender Stereotypes and Their Impact on Women’s Career Progressions from a Managerial Perspective.” *IIM Kozhikode Society & Management Review*, 10 (2), pp. 192–208, <https://doi.org/10.1177/2277975220975513>.

more negatively by men when evaluating women; for instance, assertiveness in men might be considered pushiness in women. As one commentator noted, this puts female leaders in a lose-lose situation. If they conform to the female stereotype, they are not seen to be a proper leader, but if they adapt to the leader stereotype they are not seen as a “proper woman.”²⁹ At the end of the day it may well be that the evidence shows characteristics such as compassion, warmth, or cooperative working actually turn out to strongly correlate with managerial strengths and therefore should be legitimated and honored rather than corrected.³⁰

It might be useful at this point to recall Rawls’ veil of ignorance – if we believe in fundamental equality between the sexes and then set societal structures and policy while ignorant of what gender we would be, we might design a world that gave equal opportunity to women and men without penalizing women, say, for bearing children. For example, we might consider pregnancy and maternity leave to be a normal human occurrence instead of treating it – as many businesses currently do – as an illness or career deficit. This line of thinking would promote gender equity rather than take on the difficulties of identical treatment that the term equality connotes.

Even if we accept that gender does not determine character traits such as assertiveness or sensitivity, we are still faced with the difficulty of ensuring equal treatment in business as we cannot deny physiological differences. For example, in a legal case brought before the US Supreme Court, Johnson Controls owned a plant making batteries and warned women working in the area that some of the chemicals they were exposed to were potential fetotoxins (i.e. dangerous to fetuses); Johnson Controls asked the women to sign a form showing they were aware of the risks should they become pregnant. However, when eight pregnant women on the line tested at critical levels for lead exposure, the company followed federal guidelines

²⁹ M. Ryan and S. Haslam (2011). “Think Crisis-Think Female: The Glass Cliff and Contextual Variation in the Think Manager-Think Male Stereotype.” *Journal of Applied Psychology*, 96 (3), pp. 470–484.

³⁰ E. Berkery, M. Morley, and S. Tiernan (2013). “Beyond Gender Stereotypes and Requisite Managerial Characteristics.” *Gender in Management: An International Journal*, 28 (5), pp. 278–298.

and barred them from working in the area. The women's union sued on the basis of sexual discrimination, citing additional evidence that a man who wanted to become a father was allowed to transfer out without penalty, while one woman had undergone sterilization to keep her job. The Court ruled for the women, on the narrow legal grounds that the law was silent about risks to fetuses and that the workers were given sufficient warnings.³¹

The issue remains that pregnant women – and women who may potentially become pregnant – may deserve special consideration. One question is whether the women ought to have been treated differently since there are documented risks to men as well. At least in this case both men and women did have other employment options, and the risks were known and public, which allowed them a degree of autonomy. Some commentators suggest that the issue of pregnancy distracts from what they see as the essence of the case, which is the moral imperative to provide a safe working environment for everyone, regardless of gender.³²

Injustice to women at work may reflect altogether broader issues about the apparent male bias in the structure and nature of business considered holistically. In order to approach the matter, let us turn to an extended analogy with the Olympic Games.

What springs to mind in athletics are images of people running, jumping, and throwing. Now think of the world record holders in these events. Inevitably, they will be men; that is, the fastest runner in the world is a man. We typically segregate the events so that only women compete against women, though undoubtedly there are many women who can run faster than most men. Nevertheless, it is unlikely that the fastest woman in the world will outrun the fastest man. This seems natural, given the differing physical abilities of men and women. One tempting conclusion might be that men are inherently better athletes than women. But this is highly questionable, since it begs the question of what it takes to be a superior athlete. If a contest looks to a certain skill set such as lifting heavy weights,

³¹ Risk to Fetus Does Not Disqualify Women from Job – *International Union v. Johnson Controls*, 499 U.S. 187 (1991), http://biotech.law.lsu.edu/cases/EEOC/johnson_controls.htm.

³² J. Callahan. (1994). "Let's Get the Lead Out: Or Why Johnson Controls Is Not an Unequivocal Victory for Women." *Journal of Social Philosophy*, 25, pp. 65–75.

we can see, on reflection, that the outcome is already predetermined. Yet we seldom question the nature of the Games themselves – how the contests emerged and what they measure – since we take running fast and jumping high to be appropriate ways of gauging our physical achievements. Still, if one were to take a random group of college students and train them for a marathon, for example, the odds are that the winner would be a man, although more women would finish the race since women in general exhibit greater endurance. Similarly, if we had events that rewarded balance, flexibility, and coordination – such as the gymnastics balance beam – women would probably outperform men.

The analogy asks whether the Games are in some sense natural contests, or if they emerged from skills essential to men in ancient battle, where running, throwing a javelin, or lifting heavy weights were prized qualities that were promoted through peacetime contests and childhood games. It could be that the presumptions are so ingrained in our society that we think that there is only one proper way to exhibit athletic prowess and that is through the type of games that have come down through history. But if it were possible to design them again from scratch, we might find more categories like floor exercises, where athletes design a routine of dance-like moves and acrobatic skills that would not automatically favor one gender over another.

The example illustrates at least two ways we can address issues of gender in business. The first occurs if we maintain the current business structure when we deal with discrimination, while striving to help women perform up to their potential and receive appropriate recognition. We can try to remove barriers to education, provide equal opportunity in hiring and promotion, make sure that men and women doing the same job get paid equally, and so forth. The second way is more radical: It suggests that we need to change the very nature of the workplace since, just like athletic games, it has evolved around a set of male-oriented assumptions about the nature of work and the place of women – what is considered normal is fashioned on men's experience and values. Women are systematically disadvantaged, and however well they adapt and "play the game," the way society and business are structured works against them. Some women may mimic men, according to this view, and a few may be more successful than

many men, but in general women are hampered as long as we maintain our prevailing attitudes about women as primarily nurturers and homemakers. We therefore need to rethink our assumptions about the role of women, work, and business.³³

The COVID-19 pandemic has caused businesses to rethink their attitudes toward in-person and flexible work schemes, which may be an opportunity to assess the wider structures of the workplace. The prevailing assumption had been that we have our personal lives, and then we go off to work as a distinct activity. This view operates best when the public domain is supported by a subordinate private sphere – which is largely the realm of women. Consequently, a career couple might have organized their lives around work demands, but the woman largely maintained the household and she often adjusted her ambitions around those of the man. However, the arrival of more flexibility in work hours and location may herald a breakdown of traditional gender roles. We should note, though, that the breakdown of public and private barriers may also be a double-edged sword; it is very useful to be able to work from home, but the same technologies that liberate us from having to go into an office or factory may mean that we are never really away from work. The fact that work can be done more flexibly does not imply there will be less of it, of course, and domestic chores still must be tackled, but perhaps historic gender distinctions will be less stark.

Besides injustices based on notions of the differing nature of men and women and the intrinsic structures of business, discrimination also happens at the level of personal interactions. The backdrop is one of power disparities, that is, individuals make detrimental or prejudicial remarks and carry out actions from a position of dominance within an organization. Discrimination may be institutionalized or more covert, but the effect is largely the same. Men may be given more important projects, for example, or the floor sales staff in a department store may be divided so that women sell clothing whereas men sell appliances, and thus the commission sales favor men. Discrimination may take the form of unwitting challenges to

³³ I. M. Young (1990). *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press; D. Rhode (1988). "Occupational Inequality." *Duke Law Journal*, pp. 1207–1241.

competence, expressing surprise at accomplishments, or having one's authority undermined. It can also occur in seemingly trivial forms known as microaggressions such as using a formal title for a man while calling a woman by her first name, using language with sexist connotations to describe women (e.g. "perky"), and talking about the world of work using military or sports metaphors. Unconscious bias is also reflected in the schism in awareness of executive men and working women about the state of emancipation in the workplace.³⁴

In many countries that seek to protect the less powerful, much overt sexual discrimination and harassment has been prohibited by legislation. Typically, this does not rely on the intent of the accused, but the perception of the victim. For instance, a man may think he is making a joke or meant nothing by touching a female colleague, but it is her reaction that governs. Moreover, the idea of a hostile work environment means that the harassment does not have to be direct or overt, only that it is sufficient to interfere with someone's performance at work. For example, in the United States, harassment is defined as follows: "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment."³⁵

Even if harassment is made illegal, many women may justifiably feel reluctant to follow up on an accusation and believe they will be branded as a complainer or not a team player if they object to workplace behavior. In many cases, authorities have replaced a "reasonable person" standard with a "reasonable woman" one, to offset the tendency of some men to diminish or dismiss the sensitivities of women in the workplace. Additionally, there has been a move to integrate training that mitigates the so-called bystander issue, where individuals witness harassment but are unwilling to intervene or uncertain about appropriate intervention.

³⁴ N. Carter and C. Silva (2010). "Women in Management: Delusions of Progress." *Harvard Business Review*, March, <https://hbr.org/2010/03/women-in-management-delusions-of-progress>.

³⁵ U.S. Equal Employment Opportunity Commission (2022). "Sexual Harassment," www.eeoc.gov/sexual-harassment.

Discriminatory Biases

Recent research has highlighted the impact of ingrained biases that skew our perceptions and behavior. Implicit bias happens when people make unconscious assumptions about others. Although unintentional, it is manifest in attitudes, behaviors, and actions that color our perceptions for better or worse. Many early studies had subjects who were asked to type responses as accurate or not to two-word phrases such as doctor/professional or doctor/manual labor. When value terms were introduced the delay in making some links rather than others highlighted the quick judgments we make, such as nurse/woman, and those that some people spent more time on, such as college dean/African American. One key finding was that people were unaware of their own biases and so merely being educated about them could not affect their attitudes.

Awareness training has been found to have limited effects unless supplemented by longer-term intervention and role-playing exercises where individuals can rewire their reactions somewhat. On the other hand, more formal procedures may slow down our reactions and force us to go through a mental checklist before making quick decisions.

The experience of the multi-billion-dollar international company Starbucks may be instructive. The company has advocated a commitment to anti-racism and diversity, but its implementation has been challenging. In 2015, Starbucks CEO Howard Schultz wanted to promote national discussions about race, and as a result encouraged baristas to write “#racetogether” on coffee cups and engage customers to “stimulate conversation, compassion and action around race in America.” The campaign was, in retrospect, somewhat clumsy and ill-prepared. It was widely derided at the time largely because the message from a company selling expensive coffee seemed to many to be inauthentic. Its hasty implementation put employees in the awkward role of ambassadors for social change when many customers were strangers anticipating quick service when buying a beverage to go. Moreover, critics noted that only three of the nineteen upper management team were people of color. Despite the negative response, Schultz, a white billionaire, persisted in the campaign. However, as one critic maintained, it was probably an act of hubris to think the company could ask front-line

employees to solve the nation's systemic addiction to racism over a Frappuccino, and the initiative was eventually terminated.³⁶

In 2018, two African American men were arrested in a Starbucks coffee shop in Philadelphia. They were waiting for a business associate and had not ordered anything, when one asked to use the restroom. The manager felt threatened and asked them to leave, but they refused. At that point the police were called and arrested them in handcuffs just as their colleague arrived. They were later released without charge. Some patrons took video recordings of the scene and shared it on social media, with one commenting, "All the other white ppl are wondering why it's never happened to us when we do the same thing." In effect, even if the manager disavowed racism, he nevertheless associated African American customers with a threat in a way he would not have done with others.

Two days later, the local mayor said the incident "appears to exemplify what racial discrimination looks like in 2018." In contrast, the police commissioner commented on Facebook that "officers did not do anything wrong." Protests mounted, and Schultz's successor CEO Kevin Johnson went to Philadelphia to meet the two men. As part of the company response, he ordered that all 8,000 stores shut down for a day for mandatory antibias training. When he reflected on what happened in Philadelphia, Johnson said, "We could not ignore the painful truth: Racial bias was at the heart of the incident, and it was reprehensible." In 2008, Starbucks had similarly closed for a day of training to improve the quality of the beverages and, given that he felt an urgent response was needed to address racial justice and conscious and unconscious bias, the closure was completely justifiable. The city later compensated the men and modified its arrest policy. The Police Advisory Commission in Philadelphia recommended antibias training for its officers, not only to counteract unconscious bias, but also to acknowledge the systemic roots that perpetuated those reactions.³⁷

³⁶ R. Hernandez (2015). "Here's What People Are Saying About Starbucks' 'Race Together' Campaign." *Jefferson Public Radio*, March 18, <https://bit.ly/3Quv6xj>.

³⁷ A. Orso (2019). "One Year Later: A Timeline of Controversy and Progress since the Starbucks Arrests Seen 'round the World." *Philadelphia Enquirer*, April 12, <https://bit.ly/3OsaMv4>.

Executives commented that the training made them more aware of their biases. “As leaders sometimes we fail to recognize just how much of our own thinking, behavior, decisions, policy-setting and responses are influenced by the greater society. At Starbucks we are trying to become more conscious of such forces and actively confront them.” Another executive observed:

White fragility also surfaced in these conversations, with white partners feeling a combination of dread, shame, curiosity and guilt . . . In session after session, managers pushed back . . . They didn’t know enough about their own biases to know how to confront them. One manager said, “Don’t put me in that position – I know a lot about a lot of things, but on this topic, I am also a learner.”³⁸

Starbucks publicly shared many of its training materials that explore bias toward groups that have been marginalized at the individual and system level, including with respect to race, gender, political culture, disabilities, sexuality, nationality, and age. One of its aims was to create workspaces where bias is confronted and awareness of bias becomes the norm, maintaining that businesses can be leaders for beneficial social change.³⁹

Almost a year later, Schultz stated, in reference to the incident in Philadelphia: “As somebody who grew up in a very diverse background as a young boy in the [government housing] projects, I didn’t see color as a young boy, and I honestly don’t see color now.” The claim to racial color blindness was seen by many as an insensitive denial of an obvious truth – that people view each other with racial distinctions. Schultz’s successor, CEO Kevin Johnson, pointed out in a training video that the term described “a learning behavior of pretending not to notice race. That doesn’t even make sense.” A woman who had videoed the incident commented, “They don’t understand how embedded these views are. If you can’t see color, you can’t be part of the solution, because you don’t

³⁸ V. Varma and K. Yamashita (2020). “Case Study of Crisis and an Affirmation of Character: The History of Starbucks Coffee Company’s Anti-Bias Efforts.” *People + Strategy Journal*, <https://bit.ly/3SzEmCj>.

³⁹ Varma and Yamashita, “Case Study of Crisis and an Affirmation of Character.”

see what the problem is.” And a Harvard professor observed: “That’s what makes the critique of systematic racism so important. It’s not just what happens to black people, but what doesn’t happen to white people.”⁴⁰

Even with its dedication to increasing racial awareness, Starbucks admits that it made missteps. In 2020, the company banned its employees from wearing materials supporting the Black Lives Matter (BLM) movement, citing that it could be “misunderstood and potentially incite violence.” The decision prompted a backlash and soon after the company reversed its position and distributed 250,000 Starbucks BLM tee shirts to its employees.

The Starbucks case is emblematic of several issues of justice and discrimination. Both Schultz and Johnson were well intentioned, to be sure. Nonetheless, the company is dealing with a legacy of historic and systemic harms that were not of its making, which characterized particular individuals as less valued or worthy. It also shows that changing corporate culture cannot be done overnight, especially when dealing with implicit biases where the evidence shows that awareness needs to be supplemented by long-term reinforcement. Changing attitudes and the way they are manifested in our behavior is not typically a conversion experience where the scales fall from our eyes and we admit that we were mistaken. Rather, embedded associations often require education, exposure, and rehearsal. The evidence suggests that a one-day training session is a start, but as with Aristotle’s ethical training we need to be required to act differently, have it become habituated over time, and only then internalized; to that end, written policies and procedures are an effective check and balance mechanism. Moreover, a business addressing cultural wrongs will have to incorporate the “tone at the top, the mood in the middle and buzz at the bottom” approach. In this case, Starbucks realized in its subsequent training that antidiscrimination competencies needed to be addressed for its entire workforce, not just senior management.

⁴⁰ V. Russ and A. Orso (2019). “How Saying ‘I Don’t See Color’ Went from Woke to Whitewashing.” *Philadelphia Enquirer*, February 15, <https://bit.ly/3v0GYyQ>.

Diversity, Equity, and Inclusion

Diversity initiatives can be seen in three different ways. They may be thought of as remediation efforts to mitigate past injustices; they may seek to make hiring and promotion procedures more fair; or they may actively encourage recruitment and integration of traditionally underrepresented groups. As we have seen, trying to redress past actions is tremendously difficult unless we can draw a straight line from harms done by a company to specific individuals. If someone had previously been denied promotion solely on the grounds that they were over a certain age, or because they were homosexual, there could be legal and moral remedies. It is more difficult to say that because systematic discrimination existed in the past, current people ought to be selectively advantaged. The more recent move has been to ensure that hiring and promotion processes are fair and inclusive and have a broader understanding of notions of merit. For example, a company might recruit from a wider range of educational institutions than it has traditionally.

Sometimes diversity goals may act as a tiebreaker. A well-qualified white executive could reasonably complain that they were being discriminated against if the position were given to a less qualified minority candidate, but in assessing these arguments we need to have a broad notion of qualifications, and in most cases all the candidates will have met threshold requirements. But if we take a broader view of merit, we may consider that background experiences, cultural awareness, and overcoming historical and systemic obstacles have value just as education and work experience do, so we can imagine that a diverse candidate is bringing more talent and potential to the table.

Robin Ely and her colleague David Thomas from the Harvard Business School originally identified three different motivational strands to promoting diversity. They call the first the *integration-and-learning* perspective, which primarily draws on the experiences of various cultural groups as resources that can be tapped to enable the firm to redefine its markets, products, strategies, and business practices.⁴¹ In contrast, the *access-and-legitimacy* view

⁴¹ R. Ely and D. Thomas. (2001). "Cultural Diversity at Work: The Moderating Effects of Work Group Perspectives on Diversity." *Administrative Science Quarterly*, 46, pp. 229–273.

recognizes that diversity within an organization gives it a strategic advantage and provides entry into previously neglected markets. As one CEO observed: “If the Latino community in America were an independent country, it would be the eighth largest economy in the world, comparable to India and larger than Italy, Brazil or South Korea’s GDP ... failing to include Latinos in corporate America is literally ‘money being left on the table’.”⁴²

The third motivation is less strategic. A *discrimination-and-fairness* view takes the position that having a culturally diverse workforce is a moral imperative to ensure justice and fair treatment of all members of society. It goes beyond legal minimums and actively counters prejudicial attitudes so that diversity of the workforce comes to represent just and fair treatment of all employees. Justifications for this diversity need not refer to the bottom line.

Over two decades after the publication of their seminal work, Ely and Thomas presented findings that speak against simplistic applications of notions of diversity. They make a forceful case that hiring diverse employees does *not* necessarily lead to better decision-making, stronger organizations, or increased profitability. Despite anecdotal stories and good intentions, there is little robust academic research that supports these claims. Their work now promotes a *learning-and-effectiveness paradigm* that says diversity initiatives must include three essential components. First, they reject easy platitudes about the complex topic of diversity. Second, they embrace a stakeholder approach that encourages managers look beyond return on investment as paramount and instead take business success to include factors such as learning, innovation, creativity, flexibility, equity, and human dignity. Third, they question how a company harnesses diversity and whether it is willing to adapt its own power structures.⁴³

The researchers note that even though 76 percent of Harvard Business School alumni espouse the view that a more diverse workforce improves a firm’s financial performance, there is little evidence to support it; in many

⁴² D. Hamilton, M. Fienup, D. Hayes-Bautista, and P. Hsu (2020). *2020 LDC U.S. Latino GDP Report*, California Lutheran University, <https://bit.ly/3Q4yGyt>.

⁴³ R. Ely and D. Thomas (2020). “Getting Serious about Diversity: Enough Already with the Business Case.” *Harvard Business Review*, 98 (6), <https://bit.ly/3bESNo3>.

purported cases what is being reported are correlations, not causality. On the other hand, research does support the claims of higher-quality work, better decision-making, greater team satisfaction, and greater equality as long as the firm has created the appropriate conditions – fostering inquiry, minimizing status differences, and recursive learning about its own functioning. Critically, meaningful change has to be inclusive, that is, diversity *and* inclusion. Successful initiatives have promoted practical involvement and the psychological well-being of nontraditional individuals by giving them the power to influence how work is accomplished and rewarded. Moreover, organizational leaders should become aware of the ways systems of privilege and suppression operate in their culture and how they may echo within corporations, which may relieve diverse hires of the duty to instruct their superiors about notions of supremacy. Inclusion is likely to involve all members of the organization learning about explicit and implicit discrimination, moral blind spots, and how to address their own fragility when challenged about some of their biases and stereotypical thinking. The authors note that meaningful diversity occurs in an environment of trust, active attention to all forms of discrimination, and acceptance of a wide range of personal styles.

Let us return to Ely and Thomas's point about fairness. They note that if we simply make the economic argument for diversity it has the effect of diminishing the importance of equality for businesses. Additionally, it may send the message to nontraditional employees that they deserve to be hired only because the firm want "their kind" in the workforce to maximize return on investment. Imagine the repugnance of a person of color or someone with disabilities who suspects that they have been hired only because they are a token toward diversity rather than being fully respected and valued for their contributions to the firm. The point is that academic research appears to say that a full-bore rather than lip-service commitment to diversity best fulfills the promises claimed for diversity initiatives and the demands of justice. Doing so, though, may mean letting go of some ingrained assumptions about power and merit, with some risk to the financial bottom line. Research demonstrates that we have a very natural tendency to default to behaviors and responses we are familiar with, a dynamic known as the *fluency heuristic*. Hence, reverting to current structural and

procedural systems in corporations that favor homogeneity are not preferable, just easier and more comfortable.⁴⁴

Summary

Appeals to justice are raw and compelling, but often lack the framework or language that will allow us to deal with competing claims and rationalizations. It is therefore important to create prescriptive norms and to be able to defend the way businesses and individuals deal with questions of justice and discrimination. Theories of distributive justice sets up principles for allocation of wealth and other resources when there is a finite amount to be shared, and the notions of equity, equality, and need are a useful starting point. We can also draw on the precept of “equals should be treated equally,” but must acknowledge it hides the fact that it is some entity that does the treating: In short, we cannot look at the concept of justice in isolation from parallel discussions about power, merit, and discrimination within the organization. As we have seen, equality does not mean sameness, and merit can be more than paper qualifications. Moreover, diversity initiatives in themselves do little to improve a company’s performance and may in fact create disharmony and inefficiencies if they are done for the sake of appearance rather than as a sincere commitment.

Issues for Reflection

1. What are material and nonmaterial factors in deciding equality?
2. Should the workplace accommodate those who want to take time away after birth or adoption?
3. If you were hiring casual labor, what factors would influence the amount you are willing to pay?
4. Are there practical ways to remediate historically discriminated groups?
5. Does business have a responsibility to lead society in terms of diversity and inclusion?

⁴⁴ D. Rock, H. Grant, and J. Grey (2016). “Diverse Teams Feel Less Comfortable – and That’s Why They Perform Better.” *Harvard Business Review*, 22, <https://bit.ly/3Qu6O6O>.

Case: Insurance Data

Data collection and analysis has been a growing element of business, and with the emergence of powerful search engines and social media huge amounts of data can be discovered about current and potential clients.⁴⁵ Patterns in the data that someone could piece together can yield immensely valuable information leading to a competitive advantage.

Auto insurance currently uses crude categories, including age and gender. Men typically pay more than women, based on aggregated claim records. If they were allowed, insurers might be able to make more precise predictions using factors such as testosterone levels or psychological tests.

In America, the financial services industry historically discriminated on the basis of race until the civil rights era. Race was a classification on the census and provided an easy way to analyze mortality rates as a proxy for socioeconomic factors such as low income. From an actuarial point of view, it seemed to make perfect sense, as there may be continuing mortality differences even today when groups are classified by race.⁴⁶

Insurance companies are moving toward “Roboadvising,” where an algorithm sorts candidates, and using artificial intelligence programs to assess risk. A company could run a series of regressions for different factors and come up with results that may turn out to be correlates rather than causes, perhaps linking seemingly questionable moral categories to discern client risk – gender, sexual history, race, number of social media friends, and so on. Some might be classes currently protected from discrimination, but the information might provide a considerable competitive advantage.

⁴⁵ This case is based on material developed for the Maguire Center for Ethics at the American College and used with permission.

⁴⁶ L. Brilmayer, R. W. Hekeler, D. Laycock, and T. A. Sullivan (1980). “Sex Discrimination in Employer-Sponsored Insurance Plans: A Legal and Demographic Analysis.” *University of Chicago Law Review*, 47 (3), pp. 505–560; M. Heen (2009). “Ending Jim Crow Life Insurance Rates.” *Northwestern Journal of Law and Social Policy*, 4 (2), pp. 360–399, <https://scholarlycommons.law.northwestern.edu/njlsp/vol4/iss2/3>.

Questions from the Case

1. What would be the fairest basis to levy car insurance rates?
2. Technology may allow us to access highly accurate information. Once those correlations are discovered, are there any boundaries that should not be crossed on moral grounds? For example, groupings by racial origin, religious affiliation, or sexual history?
3. Discrimination on material grounds (income, health, age) is deemed appropriate for life insurance. How do we distinguish material from nonmaterial factors?
4. Some classifications are due to factors that act as proxies (for instance, lower life expectancy among certain racial groups may be the result of socioeconomic factors, not race itself). However, the results may still be robust. Is it appropriate to use whatever categories emerge?

7 Rights

Case: Shipbreaking

Oceangoing ships have a lifespan of less than forty years. Most are made of steel, and up to 95 percent of their weight can be stripped down and reused. Each year about 700 ships are sold for scrap. Recycling avoids many costs associated with first use such as extraction and processing, using only a third of the energy to produce the end product; therefore, at first glance, it is an environmentally friendly process. There are two methods that can be used to dismantle a ship: It can be put into dry dock or, alternatively, run aground at full speed onto a shallow beach and taken apart at low tide.

It is cheaper by far to beach the vessel in facilities based in five countries that account for 90 percent of the shipbreaking industry: India, Bangladesh, China, Turkey, and Pakistan. This is mainly due to lax environmental regulations and lower labor costs compared to the highly regulated European and American yards. Alang, north of Mumbai, India, is one of the largest facilities, employing some 40,000 workers. Much of the labor is unskilled and attracts migrant workers. There is a long record of injuries and fatalities at these facilities, given the lack of personal protective equipment (PPE), slick surfaces, and the heavy slabs of metal involved.¹ Management claims that safety gear is available, but it is up to the workers to use it. It turns out that many laborers work without PPE even if it is provided as, for example, heavy boots hamper their productivity on the muddy beaches.

¹ OSHA (2021). "Hazards Associated with Shipbreaking." Shipbreaking safety fact sheet, <https://bit.ly/3PaBaKk>.

Many of the ships were constructed when there were fewer regulations governing the toxic materials used. The abundant asbestos is currently not considered a toxic material in India, and hence does not merit special processing. The bilge is filled with a mix of fuel and chemicals that are liable to explode in confined areas. As a report by the World Bank states, “Sound management of asbestos, polychlorinated biphenyls (PCBs) and ozone-depleting substances and a range of heavy metals is virtually non-existent.”² The levels of mercury and oil on the Alang beach is 100 times more than comparable areas not engaged in shipbreaking.³

The Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships governs best practices in the industry. It is sponsored by the International Maritime Organization, but so far it has not been ratified by the majority of members.⁴ Greenpeace, a non-governmental organization (NGO), has actively engaged in the Indian courts to promote safer practices, but was rebuffed by its local membership as they thought such action would only serve to encourage the industry to move elsewhere where conditions might be even worse. Some governments prohibit ships registered in their countries from being dismantled by beaching. However, owners often maneuver to circumvent regulations. For example, in 2020 two British cruise ships from the 1960s were sold on the condition that they were to continue working as floating hotels. The buyer subsequently claimed the plans did not work out and sent them to India as scrap once they had been reregistered overseas.⁵

At first glance, it seems that protecting workers is an unqualified good. The local government may see nothing wrong with the state of the industry, perhaps comparing it to European conditions at the same level of development a century ago. Yet there is something troubling about the case: Regardless of whether or not conditions are acceptable in different societies

² World Bank (2010). *The Ship Breaking and Recycling Industry in Bangladesh and Pakistan*, <https://openknowledge.worldbank.org/handle/10986/2968>.

³ The Economist (2019). “The World’s Biggest Ship-Breaking Town Is under Pressure to Clean Up,” March 7, <https://econ.st/3dhNwmN>.

⁴ Basel Convention, “Ship Dismantling,” <https://bit.ly/3p6HkAQ>.

⁵ K. West and M. Gibbs (2021). “UK Cruise Ships Scrapped in India’s ‘Ship Graveyard’.” BBC News, March 2, www.bbc.com/news/uk-56196069.

at different times, there may be a point where the way we treat people is not context dependent. It may just be wrong to expose unprotected individuals to asbestos and other toxins. Do people have a right to safe working conditions? Can they forgo those rights if they choose to, or is any amount sufficient to compensate them for the risks they face?

Rights in the Workplace

Initially, it may seem that the market influences rights in the workplace. Consider the way that some jobs pay “danger money.” Some workers on high-rise construction or oil rigs are paid more in recognition of the fact that they are doing something risky. There is a market in labor, and it has found a price where certain workers are willing to face peril. At the same time, we might consider that there ought to be rights that cannot be made into commodities – that is, we should not allow people to put these rights on the market, even if they wanted to. So, for instance, in the interests of productivity, a meatpacking plant might decide to issue less protective gear to cutters and pay them more to offset the increased risk of harm. Although we can imagine the meat plant using a cost/benefit analysis, it may be wrong to make safety decisions based purely on finance. An entirely economic analysis would suggest that it is acceptable to put a price on jeopardy in the workplace, and it seems appropriate that a firefighter is paid more than an office worker. Yet, at the same time, we want to say that life is infinitely precious and we should not put a price on it.

The issue comes down to whether we agree that there are areas that are morally out-of-bounds. For instance, we may have rights to personal safety, so that as a society we order airlines to have minimum levels of maintenance and training or require that lawn mowers automatically shut off when unattended, even if there is a demand for cheap goods and services from people willing to take the risk of hurting themselves. Mandatory testing and regulation serve to discover information and control standards prior to people being hurt. Whether in employment or in the production of goods, the market can only find a stable price for compensation after several people have been injured, and thus it is a reactive instrument. As a society

we may impose preemptive regulation that actively protects us so that a market in human risk does not have a chance to evolve.

Similarly, the fact that compensation alone does not give people a sense of justice is a clue that there are areas – such as privacy, safety, or freedom of religion – where the market simply should not apply. An individual who loses a finger or is spied on in the restroom at work may go to court and get some payment, but that is not usually a deal the person would have made, given the choice, and very few would accept money in exchange for changing their religion. So if, for example, someone breaks their leg but wins the lottery in the same week, we might ask how much they would have to win in order to say that it was not such a bad week after all. We can then say that a value has been placed on the broken leg. Yet we should realize that although this tells us how much compensation might be appropriate in any given incident *after* it has taken place, many people would say that they would rather avoid the experience for any amount of money if they were offered the deal ahead of time, especially when the issue is about infringing rights.

As we have seen, rights can conflict with maximizing utility. For example, a firm and many of its employees may do well by blaming poor performance on an unwitting branch manager overseas, or a woman might unknowingly be hired as “eye candy” for her male manager. However, at some point an appeal to rights “trumps” all, a term from playing cards that signifies that one card wins out no matter what the other players hold.⁶ A trump claim might suggest, for instance, that it is wrong to objectify a woman without her consent or that we cannot force a tribe from its native lands in order to graze cattle whatever the potential rewards might be. Another way of putting this is to use Robert Nozick’s terminology of *side constraints*, which prohibit certain actions that violate personal rights. As he says, it is wrong to use people for the benefit of others unless they are aware of the dynamics and get some benefit from their sacrifice. He would object to workers being subjected to mandatory overtime or hazardous duties unless they freely consented and were appropriately compensated.⁷

⁶ R. Dworkin (1984). “Rights as Trumps,” in J. Waldron, ed., *Theories of Rights*. Oxford: Oxford University Press, pp. 153–167.

⁷ R. Nozick (1974). *Anarchy, State and Utopia*. New York: Basic Books, p. 32.

Positive and Negative Rights

The language of rights is pervasive in business ethics. Initially, we need to make two major sets of distinctions that underlie the discussion. The first echoes one we encountered with responsibility (Chapter 4), where rights can be described as positive or negative. One way to think about these is to draw on the *Miranda* warning that police in the United States give when arresting a suspect. They use words along the lines, “You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford an attorney, one will be provided for you at government expense.”⁸ There are two different kinds of rights asserted in the warning. The right to remain silent is a negative right, in that no one has to do anything to uphold it. In other words, it is an immunity or shield from outside interference. In contrast, the suspect will be provided with an attorney, even at state expense. This is a positive right because it requires action for the right to be preserved. In that sense, it is a claim or entitlement that can be made on other people. Thus, the right to free speech may be seen as a negative right, since it means that authorities just have to refrain from censorship, whereas the right to adequate shelter may require some agency to actively provide housing. Historically, at the time of the American Revolution the United States largely concentrated on rights that kept the government out of local affairs, and so the stress was on negative rights. Over the past hundred years or so, however, the discussion of rights has widened to include notions of entitlement.

It is also important in these discussions to note that rights and duties are not two sides of the same coin. That is, a positive right may drive a correlative duty as in the case of the state having to provide a lawyer if an arrested person asks for one. However, there are classes of duties where individuals may have a moral obligation, such as giving to charity, but there is no corresponding right to receive it. So while the two concepts are closely entwined it is important to parse out exactly what kind of right is involved and whether it imposes demands on others.

⁸ U.S. Constitution, “The Miranda Warning,” www.usconstitution.net/miranda.html.

Distinguishing Rights and Privileges

The other major distinction between sets of rights is between what are sometimes called basic or natural rights, and privileges. A long tradition maintains that we have rights by virtue of being human, so that, for instance, it is wrong to torture or enslave people simply because they are people. Thus Thomas Paine, an intellectual inspiration for the American Declaration of Independence, asserted that we have universal rights not subject to state control – fundamentally, those of liberty, property, and security.⁹ The primary focus is on individuals, and the state is an artificial creation that serves people by promoting their liberty and happiness. As we find in the Declaration of Independence, these kinds of rights are considered “self-evident.”¹⁰ The broad term for this approach is *legal naturalism*, since it holds that laws are an attempt to codify a fundamental threshold of morality inherent in nature. It rejects the validity of laws that appear to go against basic moral norms.¹¹

The contrasting view, *legal positivism*, suggests that rights only arise within a legal framework. Jeremy Bentham took issue with natural rights, believing they were a dangerous and misguided fiction. As he put it, “In proportion to the want of happiness resulting from the want of rights, a reason exists for wishing there were such things as rights . . . a reason . . . is not that right – want is not supply – hunger is not bread . . . Natural rights is simple nonsense . . . rhetorical nonsense, – nonsense upon stilts.”¹²

⁹ See, generally, T. Paine (2008 [1791]). *Rights of Man, Common Sense, and Other Political Writings*, ed. M. Philip. Oxford: Oxford University Press. The wording is echoed in the American Declaration of Independence, which asserts rights to Life, Liberty, and the Pursuit of Happiness.

¹⁰ The Virginia Declaration of Rights (June 12, 1776), asserting natural rights and initially drafted by George Mason, is considered to have formed the basis of the American Declaration of Independence (July 4, 1776) drafted by Thomas Jefferson and the Bill of Rights (1789), the first ten amendments to the American Constitution, drafted by James Madison.

¹¹ This is captured in the motto *Lex iniusta non est lex* (“An unjust law is no law at all”), St. Augustine (1964). *On Free Choice of the Will*, trans. A. S. Benjamin. Indianapolis, IN: Bobbs-Merrill, Book I, Chapter 5.

¹² J. Bentham (1962 [1843]). “Anarchical Fallacies,” in J. Bowring, ed., *The Works of Jeremy Bentham*, Volume 2. New York: Russell and Russell, p. 501.

This is not to say that Bentham thought all rights talk was foolish. Rather, he felt that we need to recognize that laws are made by humans and ideally should work toward human happiness, and thus all rights are conditional upon the societal backdrop. The strongest form of this view would treat all rights as *privileges*, which are powers we are given that may be withdrawn. Hence, the right to drive a car is more properly described as a privilege, since the state sets down the appropriate qualifications and may take them away if, say, a person is discovered driving while under the influence of alcohol. The question at hand is whether there are any rights that cannot be retracted. For example, although many in the West think there is a personal right to reproduce, that freedom may really be a function of the society we live in, with nothing special or inherently valuable involved. Rights that derive from a legal system are usually described as *civil rights*, and those that are said to apply universally are termed *human rights*.

Thus, we can describe four basic categories of rights: positive and negative human rights and positive and negative privileges. The discussion becomes cloudier when we talk about rights that are unrecognized or unfulfilled: Workers may have a right to associate with others to form a union, but the firm or government may ban any meetings. The fact that workers are prevented from unionizing does not necessarily mean that the right does not exist, only that it is suppressed. Viewed in this way, a legal right is less compelling, since it can be scaled back or rescinded by a legislative body, whereas a moral right would endure across time and cultures.

An open question is whether we can forfeit rights, and again this is perhaps easier to consider with legal rights. We may have a right to vote, but that can be forfeited if we behave in certain ways – if we are convicted of a crime, for example. The right to vote can also be rescinded on the grounds of mental incompetence, which shows that it is a qualified right. Compare this to, say, the right to bodily integrity, which prevents people from being used for medical experiments against their will and is not surrendered just because people have lost physical or mental capacities.

Another class of rights is termed *inalienable*. We might voluntarily assent to some activities that compromise our rights, like becoming a compensated human test subject for pharmaceutical trials or, less

dramatically, being paid at work and not being able to leave whenever we want. We often release rights and give other people powers: A boss might tell us that we cannot take more than an hour for lunch, for instance, or that we cannot smoke in the office building. However, there may be cases where we are legally prevented from doing something we might agree to, such as selling our internal organs for transplants or putting our citizenship on the market. These are inalienable in the sense that we cannot detach them even if we want to.

Recent Initiatives

Two distinct lines of debate emerge from the philosophical framework. First, there is the question of what rights are; second, there are issues about who holds the rights, what priority they have, and who has a burden to act. Although people often disagree about the fundamental nature of rights, there is considerable consensus around several key features. First, rights are more important than norms and provide a benchmark of minimally acceptable behavior. It may be a norm in Western society to provide free secondary education or three months of unemployment compensation, but to assert something as a right is more compelling and implies duties on other parties to allocate resources or protections. An associated claim is that rights are universal, so that they apply to all regardless of gender, race, nationality, social standing, or other factors.¹³

The tricky cases are those where a host nation allows the behavior, which may be traditional or accepted, but strikes us as violating individual rights in ways that we would not tolerate in our own society. For example, the local population might be divided along racial, religious, or sectarian lines and the question then arises as to whether a company that has set up a facility in the host country should follow the local pattern of discrimination or actively engage in some remedial action.

In response to those who maintain that all rights are legal and local (a strict legal positivist viewpoint), we could look to the precedent of

¹³ These conditions are drawn from J. Nickel (1987). *Making Sense of Human Rights*. Berkeley: University of California Press.

international agreements. For example, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is widely used as a standard for international law. It was developed from the United Nations Declaration of Human Rights and has been endorsed by 171 countries since 1976. Notably, the United States has signed but not ratified the covenant.¹⁴ Among the rights it asserts are freedom from discrimination; life, liberty, and security of the person; freedom of religion; freedom of assembly; freedom from torture; equality before the law; freedom of expression; freedom from arbitrary arrest and the right to a fair trial; privacy protections; and freedom of movement. Significantly, it has a section on economic rights that includes a right to work at a job of one's own choosing; fair wages; an adequate standard of living; safe and healthy work conditions; rest periods and holidays with pay; and explicit rights to form unions and to strike.

The latest United Nations initiative is the Global Compact that lists ten principles drawn from the Declaration of Human Rights. A former UN Secretary-General, the late Kofi Annan, challenged business leaders to set benchmark standards of practice and offered the resources and facilities of the United Nations to promote them. Launched in 2000, companies signing the Compact are required to “embrace, support, and enact, within their sphere of influence, a set of core values in the areas of human rights, labor standards, the environment and anti-corruption.”¹⁵ To date, over 14,000 companies have voluntarily joined the initiative including many Fortune 500 top international corporations, such as Microsoft, Johnson & Johnson, Starbucks, Nike, Royal Dutch Shell, and Cisco Systems. The Compact is also open to NGOs, unions, and academic institutions. The Compact is not binding but announces that a company is willing to be publicly accountable and transparent in its practices, judged against a common baseline standard. Let us now turn to a historic case that illustrates some of the major issues involved in applying a rights-based analysis to business.

¹⁴ United Nations (1966). “International Covenant on Economic, Social and Cultural Rights,” www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

¹⁵ United Nations Global Compact. “The Ten Principles of the UN Compact,” www.unglobalcompact.org/what-is-gc/mission/principles.

The Niger Delta

The Niger Delta in the southeast of Nigeria has some of the world's richest oil reserves. The area is home to many indigenous groups, including the Ogoni tribe whose traditional lands are a relatively small but densely populated region of just over 400 square miles near the oil field. A subsidiary of Shell began drilling in 1958. Reports describe pipelines built across farmland, fields churned up by heavy vehicles, widespread leaks that contaminated the soil and water, and constant flaring – a practice of burning off excess gas at the wellhead that leads to acid rain. The Ogoni traditionally lived off subsistence farms supplemented by coastal fishing, both of which been decimated by pollution.

After a massive spill in 1993, the Ogoni formed the Movement for the Survival of the Ogoni People (MOSOP) to protest environmental and human rights abuses. The organization issued the 1990 Ogoni Bill of Rights that demanded the cleaning up of oil spills; a reduction in gas flaring; fair compensation for lost lands, income, and resources; a share of profits from locally extracted oil; and self-determination.¹⁶ It sought \$10 million from Shell in compensation. It is estimated that Shell earned over \$30 billion from Nigerian oil, although it employed few Ogoni and, at the time, did not engage in social projects. It appears that Shell colluded with the government in quelling protest. Human rights organizations claimed that when Shell requested protection, the police and army reacted swiftly and violently. Some MOSOP activists were murdered, and the police arrested eight other members of the organization, including the internationally renowned poet Ken Saro-Wiwa, putting them on trial before a military tribunal for allegedly murdering four Ogoni chiefs. They were convicted and hanged on what many considered sham evidence, despite international political condemnation and protests. Shell's reaction was that it could not meddle in the internal affairs of a sovereign nation, although the vast majority of Nigerian revenues came from oil and the country was run by a military dictator whose regime was viewed as thoroughly corrupt.

¹⁶ ESCR-Net. "Movement for the Survival of the Ogoni People (MOSOP)," www.escr-net.org/member/movement-survival-ogoni-people-mosop.

In recent years, peaceful protest has given way to action by militia groups including oil piracy, weapons smuggling, and kidnapping. Oil companies often pay the ransom and seek to prevent attacks by hiring hundreds of local people for nominal jobs for short periods.¹⁷

The Organization of African Unity (OAU), created by governments on the continent, called for Nigeria to initiate a comprehensive cleanup of lands and rivers damaged by oil operations and required assurances that future development would not negatively impact local communities. The OAU set up the Commission on Human and Peoples' Rights that would recommend changes. However, the main function of the Commission is to carry out "sensitisation, public mobilisation and information through seminars, symposia, conferences and missions" and its actions did not lead to dramatic improvements in the area.¹⁸

This case illustrates several issues involving rights. The first is whether there are rights that exist apart from, or above, the legal system. If rights can only derive from a legal system, what do you do when the government is corrupt or ineffective? Nigeria, for example, consistently ranks in the bottom quarter of Transparency International's corruption index, ranking 149 out of 181 countries in 2020.¹⁹ Most people have trouble with the idea that only those lucky enough to be born in a developed country, with a responsible government, are entitled to clean water or the right to make a living.

It also shows that even though we often think of rights as a case of all or nothing, it may be useful to consider them in a more graduated way. Thomas Donaldson has developed such a ranking, and he additionally cautions us to be wary of a "one size fits all" approach that might turn discussions about rights into a promotion of cultural imperialism. He maintains that we should cherish those basic human rights such as

¹⁷ I. Albert, N. Danjibo, and O. Albert (2020). "Back to the Past: Evolution of Kidnapping and Hostage Taking in the Niger Delta, Nigeria." *Beijing Law Review*, 11, pp. 211–226, <https://doi.10.4236/blr.2020.111015>.

¹⁸ African Commission on Human and Peoples' Rights, "Mandate of the Commission," www.achpr.org/mandateofthecommission.

¹⁹ Transparency International, "Corruption Perceptions Index, 2020," www.transparency.org/en/cpi/2020/index/nga.

owning property and self-determination that are the threshold of all business activity. Beyond that he thinks that we need to bear in mind the economic realities in what he calls a fairness/affordability test.²⁰ *Affordability* in Donaldson's sense is making sure the most basic rights are given highest priority – for example, we have to recognize that security matters before, say, concerns about working hours. If a country is in anarchy and run by militias, then those issues must be addressed before we can deal with other rights claims. Furthermore, he suggests we ought to be open-minded about local traditions and realize that the cultural context matters in deciding what is right and what is wrong.²¹ His listing suggests that businesses should not deprive people of the right to subsistence, nondiscrimination, and freedom of speech and association. In his view, it would be wrong for a company to deny people the chance to provide for themselves, for instance, by mining their traditional lands without adequate compensation. On the other hand, requiring workers to perform a mandatory exercise program in the morning before work would probably not amount to a human rights violation.

Difficulties arise in determining which practices amount to efficient use of labor by a firm with a bargaining advantage, as opposed to violating individual rights. Additionally, there are times when it is in the company's immediate interest not to promote some rights, such as the freedom to form unions and to strike. The UN's ICESCR is more demanding than Donaldson, insisting on fair wages and an adequate standard of living. Recall that people may have rights that are ignored or suppressed, and the fact that abuses happen does not refute the argument that workers have certain entitlements.

So far, it seems that the duty to safeguard rights primarily lies with sovereign governments. However, in the Nigerian case it appears that Shell and other companies have operated jointly with the government to some extent, or at least stood mutely by when they were aware of gross

²⁰ T. Donaldson (1989). *The Ethics of International Business*. New York: Oxford University Press.

²¹ T. Donaldson (1989). "Moral Minimums for Multinationals." *Ethics and International Affairs*, 3 (1), pp. 163–182.

violations. The contemporary philosopher Henry Shue has divided the duty to uphold rights into three categories:

1. rights that we should not deprive
2. rights that we should help protect from deprivation
3. rights to bring to the deprived.²²

For example, if a multinational company operates in a host country that abuses rights, the company will face the issue of whether it should operate by the prevailing standards or, at the other extreme, intervene to provide rights to its workers and the community. It might be more appropriate for an oil company to claim that it should not be expected to do what is properly the job of the government when it comes to, say, building schools. Yet, it is not as clear that Shell should either ignore or not work to rectify the pollution that destroys the livelihood of the community when there are unmistakable links between its operations and ill effects. After years of legal wrangling, and even though Shell ceased operating in the Niger Delta in the 1990s and denied responsibility for causing human and environmental harm, a Dutch court ordered it to pay restitution of \$111 million in 2020 for its role in polluting the area.²³ Therefore, it is important for companies to decide what constitutes basic rights and at what point they have a moral duty to become involved, whatever the existing norms.

Sweatshops

Another topic that benefits from a rights-based analysis is the case of sweatshops. Some industries rely on low-skilled or unskilled workers and often operate on very small margins. These conditions, together with fierce competition within the economic sector, lead to a situation where firms can relocate easily and workers are dispensable. Employees who take jobs like these usually have few other choices and are ripe for exploitation. Because employment is only on a casual basis, there will likely be no benefits or protections for workers. Typical abuses include low wages, child labor,

²² H. Shue (2020). *Basic Rights*. Princeton, NJ: Princeton University Press, pp. 52–55.

²³ Deutsche Welle (2021). “Shell to Pay \$111 Million for 1970 Niger Delta Oil Spills,” August 12, <https://bit.ly/3QdRsTY>.

health and safety compromises, intimidation, and harassment. In a typical case, investigators in Los Angeles found undocumented Thai and Mexican garment industry workers kept in a compound surrounded by razor wire, working twenty-hour days for a dollar an hour. They were threatened with rape or beatings if they failed to meet their sewing quotas.²⁴

Sweatshop practices are not confined to developing countries but are a function of prevailing economic conditions, including the powerlessness of undocumented workers. A second connotation of sweatshop, then, refers to systematic violations of workers' rights, and these need not be confined to subcontractor factories making shoes or clothes. Several multinationals have set up monitoring systems to ensure decent working conditions, largely in response to public outrage when factory conditions are revealed.

Historically, sweatshops have migrated elsewhere in the face of increasing levels of employee skills and mounting worker activism, and some commentators see this as an inevitable stage in economic development. However, this assumes that workers are allowed to freely associate, whereas many firms in fact vigorously resist the development of unions, sometimes with the collusion of government agencies.

The language of rights now allows us to make another vital distinction. Whereas we may not condemn factories using low-skilled workers out of hand, nevertheless we have grounds for criticizing a workplace that violates basic rights. Thus, it would be wrong to judge clothing by its country of origin alone, since these abuses can happen anywhere. We should also be careful when looking at pay rates and conditions without reference to the societal context. In order to make appropriate comparisons, we need to be aware of the prevalent standard of living and what constitutes a "living wage" in assessing a situation. Workers may be poorly paid, especially by Western standards, yet if they are not coerced to work, have alternatives, and elect to take the job knowing the conditions their contract would be acceptable under a capitalist model. At the same time, rights language enables us to explain why it is universally wrong to force eight-year-olds to sew soccer balls in harsh factory conditions.

²⁴ K. Ellis and K. T. L. Tran (2016). "Sweatshops Persist in U.S. Garment Industry," *Women's Wear Daily*, December 5, <https://bit.ly/3dij9g2>.

Rights and Accountability

We can make two interim conclusions. First, when discussing rights, it is important to be as specific as possible. A broad-brush accusation of human rights abuse is unlikely to be effective. Instead, we should draw on our initial distinctions to see what sort of right is owed to whom and by whom within a particular cultural context, as well as considering the level of economic development. Discussions about, say, a living wage must be nuanced by reference to prevailing wages and the cost of living. Moreover, there are some issues that may offend Westerners but, when examined closely, are concerned with a privilege rather than a basic right. For example, the practice of nepotism in hiring is widespread in Asia and seems to go against rights to nondiscrimination. However, given the background of significant unemployment, acceptance of the practice within the culture, and its social utility in preserving the family structure, it is less clear that it would be considered abuse.²⁵

Second, we need to think about where the moral onus should lie when it comes to preserving and protecting rights. Four major candidates come to mind: (a) governments, (b) companies, (c) NGOs, and (d) consumers. Governments can regulate internally and can influence other countries as a matter of political policy. Notoriously, though, some rights abuses are taken much more seriously than others. In the United States, for example, there are fewer than 2,000 health and safety inspectors for the 130 million workers employed by 8 million domestic contractors, or 1 compliance officer for every 70,000 workers.²⁶ The mobility and casual nature of many of these operations also makes it difficult for the authorities to police them.

Externally, the European Union and the American government have imposed economic sanctions on China for using biometric tracking of millions of Uyghurs; Bangladesh for employing hard-line paramilitary police methods; North Korea for exploiting cheap labor; and Burma for internal

²⁵ T. Donaldson (1996). "Values in Tension: Ethics Away from Home." *Harvard Business Review*, 74 (5), pp. 48–62.

²⁶ U.S. Department of Labor (2021). "OSHA Commonly Used Statistics," <https://bit.ly/3SD4pbz>.

repression.²⁷ However, in the opinion of some experts, “a rapidly changing global economy means that unilateral economic sanctions are decreasingly useful yet increasingly costly. If sanctions are to have any chance at all of producing favorable outcomes, they must be multilateral, they must be carefully formulated, and they must be vigorously enforced.”²⁸ For example, after the brutal reaction to the Tiananmen Square uprising, America tried to impose economic sanctions, but the efforts were thwarted by China’s refusal to make concessions and by US’ business pressure to maintain trade links.²⁹ Plausibly, a transnational body such as the UN Human Rights Council (created in 2006) could take on this role, although currently its main functions appear to be advisory and symbolic rather than punitive.³⁰

Companies themselves may assume the role of protecting human rights. Many major firms now incorporate rights language into their corporate codes of conduct. Additionally, there have been initiatives where companies are certified as being in human rights compliance. The AccountAbility network, for example, promotes an assurance standard – AA1000 – that members seek to achieve based on best practices for all stakeholders.³¹ Similarly, Social Accountability International specifically awards the SA8000 standard to companies that promote human rights for workers.³² These are voluntary certifications, yet they have attracted interest from many of the world’s major firms. However, Prakash Sethi, an expert on international labor rights, comments that some major corporate self-regulating systems “are surrounded by a fog of aspirational language and opaque success claims, with no amount of verisimilitude able to lend them meaningful credibility.”³³ Nevertheless, affiliation with such organizations

²⁷ U.S. Department of the Treasury (2021). “Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day.” Press release, December 10, <https://home.treasury.gov/news/press-releases/jy0526>.

²⁸ K. Elliott (1997). “Evidence on the Costs and Benefits of Economic Sanctions.” Peterson Institute for International Economics, October 23, <https://bit.ly/3BT3RbH>.

²⁹ C. E. Dalpino (1999). “Human Rights in China.” Policy Brief #50, The Brookings Institution, Washington, DC.

³⁰ www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx.

³¹ www.accountability.org/. ³² <https://sa-intl.org/programs/sa8000/>.

³³ P. Sethi and J. L. Rovenpor (2016). “The Role of NGOs in Ameliorating Sweatshop Conditions in the Global Supply Chain: The Case of the Fair Labor Association (FLA)

represents a commitment by the companies to publicly available benchmarks.

A third monitoring system comes from NGOs. These are groups that are not directly affiliated with industry or government. They include human rights organizations such as Amnesty International, Human Rights Watch, and the Lawyer's Committee on Human Rights, which survey and report on industry practices. Labor unions and their international agencies work to promote the interests of workers. Some movements are centered on a particular industry – the American Clean Clothes Campaign, for instance, seeks to improve fair trade in the apparel industry.³⁴ A specific firm could also be the focus of a campaign for improvement – for example, the “McSpotlight” website dedicated to monitoring the McDonald's Corporation.³⁵ There are also NGOs associated with shareholder groups that want to practice socially responsible investing by avoiding firms with questionable practices, as well as religious-based groups that monitor issues of social justice and welfare.³⁶

The fourth candidate for preventing rights violations is the consumer. Companies may tolerate abuses, but if consumers boycott goods that do not have a union-made label, firms get a clear economic signal about the values of their customers. However, to be effective a boycott needs to be embraced by large numbers of consumers acting in concert. For example, various student groups have recently pressured university authorities to ensure that the \$4.6 billion a year university-sponsored clothing sector – so-called logo wear – is made in factories with reasonable conditions.³⁷

and Social Accountability International (SAI).” *Business and Society Review*, 121 (1), pp. 5–36. See also, R. M. Locke (2013). *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy*. New York: Cambridge University Press.

³⁴ <https://cleanclothes.org/>. ³⁵ www.mcspotlight.org/index.shtml.

³⁶ See, for example, L. Taraldsen (2021). “A \$1.4 Trillion Fund's NGO Ties Offer Social-Investing Path.” *Bloomberg.com*. June 8, <https://bloom.bg/3vfEkW5>; C. Louche, D. Arenas, and K. C. Cranenburgh (2012). “From Preaching to Investing: Attitudes of Religious Organizations Towards Responsible Investment.” *Journal of Business Ethics*, 110 (3), pp. 301–320.

³⁷ See, for example, www.workersrights.org/; R. Ratcliffe (2012). “Students: ‘We’d Rather Go Naked Than Wear Sweatshop Clothing’.” *Guardian*, November 29; H. Bundrick

Challenges to Rights Frameworks

Rights talk can be criticized as characterizing a particularly liberal, secular, and male perspective. While very few commentators entirely dismiss the notion of human rights, they point out that we must consider that individual rights need to be thought of in a broader context. Let us briefly turn to each.

Communitarianism

One contemporary challenge to the primacy of individual rights in discussions of business ethics comes from the *communitarian* movement. Communitarians claim that individual rights should be balanced with responsibilities to the community. In contrast to the enlightenment notion of the individual being paramount, communitarians contend that human identity is based first and foremost on our social nature, as we establish ourselves in families, with friends, and in communities. Therefore, they suggest that it is a mistake to begin with the idea that we are all individual actors, making isolated decisions out of self-interest; rather, we should emphasize our common bonds. Communitarians often use the metaphor of a three-legged stool: our lives are supported by the state and by the free market economy, to be sure, but we also need a social sector.³⁸ Seen in this way, there are times when individuals need to look to the good of society as a whole and compromise some of their individual rights.

Communitarians themselves resist traditional political labels. Many from the political right would embrace state-sponsored moral education, enhancing the strength of the family, or limiting privacy rights to boost state security – acts that appear contrary to individualism. In business terms, they would say that corporations are a necessary element in our social fabric, but argue that they should not thrive at the expense of putting stress on family unity and that they have a duty to preserve or enhance social groups

(2021). “This Shocking Amount Is Spent Annually on Licensed College Merchandise.” *The Street*, August 27, <https://bit.ly/3b0HWEH>.

³⁸ D. Bell (2020). “Communitarianism.” *The Stanford Encyclopedia of Philosophy*, <https://plato.stanford.edu/entries/communitarianism/>.

and neighborhoods. For example, corporations ought to encourage flexible working or provide daycare for children.³⁹ Communitarians would also favor social engineering through programs such as affirmative action that aim at overall societal benefit, even though they might override individual rights in particular cases. Although they would not completely abandon talk about rights, they see individual rights as often falsely framing our discussions in the sense that if we construe an issue by initially focusing on individual right-holders, then larger questions about societal good and what it means to have a meaningful work and home life may subsequently be shunted aside.

Insights from Non-Western Philosophy

Some philosophies emphasize the priority of community over the individual. Watsuji Tetsuro (1889–1960), for example, proposes that we depend on a web of relationships. In fact, the Japanese word for “ethics” is a composite of two characters, *Rin* and *Ri*. *Rin* refers to companionship, and *Ri* to reasons or principles. Hence, ethics is essentially a question of examining human relations, and its fundamental assumption is that humans are at once both individuals and involved in continuing social interaction. Given that assumption, obligations to one another will not come from the demands of individuals, but rather from an awareness of what a true-hearted person would do in the web of relationships. In a court case, for example, a judge would not simply consider conformity to the law in making a decision without looking at the particularities of a given situation and the wider circumstances. This type of Eastern adjudication is typically less adversarial than in the West. The downside of this view, at least to Western thinking, is that someone with a justified case in which personal rights have been violated – by, for example, unfair treatment by a supervisor – is unlikely to have many avenues for recourse or appeal after a ruling.

Reliance on relationships and community rather than rights affects what we think of as corporate social responsibility. Traditionally, we have looked

³⁹ See, for example, A. Etzioni (1993). *The Spirit of Community: Rights, Responsibilities, and the Communitarian Agenda*. New York: Crown Publishers.

at businesses as operating in a separate sphere from the rest of society, with a right to make profits, but with the expectation that they have a social conscience about the way they go about it. However, if we see business as intertwined with society, then we cannot disconnect the good of business from what is good for us overall. This perspective expands our range of issues, moving from the specific concerns of, say, worker safety or establishing a living wage to larger concerns about how the business is contributing to society. Thus, asserting personal property rights – for instance, the right to own a car in China – may be shortsighted without looking at the wider issues of environmental impact and the state of China’s infrastructure; only then can we tell whether increasing the number of vehicles serves the common good. Therefore, it is important to use the widest possible perspective first when we apply concepts of rights in analyzing business practice, especially when other cultures are involved.⁴⁰

Religious Perspectives

Many of the leading world religions also promote duties that look to the general welfare of mankind and the environment rather than emphasizing the primacy of the individual.⁴¹ Christianity warns of excessive greed and strict adherence to contracts, but in general looks to the common good. Muslims base their ethical approach from the holy book *The Qur’an* and the teachings of Muhammed recorded as the sunnah. The faith looks to concepts of human well-being based on an individual’s relationship with God, and unity among humankind as creatures of God, called Tawhid. At the same time, the overall focus is on community welfare and obligations of the employer rather than asserting individual rights as such.⁴²

⁴⁰ See K.-C. Lam (2003). “Confucian Business Ethics and the Economy.” *Journal of Business Ethics*, 43 (1/2), pp. 153–162; D. Koehn (1999). “What Can Eastern Philosophy Teach Us about Business Ethics?” *Journal of Business Ethics*, 19 (1), pp. 71–79.

⁴¹ D. Melé and J. Fontrodona (2017). “Christian Ethics and Spirituality in Leading Business Organizations: Editorial Introduction.” *Journal of Business Ethics*, 145 (4), pp. 671–679, <https://doi.org/10.1007/s10551-016-3323-3>.

⁴² Universal Islamic Declaration of Human Rights (1981). Islamic Council of Europe, http://hrlibrary.umn.edu/institute/islamic_declaration_HR.html.

Nonhuman Rights

So far we have discussed rights as belonging exclusively to humans. The justification for this exclusivity relies on humans having special properties that allow them rights. Some philosophers have questioned whether we are using circular reasoning in this argument: We pick some human property, say, the ability to use language, and then say that rights-holders are the ones who have that property. Doing so systematically bars any other contenders, which in turn limits our analysis. Thus, for example, if clear-cutting a forest for timber endangers a particular kind of bird, the rights-holders would be the humans who care about birds, and the analysis would be in terms of how their interests are hurt.

Several recent commentators have challenged this view, suggesting that we might consider whether there are other candidates, including nonhuman animals or even the environment. Perhaps in building a commercial center we would have to disturb a graveyard or some other holy site. It is plausible to think of the area as off-limits based on a rights-based argument, even if there is no longer a direct connection to a living person: The dead may have a right to rest in peace or to be treated with great respect. Similarly, we treat various historical locations as hallowed and leave them alone with the sole justification that it is the proper way to act. We might say future generations already have rights – that is, as possible people. Although they do not currently exist, perhaps they are nevertheless entitled to certain rights such as clean air or water on the same grounds as living people.

Let us take the case of animals used in pharmaceutical research. Chimpanzees have been used extensively in experiments for hepatitis and HIV/AIDS. They are typically bred by for-profit companies and routinely euthanized after they are no longer useful. They rarely get palliative drugs during procedures. If the criterion for being a rights-holder is intelligence or the ability to speak, then we can say they have no individual rights. However, some recent philosophers have followed Peter Singer in thinking that historically rights may be seen as an expanding circle.⁴³ The idea is that

⁴³ P. Singer (1981). *The Expanding Circle: Ethics and Sociobiology*. New York: Farrar, Straus and Giroux.

originally only the male sovereign had rights, but then they were expanded to the aristocracy, property owners, and then to men universally; and subsequently the barriers have come down to include women, children, and people of all races and creeds. Singer's significant move is to claim that the material distinction in assigning rights is the ability to suffer, rather than the ability to use language or to reason.⁴⁴ By his thinking, higher animals, at least, deserve moral consideration. While this would not necessarily preclude animal experimentation, it would imply that we should ensure that the animals do not have to endure unnecessary distress.

In addition to animal rights, some philosophers and legal scholars claim that natural objects in the environment ought to be given legal standing, so they could be party to a lawsuit even when human parties may not care or cannot afford to make a case. The discussion began when Disney Enterprises wanted to build a ski resort in the area now protected as part of Sequoia National Park. The legal theorist Christopher Stone wrote an influential essay maintaining that we should appoint legal guardians for the environment: "We make decisions on behalf of, and in the purported interests of, others every day; these 'others' are often creatures whose wants are

⁴⁴ Singer draws on the work of Jeremy Bentham in this regard. Bentham said:

Other animals, which, on account of their interests having been neglected by the insensibility of the ancient jurists, stand degraded into the class of things . . . The day has been, I grieve it to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, have been treated . . . upon the same footing as . . . animals are still. The day may come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognized, that the number of legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or perhaps, the faculty for discourse? . . . the question is not, Can they reason? nor, Can they talk? but, Can they suffer? Why should the law refuse its protection to any sensitive being? . . . The time will come when humanity will extend its mantle over everything which breathes.

J. Bentham (2007 [1780]). *An Introduction to the Principles of Morals and Legislation*. Mineola, NY: Dover Publications, p. 311 n.

far less verifiable and even more metaphysical in conception than the wants of rivers, trees, and land.”⁴⁵ Some of the judges felt that there needed to be an advocate for the immunity rights of the environment, regardless of whether there was a human who was willing to bring its interests before the court.⁴⁶

Summary

As we return to the case described at the beginning of the chapter concerning shipyard workers, recall the negotiation stance of threat advantage, where the party with weaker bargaining power may be put in a position of “take it or leave it.” This tells us that the mere fact people have taken a job is no indication of their willingness to forfeit their rights, since the choice can often be substandard working conditions or destitution, and perhaps they – and all workers in the industry – deserve appropriate protection even if it raises costs.

In examining cases we can see how the language of rights may best be used: that is, by understanding rights generally and criticizing abuses specifically. Rights talk can be profoundly beneficial in broad terms in the sense that it can establish far-reaching norms that may diffuse relativist claims about a given practice’s acceptability based on the situation. At times it is appropriate to apply universal standards, say, against physical abuse, regardless of a country’s economic development or its own standards. Furthermore, if we consider human rights within this wide perspective, it is not just a case of businesses trying to squeeze employment conditions to run the most efficient

⁴⁵ C. Stone (1972). “Should Trees Have Standing? Toward Legal Rights for Natural Objects.” *Southern California Law Review*, 45, pp. 450–501.

⁴⁶ See Justice Douglas, dissenting, *Sierra Club v. Morton*, 405 U.S. 727 at 741–742:

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole – a creature of ecclesiastical law – is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a “person” for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes . . . So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life.

operation possible, whatever the human cost. Rights claims must consider the overall place of business, consumers, and government in society. Seen impartially in this way, we ought to expect that people are entitled to certain levels of treatment, articulated in terms of rights, whoever they are and wherever they may live, and business actions are only one part of a wider dialogue about what it means to be human and what it takes to have a good life.

The backdrop of human rights thus gives us valuable leverage to examine specific cases. General claims that a country is abusing human rights is less effective than saying that a particular company is going against its own code of practice or prevailing standards. Thus, public announcements of standards of practice by companies, transparency, and accountability will all ensure rights for both business and workers, especially in light of transnational norms established by independent bodies such as the United Nations. As we have seen, there may be cases where a company should be prohibited from acting, but we should be conscious of the level of rights that are infringed, the cultural context involved, and the link between the company and the harm.

The rights problems with shipbreaking would not have been solved if firms simply moved elsewhere to a shipyard operating with even more permissive standards. The company could have given assurances that basic rights would be safeguarded and allowed transparency, and perhaps the work could have continued with appropriate protections in place. Yet if we take rights seriously, then we need to see that violations by individual businesses occur against a social and political background. Whatever the conditions at the yard, we should recognize that they occur amid pressures that derive from a poor country actively seeking hard currency as well as from impoverished workers desperate to earn a living.

Human rights provide a baseline for deciding what is acceptable in business practice. However, some personal rights are often compromised in our role as employees or consumers. Sometimes the firm imposes restrictions, such as a ban on smoking or dangerous hobbies, and individual workers make personal decisions about whether they are willing to accept the conditions for the pay. As consumers, there are times when we want to buy goods that could lead to harm but we are prevented from doing so, circling back to the question of how free the market should be.

Questions for Reflection

1. What do you consider to be fundamental human rights that are immune to societal changes?
2. Do you think animals or the environment can be bearers of rights?
3. Whose interests ought to be paramount, those of the community or those of the individual? What are the key factors in your position?
4. Whose job should it be to preserve and enforce human rights?
5. Why should people be banned from selling one of their kidneys or eyeballs for cash? When should issues of rights override market concerns?

Case: Privacy Worries

There is an adage that says, “if you don’t have anything to hide, you have nothing to fear.” However, most of us have information we would prefer to keep to ourselves and we want to feel in control of what is made public. Nevertheless, in the information age, we are being monitored and exploited, often without our knowledge. Think of a simple credit card transaction. It will yield solid information about the location of the individual, the vendor, and how much was spent. At the same time, a lot can be inferred. The sale could be at a high-end restaurant, for example, from which we can assume that the person has disposable income. If that is combined with other charges, we can build a picture of someone’s spending patterns, taste, and even personality.

Much more can be learned from someone’s social media usage. The financial model for most platforms is to sell advertising space, and metrics can be developed on whether they lead to subsequent spending. Content will be modified according to past usage, and ads can become highly individualized. Research has linked clicks to religious views, ethnicity, age, gender, and personality traits, and highly accurate profiles of users can be built, including information that is not publicly available.

A consulting firm called Cambridge Analytica promoted a quiz on Facebook called “thisisyourdigitallife” which created a psychological profile of users and unwittingly, but not unusually in software terms, it allowed

Cambridge Analytica to gather the history not only of the individual but also all their friends as well, including all their “likes.” Cambridge Analytica then sold the information to retailers and political parties, and planned to send targeted messages in the 2016 US election as well as in Brexit. The company folded in 2018, saying that subsequent negative publicity had scared away its customers. Facebook itself has a history of data breaches. In one case, a marketing research group allegedly gained access to private groups that may have revealed otherwise confidential medical information.⁴⁷

Emergent technologies also mean that less of our lives are private. Some software can scan personal picture libraries and detect patterns. Facial recognition software and the increasing use of CCTV cameras can track people. As with all software, it is not yet perfect. Data correlations may draw false inferences that then taint the individual. Some programs that prescreen candidates may inadvertently import biases favoring traditional candidates. Moreover, facial recognition is much less accurate when it comes to identifying people of color, which has led to false accusations.⁴⁸

Questions from the Case

1. Should there be any controls on data collection of consumers?
2. Is there a right to privacy? How would it be enforced?
3. Can information be kept confidential in the information age?
4. What redress ought to be available for someone if they have false or inaccurate profiles?
5. Does a company have any duty to disclose to consumers if it discovers a risk factor – a liability such as high blood pressure, for example – that the individual may not be aware of and which could easily be treated?

⁴⁷ J. Davis (2019). “Facebook Accused of Exposing User Health Data in Complaint to FTC.” *HeathITSecurity*, February 20, <https://bit.ly/3QbRbkJ>.

⁴⁸ J. Marx (2021). “Sacramento Report: Facing the Implications of Biased Tech.” *Greenlining Institute*, May 10, <https://bit.ly/3orenyS>.

8 Beneficence

Case: Walmart

Walmart is the world's largest retailer and every store sells copies of the biography of its founder, Sam Walton, which expounds his personal philosophy.¹ In 1992, just before his death, Walton wrote that he believed it was inappropriate to use corporate funds for charitable purposes:

We have built a company that is so efficient it has enabled us to save our customers billions of dollars, and whether you buy into the argument or not, we believe it. That in itself is giving something back, and it has been a cornerstone philosophy of our company . . . we feel strongly that Wal-Mart really *is not* and *should not be*, in the charity business. We don't believe in taking a lot of money out of Wal-Mart's cash registers and giving it to charity for the simple reason that any debit has to be passed on to somebody – either our shareholders or our customers. . . . By not designating a large amount of corporate funds to some charity which the officers of Wal-Mart may happen to like, we feel we give our shareholders more discretion in supporting their own charities.²

At the same time, the Walmart Foundation's mission statement quotes Walton as saying, "We want the associates and the management to do things together that contribute to the community and make them feel like a team, even if they don't directly relate to selling or promoting our merchandise."³ In

¹ D. Marcotte (2021). "2021 Top 50 Global Retailers." National Retail Federation, March 24, <https://nrf.com/blog/2021-top-50-global-retailers>.

² S. Walton with J. Huey (1992). *Sam Walton: Made in America*. New York: Doubleday, pp. 239, 240.

³ The Walmart Museum, "Corporate Giving: The Walmart Foundation," <https://bit.ly/3SCy594>.

2021, the Foundation donated almost \$1.5 billion in goods and cash, was actively involved in disaster relief efforts, and encouraged its employees to volunteer with nonprofit organizations. It also supported reading programs and a literacy hotline.⁴ After unrest in the United States following police shootings, Walmart pledged over \$100 million toward efforts that fight systematic racism.⁵ In this chapter, we will examine some of the possible reasons that could explain the apparently conflicting statements by Sam Walton and use these to analyze more broadly why corporations should allocate resources toward the common good.

Corporate Beneficence

Beneficent acts bring about good. Beneficence is distinguished from *benevolence*, since benevolence is the *desire* to do good, not the actual performance. Philosophers make further distinctions within the concept, suggesting that we should: (a) not inflict harm, (b) prevent harm, (c) remove harm, and finally, (d) promote the good. The broad principle of beneficence is usually supplemented by norms drawn from ethical theory about the priority of the elements listed above and how we should resolve conflicts between them. From a purely psychological point of view, it turns out those harms and benefits are not symmetrical: We are more likely to avoid harm than to seek out the good.⁶

The weakest form of beneficence is non-maleficence, or not doing harm. While this may be straightforward in discrete personal actions, we should recognize that most business activity involves some incidental damage, which in many cases leads us to use a proportionality test of harms and benefits to assess outcomes. For instance, the airline industry provides efficient transportation, but is a major producer of climate-altering carbon emissions.

Initially, following Sam Walton's view, there may be no reason for a company that obeys local laws to give anything at all, because successful

⁴ <https://walmart.org/>.

⁵ M. Repko (2021). "Walmart Donates \$14 Million As part of Broader Pledge to Advance Racial Equity." CNBC, February 1, <https://cnb.cx/3S1yb9V>.

⁶ See, generally, D. Kahneman and A. Tversky (1979). "Prospect Theory: An Analysis of Decision under Risk." *Econometrica*, 47 (2), pp. 263–292, www.jstor.org/stable/1914185.

business practices benefit society overall. As one CEO contended, companies should not feel obligated to give back to the community since they owe nothing: “What the hell have we taken away from society by being a successful company that employs people?”⁷ The argument goes that investment and the subsequent generation of wealth are beneficial: Corporate activity is the engine that drives modern society, and that in itself should be a sufficient payback. Moreover, firms pay taxes and help provide employment that spurs further economic activity. Still, as we shall see, this view is less widely held than it used to be, and the vast majority of major firms now engage in beneficent behavior of some kind, and several have made it a cornerstone of their mission.

The language used in business ethics discussions in this area may be confusing: *Corporate social responsibility* (CSR) is a pervasive term yet like the parent concept, responsibility, it has a wide range of meanings and applications. Compliance with the law is seen as a minimal requirement for the proper operation of business, and CSR is frequently used to describe any action that a firm takes over and above its legal obligations. In the United States the term is often used to refer to the duty of business to pay back to the community, typically in various forms of corporate philanthropy. The European model of CSR is more wide-ranging and suggests that a firm should have a commitment to the overall welfare of society by integrating concerns about the environment, employees, the community, and other stakeholders as well as moving toward more sustainable business practices. The emergent language for investors is *ESG* reporting that looks to the Environmental, Social, and Governance metrics of a company. Here, we will focus on the practices of philanthropy and community involvement overseas, using the more specific terminology of beneficence, while recognizing that the term CSR may be used by practitioners in a variety of applications.

Sometimes rights act as boundaries for acceptable behavior, and often this notion of non-maleficence in terms of rights is what firms themselves mean by CSR. Rights can override utility calculations, and similarly it turns

⁷ J. Powell (2005). “Nestle Chief Rejects the Need to ‘Give Back’ to Communities.” *Boston Herald*, March 10.

out many firms with a bedrock commitment to CSR also affirm that rights claims can be a sufficient reason to forgo potential profit maximization.

Many companies have publicly adopted the international SA8000 certification of social responsibility. The SA8000 standard is awarded after an independent body has inspected a company's practices and found that it complies with minimum standards regarding child labor, health and safety, collective bargaining, nondiscrimination, and bargaining rights.⁸ Similarly, the United Nations Global Compact has nine principles of economic, social, and environmental rights that afford protections. These principles tend to cluster around the baseline understanding of beneficence since they demand that companies avoid harm and be legally compliant, but they do not impose a further obligation to promote the good.⁹

Motivations for Beneficence

When we move away from businesses avoiding harm toward a positive duty to bring about good, the discussion inevitably involves questions of motive, and so we now consider what might cause a company to apportion assets toward that end. After all, upholding human rights can be seen as a minimal ethical threshold, and responsibility for harm can lead to legal liability and consequent payments for compensation, whereas the payoff for doing good is less obvious.

There are four basic reasons why a company may act beneficently.¹⁰ The first is purely instrumental, where a firm's paramount objective is to return wealth to its owners. Therefore, if it appears that consumers will patronize a company more if it is engaged in community action, then the company will respond to the market signal. If shareholders express disquiet about various policies, say, not getting involved in arms sales or dealing with corrupt regimes, then the company would only be acting in its own self-interest in responding to those concerns. Beneficence here is a means to an end, and if the evidence shows that the company would be better off by

⁸ <https://sa-intl.org/programs/sa8000/>. ⁹ www.unglobalcompact.org/what-is-gc.

¹⁰ This typology is based on E. Garriga and D. Mele (2004). "Corporate Social Responsibility: Mapping the Territory." *Journal of Business Ethics*, 53, pp. 51–71.

offering cheaper prices and ignoring community involvement, then it will switch its tactics.

The instrumental view relies on evidence, but unfortunately the data may be difficult to determine and may have mixed results. That is, some companies that are committed to beneficent action appear to do well, but that does not necessarily mean they do well for that reason – perhaps they have the stability and wealth to run community action programs without hurting their profitability.

Although the evidence of a positive correlation between corporate beneficence and profitability is inconclusive, researchers have concluded that there is a “crisis value” in having a good reputation in that it acts like insurance against poor public perception. Firms with a solid reputation for positive community engagement may still be involved in wrongdoing, but they recover much more quickly than companies that are indifferent to stakeholder concerns.¹¹ However, is little evidence one way or another that companies deliberately engage in beneficent acts to guard against bad publicity, and so it could be a fortunate side effect of a prior commitment to adopt ethical practices.

The same sort of claim might be made about companies that are involved in controversial practices or with questionable regimes, since spending a great deal on civic projects and philanthropy may tend to blunt criticism and force observers to at least acknowledge that they are also bringing good into the world. Some commentators have linked Amazon and Walmart’s dramatic increases in charitable giving to widespread criticism about their employment practices, televised news stories about lack of medical leave, and exploitation of undocumented workers.¹²

A second reason for corporate beneficence takes a wider view and suggests that a company’s continual growth and sustainability require investment in the overall social welfare of communities.¹³ This reasoning differs

¹¹ H. Jo and M. Harjoto (2011). “Corporate Governance and Firm Value: The Impact of Corporate Social Responsibility.” *Journal of Business Ethics*, 103, pp. 351–383.

¹² R. Reich (2020). “America’s Billionaires Are Giving to Charity – but Much of It Is Self-Serving Rubbish.” *Guardian*, April 12, <https://bit.ly/3Q101QR>.

¹³ C. Heyward (2020). “The Growing Importance of Social Responsibility in Business.” *Forbes*, November 18, <https://bit.ly/3zq5LOr>.

from the merely strategic by seeing that integration in society is a necessary component for a firm's existence. One form of the argument is that the next billion personal computers are not going to be sold in the United States and Europe but in the developing world, and companies in that industry have a vested interest in creating a middle class in those countries.¹⁴

A third reason for business beneficence is grounded in the notion of a social contract. Typically, states or local governments incorporate businesses. The benefits of incorporation include limited liability, so that investors are only responsible for losses up to the amount of their investment, and stability for the corporation beyond the lifetime of its members. From these benefits that the society has bestowed on business comes a sense of reciprocity – that the corporation ought to repay the society in some way. Business has a symbiotic relationship with society, so that each fosters initiatives that ultimately benefit both. Historically, corporations and government have been interdependent, and paying back to the community may be a partial recognition that companies need to maintain good relationships, especially in contemporary times when a number of traditional government functions such as mass transit or security are now increasingly handled by private, for-profit ventures – it seems companies such as Home Depot or McDonald's may be more capable of providing disaster relief than the federal government.¹⁵ This view is often expressed by the term *corporate citizenship*, with the idea that corporations have both responsibilities and privileges, just like other members of society, and they need to act accordingly; or even that corporations have additional rights and burdens because of their greater power and influence.

When we look at the home pages of most large and successful businesses, there is almost always a statement or link to corporate responsibility that echoes a citizenship approach. For example, IBM claims: "IBM pursues the highest standards of corporate responsibility in all we do – supporting and empowering employees, working with clients and suppliers, and governing our company."¹⁶ In a similar vein, the banking concern Citigroup has

¹⁴ H. Lee (2014). "Investors Bet on the World's Newest Middle Class." *CNBC*, December 22, <https://cnb.cx/3zwYg9F>.

¹⁵ P. Danziger (2017). "Fire, Floods, Hurricanes: How And Why Corporations Must Help." *Forbes*, October 20, <https://bit.ly/3PAFHxt>.

¹⁶ www.ibm.org/responsibility.

a dedicated link to its “Global Citizen” site, where it announces: “Citi’s mission, as a leading global bank and corporate citizen, is to enable growth and progress for clients and communities across the globe, so together, we can create a better tomorrow.” It offers links to a variety of initiatives, including those that aim to defeat poverty, defend the planet, and demand equity.¹⁷ Exxon Mobil also has a banner that talks about empowering local communities to tackle environmental, economic, and public health issues.¹⁸ And the Home Depot site links directly to a page on corporate responsibility that states that its strategy “is centered on three key pillars: focusing on our people, operating sustainably and strengthening our communities. We strive to operate as a company that reflects and supports diversity, equity and inclusion among our associates, suppliers and communities we serve.”¹⁹ These postings are highly significant. They give a clear and consistent message that most of the world’s leading companies take CSR seriously and that ethics plays a large part in their public announcements. Through their language, we can see that corporate responsibility to a wider community and the environment has been widely adopted.

Critics could easily charge that these postings represent rhetoric, what economists call “cheap talk,” words that benefit the company but incur no expense. The accusation of hypocritical grandstanding is worth close scrutiny. If corporate acts were solely designed to improve the economic bottom line, we would expect some clear justification based on potential returns or their benefits compared to their costs. However, it turns out that many companies rarely justify beneficence at all but assert it as an accepted given for corporate behavior. Expenditures listed as CSR or ESG are rarely itemized or tracked closely in corporate reports. Moreover, the vast number of programs and initiatives that companies have funded without precise performance monitoring suggests that they represent a true commitment rather than an investment in economic terms alone.

The fourth reason for beneficent behavior is that companies naturally accept that positive ethical duties are embedded in the practice of business, and therefore responsibility to the community is a normal part of corporate

¹⁷ www.globalcitizen.org/en/connect/citi/.

¹⁸ <https://energyfactor.exxonmobil.com/projects/community-impact/>.

¹⁹ <https://corporate.homedepot.com/responsibility>.

activity. A strongly normative stakeholder view of the corporation suggests that the function of the firm is to maximize the welfare of all stakeholders, and so a business would predictably have positive duties to communities, government, and other constituents such as nongovernmental organizations (NGOs) – for example, Oxfam, Greenpeace, Amnesty International, and the Red Cross. A recent concrete expression of this sort of claim is found in the Caux Principles, a set of aspirations drawn up by several influential business leaders toward *moral capitalism*. They suggest that business should be grounded in seven basic principles, the paramount one claiming, “A responsible business has responsibilities beyond its investors and managers.”²⁰

A recent innovation has been the emergence of so-called *Benefit Corporations* or *B-Corps*. These are for-profit companies that explicitly state that part of their mission is to increase the welfare of stakeholders, who typically include employees, the community, society at large, and the environment. In the United States and some other countries, most companies are “C” companies, for-profit entities where shareholders anticipate managers to have the paramount job of maximizing the return on their investment, but in many jurisdictions they can change to Benefit Corporations by simply adjusting their bylaws. This may lead to a change in public perception and the way analysts judge the firm. In examining a company, the major metric is profitability, but in the case of a Benefit Corporation the metrics intentionally incorporate notions of positive impact on a wide range of stakeholders to create an overall picture of the company’s success. Managers traditionally have been thought of as having a fiduciary duty to maximize returns on behalf of those investing in the firm, but here they are committed to various social goals as well. Becoming a Benefit Corporation may have the consequence of shielding it from shareholder challenges or takeovers since investors are aware at the outset that profit is not the sole purpose of the firm.²¹ However, we should note that at present there is little formal monitoring or accountability once

²⁰ www.cauxroundtable.org/principles/.

²¹ M. Harjoto, I. Laksmana, and Y.-w. Yang (2019). “Why Do Companies Obtain the B Corporation Certification?” *Social Responsibility Journal*, 15 (5), pp. 621–639, <https://doi.org/10.1108/SRJ-07-2018-0170>.

a firm has made the change, and in some cases it will be hard to assess whether they have realized their self-reported goals.²²

One solution to the accountability issue could be to outsource monitoring to a third-party organization, and in response a private certification has emerged run by an international organization called “B Lab.” Firms such as Natura, the parent company of the Body Shop brand, pay a fee and are then assessed on their social and environmental performance, including employee benefits, charitable giving, and material usage along the supply chain. B Lab claims to make a holistic appraisal of public records, carries out randomized site visits, and subsequently offers firms risk analysis once certified. For some participants, the fee symbolizes a serious commitment to external impartial review.²³ On the other hand, some critics question whether a company paying to participate would react badly to a negative report instead of remediating the identified problems. Moreover, there are already several institutions that compile a firm’s impact on stakeholders, including the European Union and the independent nonprofit Global Reporting Initiative which both offer reporting frameworks and appropriate standards.²⁴

Having looked at the broad conceptual framework that supports business beneficence, we now turn to two operational applications: corporate philanthropy and corporate social intervention overseas.

Corporate Philanthropy

In the United States at the turn of the twentieth century, several mighty corporations were seen as a powerful threat to society. Partly to improve their public image, these companies began giving considerable sums to charity. Henry Ford initiated health and recreation programs for his workers. J. D. Rockefeller gave away hundreds of millions of dollars, and his

²² R. André (2012). “Assessing the Accountability of the Benefit Corporation: Will This New Gray Sector Organization Enhance Corporate Social Responsibility?” *Journal of Business Ethics*, 110, pp. 133–150, <https://doi.org/10.1007/s10551-012-1254-1>.

²³ B Corp, “Measuring a Company’s Entire Social and Environmental Impact,” www.bcorporation.net/en-us/certification.

²⁴ See, for example, <https://bit.ly/3p0l9fn> and www.globalreporting.org/.

funding helped eradicate hookworm in the American South. The wealthy magnate Andrew Carnegie set up an educational fund, the Endowment for International Peace, and founded over 2,000 libraries. Carnegie also wrote a book, *The Gospel of Wealth*, where he publicized his belief that the wealthy have an obligation to help the less fortunate:

The best means of benefiting the community is . . . returning . . . surplus wealth to the mass of their fellows in the form best calculated to do them lasting good . . . The man who dies leaving behind him millions of available wealth, which was his to administer during life, will pass away “unwept, unhonored and unsung” . . . Of such of these the public verdict will then be: “The man who dies thus rich dies disgraced.”²⁵

Notably, like Sam Walton of Walmart, Carnegie disdained pure charity: He only believed in giving that would encourage people to subsequently help themselves. “Neither the individual nor the race is improved by almsgiving . . . He is the only true reformer who is as careful and as anxious not to aid the unworthy as he is to aid the worthy.”²⁶

A legacy from the early days of corporate giving is that very little current giving is in the form of unconditional handouts, and it typically tries to avoid recipients becoming dependent on charity. As the adage goes, if we give a man a fish, he may eat for a day, but by teaching him to fish we feed him for a lifetime.

Much of today’s philanthropy has the deliberate aim of boosting the company image and creating goodwill. The fastest-growing form of philanthropy is what is called *cause-related marketing*, where a firm donates a proportion of its receipts to an organization. For example, it may say that 1 percent of all profits will be sent to the World Wildlife Fund, or five cents will be given to saving the rainforest for every bottle of a particular brand of beer purchased during a certain period. The practice was started when American Express linked use of its card to corporate donations toward restoring the Statue of Liberty in 1981. According to studies, 54 percent of consumers say they would pay more for a product that supports a cause they

²⁵ A. Carnegie (1962 [1889]). *The Gospel of Wealth and Other Timely Essays*, ed. E. C. Kirkland. Cambridge, MA: Harvard University Press, p. 29.

²⁶ Carnegie, *Gospel of Wealth*, p. 29.

endorse, 75 percent would switch to a brand that is associated with a cause if that were the only competitive difference, and 84 percent believe cause-related giving creates a positive image for the company.²⁷

The success of cause-related giving is both astonishing and something of a puzzle. In the wake of a devastating hurricane, some enterprising car dealerships were offering to donate \$100 to homeless victims for each car bought during a certain period. Although the sentiment is well placed, it is economically odd to put a \$100 premium on a car (assuming that the \$100 does not come from dealer profits) and then have the dealer send the money to the appropriate charity. If we wanted to help, say, breast cancer research, wouldn't it make much more sense to donate directly to the cause rather than have it go through an intermediary level of bureaucracy?

Yet consumers are attracted to this type of brokered giving, for two possible reasons. The first is that the giving is actually a conscience salve for purchasers of luxury goods, since very few of the goods involved are basic staples but rather discretionary purchases. In reality, no one really needs high-fat ice cream, yet it is much easier to justify buying it if we think of it as a way of helping out nut producers in rainforest areas. The action is thus easier to understand as a licensing act that allows us to make a purchase where we previously had misgivings.

Another reason for this type of consumer purchase is that cause-related giving helps people to overcome a psychological impasse in deciding between competing products. In the research, three-quarters of those surveyed would choose an item if giving to a good cause were the only significant difference between it and a rival. This means that appeals to our better nature are very effective – more so than brighter packaging or coupons, for example.²⁸

Cause-related giving has been criticized on several grounds, and it can go badly if consumers believe that the company is insincere or opportunistic. For instance, Pepsi ran an ad during a period of social unrest in which superstars apparently present at a protest give a soft drink to a police officer doing crowd control, and then everyone present calms down and celebrates.

²⁷ H. Pringle and M. Thompson (1999). *Brand Spirit: How Cause Related Marketing Builds Brands*. New York: John Wiley & Sons.

²⁸ See, for example, Pringle and Thompson, *Brand Spirit*.

Dr. Martin Luther King's daughter responded sarcastically with a social media post captioned "If only Daddy would have known the power of #Pepsi." In another case, "Buckets for the Cure," KFC donated fifty cents to the Susan G. Komen breast cancer research fund for every bucket of chicken sold. Ironically, although the promotion raised over \$4 million, many felt the only relation involved was that eating fried food leads to obesity, a prime risk factor in cancers. Similarly, Mastercard launched a campaign where it would donate the equivalent of 10,000 meals to starving children in the Caribbean and Latin America for every goal scored by two famous soccer players between 2018 and 2020.²⁹ Many felt that the donation should not have been tied to their performance but merely given freely. A typical industry response is that despite the cynicism of critics and occasional lack of sensitivity, cause-related marketing is an overall "win/win" effect since companies have very large advertising budgets and marketing structures, so charities do well by coordinating their fundraising with a corporation and typically get funds they otherwise might forfeit.

A major ethical issue with strategic philanthropy is whether we should just accept that good is brought into the world, even though the motives may indeed be explicitly instrumental. For example, when a company gives money to charity as a marketing ploy, it may end up doing well by doing good, and the charity receives money it might not have otherwise. Once again, the key to analyzing the issue may lie with consumer attitudes – we may be reluctant to give to charity directly, despite the obvious greater efficiency, and it may be that we are more willing to donate when we feel guilty about purchases or want to do the right thing without sacrificing an affluent lifestyle.

However, not all corporate giving is exclusively instrumental. Drawing on our earlier framework, there may be times when a company engages in philanthropy that goes beyond immediate returns: It may be looking at the market with a long-term perspective in order to work out what will sustain the business over time in a worldwide market, or the leadership might consider that corporate giving should be separate from bottom-line concerns altogether. In the United States there are several significant legal cases

²⁹ S. Lepitak (2018). "The Worst Marketing I've Ever Seen: Mastercard's World Cup Children's Meals Campaign Stirs Debate." *The Drum*, June 2, <https://bit.ly/2HhhIZu>.

that uphold the right of a company to make gifts without any concern for maximizing shareholder return. A landmark ruling in 1991 upheld a \$50 million donation by Occidental Oil to construct a museum, without any evidence that the museum would return any profit, based on the vast net worth of the company.³⁰ The upshot is that there is a tradition of corporate philanthropy as an accepted part of normal business and insofar as law reflects societal policy investors should not automatically expect an economic justification for giving to worthy causes.

American corporations and corporate foundations currently donate almost \$17 billion and \$88 billion, respectively, every year.³¹ To put that in perspective, though, corporations and their associated foundations accounted for only 20 percent of total giving.³² In a survey of 250 multi-billion-dollar international companies, it turned out that while they had aggregate revenues of almost \$8 trillion, their philanthropic donations were less than 1 percent of their pretax profits.³³

Corporate giving surrounds us: Many college buildings are named after benefactors and students often use computers and software donated by private companies. Many of our great cultural landmarks such as concert halls and libraries were funded by large corporate donations. Donations are not always in the form of cash, however. One of the largest donors in the United States is Microsoft, which donated \$1.4 billion in software and services in 2020.³⁴ Pfizer's giving ranks it as one of the most generous philanthropic companies largely because it has provided low-cost medicine to poor and uninsured people.

Some of these donations are undoubtedly strategic in the sense that it is beneficial to the firm to promote the use of their proprietary materials in a competitive market, and their charitable donations may attract tax

³⁰ See, generally, E. Elhauge (2005). "Sacrificing Corporate Profits in the Public Interest." *New York University Law Review*, 80, pp. 733–869.

³¹ National Philanthropic Trust, "National Giving Statistics," www.nptrust.org/philanthropic-resources/charitable-giving-statistics/.

³² Charity Navigator (2018). "Giving Statistics," www.charitynavigator.org/index.cfm?bay=content.view&cpid=42.

³³ T. McClimon (2020). "Corporate Giving by the Numbers." *Forbes*, January 16, <https://bit.ly/3vf4UOW>.

³⁴ <https://news.microsoft.com/bythenumbers/en/give>.

breaks. Staged fanfares when corporate donations are announced also point to a public relations dimension to the act. At the same time, though, there are clearly cases where goods, services, or cash are donated with no evident return on investment, in either the short or the long term.

A litmus test of giving is to determine whether it drops during hard times, so that pure beneficence may imply a disregard of bottom-line concerns. A common vehicle for corporate philanthropy is the foundation, a setup that was created when tax breaks were allowed for corporate giving as part of Roosevelt's New Deal in 1935. Money is transferred from the parent company to the foundation, and thus is accounted for separately from the main business. In the United States a foundation must give away at least 5 percent of its assets every year. The Bill and Melinda Gates Foundation provided over \$5 billion in direct grants, funds thousands of educational programs, and has donated hundreds of millions of dollars to the development and distribution of vaccines for malaria, AIDS, and other diseases.³⁵ A result of splitting foundational giving from the parent organization is that there is continuity of giving even in an economic downturn, and so using a foundation represents a persistent commitment to doing good that avoids the vicissitudes of the business cycle.³⁶

In short, although some argue that the operation of capitalism has brought great harm to many in the world, it is also evident that corporations have brought about many benefits. Strictly speaking, many of these corporate actions are unnecessary, in that they are over and above what is morally required.

Corporate Social Intervention Overseas

We can use the language of beneficence to assess the actions of companies in their dealings with communities abroad. Corporations have sometimes been instrumental in promoting civic and social programs in their overseas

³⁵ www.gatesfoundation.org/about.

³⁶ T. Calebrese and T. Ely (2022). "How US Private Foundations Change Payouts Based on Financial Shocks: Revealed Publicness or Revealed Privatness?" *Journal of Public Administration Research and Theory*, 32 (1), pp. 166–182, <https://doi.org/10.1093/jopart/muab015>.

operations and they have the power to be agents of great good or pernicious wrongs.

It is useful to begin with a look at corporate intervention in a historical light, since many of the issues appear much clearer with the passage of time. During the apartheid era in South Africa (1948–92), there was official state-sanctioned racial segregation in all walks of life. Nonwhites were not allowed in certain areas without a pass, Black unions were not recognized, and Black education was rudimentary at best. Partly because of poor labor conditions and low wages, owning and operating a plant in South Africa could be highly profitable.

Throughout the period, US businesses were heavily invested in the South African economy, especially in mining and oil. Reaction in the United States was mixed: Many investors and campus activists demanded that firms and colleges withdraw their funds from companies dealing with the regime, whereas others felt that the presence of US companies could be a force for improvement, a policy known as *constructive engagement*. In the midst of the controversy, and in the wake of the 1976 Soweto uprising, the Reverend Leon Sullivan drew up a set of voluntary – and unenforceable – principles that companies working in South Africa could publicly agree to abide by, thus disarming some of the controversy. Almost half of the 300 or so companies signed up to these principles, including General Motors, Ford, and IBM.³⁷ Ford, for instance, created management training centers for Black workers and desegregated workplaces, in direct opposition to apartheid policies.

In retrospect, the evil of apartheid is apparent, and the Sullivan Principles espousing nondiscrimination and integration are generally non-controversial. However, as some commentators have pointed out, there is a moral question concerning the original sixth principle: “Improve housing and education opportunities for employees outside the workplace.” Initially, the principle seems innocuous, but we should note how it moves from refraining from harm to active intervention. Moreover, it advocates doing so by using the firm’s influence within a sovereign nation. Perhaps

³⁷ Z. Larson (2020). “The Sullivan Principles: South Africa, Apartheid, and Globalization.” *Diplomatic History*, 44 (3), pp. 479–503, <https://doi.org/10.1093/dh/dhaa002>.

companies should be a force for promoting good in this way, but there are significant risks as well. Generally, a company is a guest in a host nation, and it is therefore subject to the native laws and customs. The company always has the option not to do business with a regime that acts in a way contrary to its beliefs. So, if a country systematically represses women – perhaps in a way that a US company would not tolerate domestically – it may withdraw rather than try to change national practice. As history shows, the principles were vague and hard to monitor or enforce, and they were eventually dropped by most of the participants. At the same time, they may have spurred many companies to look at their own practices and draw up internal codes of conduct for dealing with global issues.

There are several reasons for cautioning against active intervention. Following Mill, we might ask if we are interfering for the right reasons and in the right way. The key term here is *imperialism*, which has two elements: first, that a party is so sure of their position that they feel it appropriate to impose their standards and beliefs on others; and second, that their values can only be manifested in one way. In a pluralistic world, what appears to us to be wrong may turn out to be acceptable practice, and we should be wary of rushing to judgment, especially when dealing with deeply held religious and social traditions. Many philosophers now advocate *moral imagination*, which integrates core values with the cultural context when faced with discretionary choices. Additionally, in practical terms many companies simply lack the expertise to deal with social issues. This is not to say that a company should not do good in cooperation with a host country when invited to do so: For instance, the pharmaceutical company Merck helping sub-Saharan river blindness victims by supplying free drugs would be unproblematic since its involvement is both invited and draws on the firm's established area of expertise.

Once more, we may have to take a broad perspective about beneficent action and ask whether, all things considered, it causes more harm than maintaining the status quo; if so, the company should cease its activism. In the case of apartheid, the wrong was so grievous that careful corporate intervention could probably have been justified. In contrast, during the 1950s, US concerns – especially the United Fruit Company (UFCO) – were directly involved in manipulating development and sometimes regimes in

Central America. UFCO provided free schooling for the children of employees and built many ports and railroads. At the same time, it discouraged road construction, which would have challenged its monopoly on the railroads, and did everything it could to prevent the government from buying back land from the company.³⁸ In that case, the overall harm probably did not warrant the benefits from corporate intervention.

Many of the social issues that companies encounter overseas are not clear-cut, and it is not always obvious that the host country shares the values of the company's home country. When we beneficently promote the welfare of others, it is incumbent on us as donors to make sure that the intervention is both welcome and appropriate or, conversely, that pulling out of or boycotting a country will be effective and not hurt those we are trying to help.

Summary

We have applied the framework of beneficence to philanthropy and corporate intervention and have found recurring themes about the delicate balance a firm needs to maintain between economically strategic and ethical issues.

The most persistent disquiet about corporate beneficence in general is that without a great deal of understanding, expertise, and monitoring, it can cause unintended bad results. For example, the socially conscious ice cream makers Ben & Jerry's launched an initiative to buy Brazil nuts for a new product called Rainforest Crunch to thwart Amazonian deforestation. The idea was that the forest dwellers would form cooperatives and sell directly to Ben & Jerry's, thus eliminating the middleman and preserving the land.³⁹ Ben Cohen, one of the company's founders, announced, "The success of our Rainforest Crunch shows that harvesting Brazil nuts is a profitable alternative for Amazon natives who have seen their lands ravaged to create grazing areas or for mining."⁴⁰

³⁸ P. Chapman (2018). *Bananas: How the United Fruit Company Shaped the World*. London: Canongate Books.

³⁹ D. Coldwell (2021). "Toxic Behavior in Organizations and Organizational Entropy: A 4th Industrial Revolution Phenomenon?" *SN Business & Economics*, 1 (70), <https://doi.org/10.1007/s43546-021-00079-0>.

⁴⁰ J. Entine (1995). "Rain-Forest Chic." *Report on Business*, October, http://archives.jonentine.com/articles/rainforest_chic.htm.

Unfortunately, the very success of the flavor meant that the cooperative could not produce the quality or quantity of nuts needed, and Ben & Jerry's began to buy from commercial enterprises in the region. The increased demand stimulated large-scale nut farming and prices plummeted. The cooperative could not compete, and eventually native growers sold off their land to big business to recoup their losses, while the government used the increased trade as a reason to cut aid to the region. The case shows that unless a company is extremely sensitive to cultural issues, well-intentioned intervention in a foreign country may result in negative consequences to a traditional way of life and social order.

Beneficence in the form of philanthropy may come with a price to the recipient, too. Schools that accept sponsorships or cooperate in fundraisers that involve redemption of barcodes from specific producers find that it is a requirement that certain brands are purchased in the first place and thus encourage additional consumption. They also may receive educational materials and have teachers using lesson plans prepared by the American Coal Council that assure students that coal is "abundant, secure and environmentally sound."⁴¹ Similarly, Hershey's Chocolates offer materials to help students learn fractions by dividing a candy bar.⁴² School administrators may also accept donations from firms that come with corporate logos or receive noticeboards and newscasts that come with advertising. In one notorious case, a student was suspended for wearing a Pepsi tee shirt at his school's "Coke in Education Day," which included Coca-Cola employees lecturing on economics, helping students bake a Coke cake, and analyzing the drink's contents in a chemistry class.⁴³ More concerning, though, maybe the fact that many enterprises are now offering schools digital access, especially in the wake of the COVID-19 pandemic. Some of these platforms offer personalized learning services that are siphoning a great deal of personal information from students which could be used or be sold on.⁴⁴

⁴¹ American Coal Council (2016). "American Coal Update," <https://bit.ly/3d1a76O>.

⁴² www.teacherspayteachers.com/Browse/Search:hershey's%20chocolate.

⁴³ A. Molnar and F. Boninger (2020). "The Commercial Transformation of America's Schools." *Phi Delta Kappan*, 102 (2), pp. 8–13, <https://doi.org/10.1177/0031721720963223>.

⁴⁴ V. Strauss (2020). "As Schooling Rapidly Moves Online across the Country, Concerns Rise about Student Privacy." *Washington Post*, March 20, <https://wapo.st/3PCKzLE>.

These findings reinforce the point that beneficence simply imposed from above is at best likely to be ineffective and transient and at worst transgress the minimal moral requirement of doing no harm. Returning to Walmart, whatever the motives behind the company's philanthropy, it has been especially effective largely because it has targeted local and specific community projects. It has been adept in leveraging its giving into good public relationships, and this has been a model for other firms. Its tactic has led to a somewhat incongruous dynamic, where people may disapprove of big corporations but are happy with the low prices and social involvement of their neighborhood store. We may conclude, then, by recalling how we feel more responsibility for those we can identify with, in contrast with abstract needs. Whatever form of beneficence a firm engages in, research establishes that it is most successful when the donor and recipients communicate well, have a shared vision of program goals, and are committed to a long-term relationship.

Questions for Reflection

1. How much do you think we should be concerned about corporate intentionality? That is, if corporate beneficence does good, as opposed to doing bad or nothing at all, why should we complain?
2. Does it matter what proportion of corporate profits a company gives? For example, in 2002 Walmart gave almost \$200 million to charity when its overall profit was about \$12 billion.
3. Tax breaks are a significant factor in corporate philanthropy. What effect do you think it would have if companies were no longer allowed to deduct charitable donations?
4. What do you understand by the term "corporate social responsibility"? On a scale from "Do no harm" to "Bring about the good," what level of action should businesses take? What reasons are there to do more or do less?

Case: Sponsoring a Contentious Cause

Sophia Alexander was the CEO of a well-established manufacturing firm. She started over twenty-five years ago and won steady promotion. The company had always been thought of as a key stakeholder in the community, and traditionally had given back in terms of grants, sponsorships, and local service opportunities for its employees.

Until recently, Sophia had regarded donating money to various local not-for-profit groups, including those involved in the arts, as one of the more pleasant aspects of her job. For as long as anyone could remember, the firm had supported a local theater group that usually put on popular musicals and premiered the work of local playwrights. This year it was going to present the “Pittsburgh Cycle” by August Wilson. However, prompted by recent political events, the artistic director suddenly changed the program to include a quasi-improvised piece that dealt with suppression of minority voices and alleged police brutality. It contained elements of nudity and violence and deliberately broke the “fourth wall” to engage the audience. As usual, Sophia’s firm was introduced and thanked as a major sponsor before each performance and was highlighted in the playbill. Some groups began to picket the show saying it was “wokeness gone wild,” a comment the director dismissed as “merely demonstrating the imperialist attitudes and systemic repression endemic in our society.”

Sophia’s initial thought was that while the story had hit the news cycle it would likely all blow over. But then the firm started to get requests for comments from national newspapers and discovered that questions were going to be raised at the next shareholder meeting. An opinion piece had asked why a manufacturing firm was engaged in deliberate political agitation and shareholders had taken to social media asking if the firm’s engagement was the best move to maximize return on investment.

Various responses came from members of the management team. The corporate communications department considered it to be a public relations crisis, but one they could handle with appropriate messaging by saying that while not everyone agreed with the content it highlighted the firm’s commitment to free speech. The head of marketing took a more pragmatic view and noted that while some shares had been sold in protest,

these shareholders were often older, and a strongly supportive stand might promote the firm's reputation among millennials. In contrast, the head of the legal department suggested that it would be best to distance the company from any political controversy by withdrawing support to the theater, given that it had little to do with the essential mission of the firm and its market performance.

Sophia had to make some decisions and knew that the so-called tone from the top would resonate through the corporate culture and send a message to all their stakeholders.⁴⁵

Questions from the Case

1. In this case, the mission of the firm includes the phrase “to benefit all stakeholders.” Who should count as a stakeholder and how far should the firm take their interests into account?
2. Should a business have any obligations to sponsor community activities?
3. Is a firm responsible for issues arising from its philanthropy?
4. How should a firm account for CSR/ESG expenses?
5. What metrics might be appropriate in gauging the success of CSR/ESG initiatives?

⁴⁵ Adapted from a case developed for the American College, and used with permission.

9 Business and the World

Case: Rare Earth Minerals

Rare earth minerals mining (REMM) is a useful illustration of some of the major issues in the relationship between business and the environment, as well as the use and limitations of monetization. The consistent market for rare earth minerals (REM) offers significant profits to producers. REMM brings greater prosperity to the mining region by offering employment and tax income, as well as improved local infrastructure such as roads and utilities required by mining companies. As a result, regional and national governments often welcome REMM. On the other hand, these operations may cause significant immediate and long-term social and environmental harm that is hard to assess and remediate. The landscape is rarely restored to its previous state and may be permanently scarred. The environmental costs are rarely incorporated in the final price to the consumer (resulting in artificially low prices), are hard to quantify, and are sometimes not immediately evident. Paradoxically, many eco-friendly devices vital in the effort to replace carbon-based fuels, such as electric cars, wind generators, or rechargeable batteries, rely on REM.

REM include the element yttrium and fifteen lanthanide elements, among them cerium, europium, and lanthanum. They are lightweight and have unique luminescent, magnetic, or electrochemical properties. Despite the name, REM are plentiful around the world and two of the least abundant, thulium and lutetium, are present in quantities over 200 times the quantity of available gold.¹ Unlike gold and copper, though, REM are not

¹ US Geological Survey (2021). "Rare Earth Elements – Critical Resources for High Technology." Fact sheet 087-02. <https://pubs.usgs.gov/fs/2002/fs087-02/>.

found in pockets or veins, but mixed in with other minerals. Typically present in clay-like soils, the methods of extraction include bathing the soil in weak acidic solutions and some electrolysis. It can take hundreds or even thousands of processing cycles to separate and purify the ores. One writer made the analogy that REMM is not like shopping for cereal in a supermarket where you take exactly what you want off the shelf – it is more like having to buy the whole aisle and then sort through everything.²

The Mountain Pass mine in Eastern California was the world's largest supplier of europium in the 1960s when color televisions were introduced, resulting in dramatically increased demand for REM. The host material in this case was bastnäsite, which contained about 1 part in a 1,000 of europium. The facility ultimately closed after it was fined for significant violations of environmental regulations and became economically uncompetitive. It reopened in 2017 after a United States/China trade war and now produces over 15 percent of the global consumption of europium.³

China entered the REM market in the 1980s and quickly became the world's largest producer. REMM in most other countries subsequently closed as they could not match China's low prices. As well as being the largest producer, China also is the largest consumer with its huge electronics industry. Little data is available on the environmental impacts within China, but based on experience elsewhere REM is likely to emit sulfur compounds, require large amounts of acid reagents, and leave radioactive waste. Some evidence from farmers and residents in the town of Baotou, China, indicates the population declined from 2,000 to 300 as a consequence of the side effects of REMM and nothing is grown there now except wheat and corn. In some countries, the by-products of processing are not formally classified as waste since they could arguably yield usable products and so they are kept in large holding pens. Admitting it is waste would invoke requirements to dispose of it in a regulated manner.⁴

² S. Johnson (2020). "Are We Ready to Recycle the 'Rare Earths' behind an Energy Revolution." *ArsTechnica*, July 21, <https://bit.ly/3J8PLo4>.

³ mpmaterials.com/about/#history.

⁴ S. H. Ali (2014). "Social and Environmental Impact of the Rare Earth Industries." *Resources*, 3 (1), pp. 123–134, <https://doi.org/10.3390/resources3010123>.

By 2010, when China was producing 95 percent of the world's market in REM, it restricted the export of REM, nominally for environmental protection. Prices skyrocketed and suppliers looked for alternatives and local production. Nevertheless, as the market was expanding exponentially worldwide, consumption of REM has increased ever since and is still dominated by China.

Australia has one of the richest REM reserves in the world, but exports much of its ore to Malaysia for further processing. The Malaysian public protested when it was discovered that some ores are radioactive, and questions arose as to why the material was not being processed at source. Nonetheless, Malaysian government approvals were granted for leached water purification in 2021.

Military equipment, including GPS, precision-guided missiles, and night goggles use REM extensively. Thus, relying on a single supplier has defense implications should an adversarial relationship develop between producer and supplier nations.

One obvious option for dealing with shortages is to promote recycling and move toward a so-called circular economy where material is mined once and then reused. However, recycling has its own issues. It requires an infrastructure where materials can be collected and sorted. At present, only about 20 percent of e-waste is recycled. It appears that most households in the UK hoard one or more used appliances with no intention of disposing of them. There are only trace amounts of REM in electronics and light bulbs and separating them is labor intensive and requires knowledge about their design and the components involved. Moreover, the value of rare earth and other precious metals in any one cell phone is probably less than \$1, which gives little economic incentive to the owner to recycle and it would be hard to adequately compensate a recycling plant to have them taken apart by hand. Given current metrics and valuations, it is more efficient to mine, extract, and transport REM than to dismantle components and separate them so they can be recycled. If they were to be recycled, the easiest recovery process is smelting, which itself involves heating discards to very high temperatures to melt any plastics or other surrounding materials using energy and creating toxic wastes. An alternative is to submerge products in acid, but again this is not without deleterious side effects.

REMM highlights a specific business ethics problem since most theoretical frameworks in ethics are primarily concerned with relations between people and fail to incorporate our duties to the environment. Moreover, there are significant problems in working out the nature and extent of harms involved, since there are both immediate and direct consequences and almost unpredictable future interests. In this chapter, we first look at the ways in which we can approach such environmental issues and then more particularly examine the means to value the environment. We will then consider the move toward sustainability and what implications it has for business practice.

The Environment and Pascal's Wager

Our environment is at risk through climate change and pollution. In order to address the issue, we need to think about how we value our world, and the trade-offs we are willing to make. Here, it is useful to employ the philosophical notions of intrinsic, prudential, and instrumental values, and to consider what is meant by sustainability and what monetization techniques are appropriate.

There is some argument about whether we are encountering global climate change. Because we do not have very clear indicators about the cumulative effect of business practices on the environment, our concerns about pollution and climate change may seem premature and unwarranted, especially given that preventative or remedial measures are likely to make firms less efficient. R. Edward Freeman and colleagues suggested that we think of our global future in terms of a two-by-two decision matrix, based on Pascal's wager.⁵ Blaise Pascal (1623–62) argued that it is prudent to believe in God: If God does not exist, then we have lost nothing if we believe, but if God does exist, belief leads to infinite rewards while atheism will result in infinite suffering. Freeman adapts the wager to frame how we should react in the face of inconclusive evidence about climate change. He says that either there is climate change or there is not, and we can take steps or

⁵ R. E. Freeman, J. Pierce, and R. Dodd (2000). "Shades of Green: Business, Ethics and the Environment," in *Environmentalism and the New Logic of Business: How Firms Can Be Profitable and Leave Our Children a Clean Environment*. Oxford: Oxford University Press.

not. This gives us four options. If there is no real change happening, we can do nothing and gain the marginal benefits that our present economic decisions offer. If there is no climate change and we do take steps to reduce emissions and lessen our impact, then it will cost us relatively little. On the other hand, if climate change is real, and we take steps, we may manage to mitigate some of its effects. The worst possible outcome is if it is real and we ignore it. In considering all the possibilities, Freeman argues that in the absence of full evidence, our only reasonable course of action given the enormous downside possibilities is to assume that the changes are real and imminent and to act accordingly.

Two of the hallmarks of capitalism are growth and consumption – with an inevitable strain on the world’s resources. Countries seek to increase their national product annually. The “rule of 70” is useful here: If we want to find the doubling time of a quantity growing at a given annual percentage, we divide the percentage into 70 to find the number of years. This shows that if an economy grows at the relatively modest pace of 3.5 percent it will double in twenty years, and in some economies like China and India that have achieved 7 percent it will likely double much faster.⁶

While an expanding economy has the promise of greater prosperity, it also increases the depletion of raw materials. The same logic also applies to world populations: In 1900 the world population was about 1.5 billion; by 2021 it was 7.9 billion. Each successive billion has been achieved in an ever-shorter time. At current rates, we are adding at least eighty-three million people to the planet every year. While estimates of future numbers are largely speculative, it is fair to say that the earth has finite resources. If we continue with present practices, a higher standard of living for the current population will put an additional burden on the environment, as will any increase in population.

As an initial step in the analysis, we should recognize that we make thousands of small decisions every day as producers and consumers that affect the quality of our environment, and these decisions are not the choice between having a pristine environment or a polluted one. Instead, we make constant compromises between our convenience and wants and our desire

⁶ The Economist (2021). *Pocket World in Figures*. London: Profile Books.

for a clean planet. So if, for example, we decide to drive to work, that has both direct and indirect effects. Directly, driving to work instead of taking public transport gets us where we want to go earlier and in greater comfort, but at the cost of burning finite petrochemicals and producing exhaust. Indirectly, we contribute to a culture of independent drivers that stimulates car production, causes planners to cater to greater traffic demands, and sends signals to the oil industry about consumer preference. We are constantly engaged in trade-offs, and in economic terms we tolerate pollution up to a point where we are indifferent to the greater benefits it brings – perhaps we will be unconcerned about more smog in the air until we have to buy air filters and personal oxygen supplies – and then we will have an incentive to change our economic choices.

Consider many modern personal electrical devices: They operate on integrated circuits and if they go wrong it is cheaper and easier to replace them than to have them repaired. Similarly, many plastic containers will probably end up in a landfill not long after purchase and they will remain there for thousands of years. Many plastic products are still made with energy drawn from burning coal, and production usually creates waste products that we then have to dispose of. These consumption patterns would not be problematic if there were an infinite supply of raw resources. However, at present-day rates we will leave the earth more depleted of its natural wealth for future generations. One estimate suggests that we are draining the world's resources at such a rate that it would take almost two worlds to supply our needs. Given our usage patterns and ability to absorb waste, it would take one year and eight months to regenerate what we use in a year, evidenced by overfishing, overharvesting forests, and emitting more carbon dioxide (CO₂) than the world can capture with its natural systems.⁷

Our attitude to the environment is not only reflected in the way we deal with goods, but with services as well. We can use the entertainment vacation destination of Las Vegas as a metaphor: We use fuel that puts hydrocarbons into the upper atmosphere during the flight and then we enjoy air conditioning that pours additional heat outside, ironically boosting the

⁷ E. Wackernagel and B. Beyers (2019). *Ecological Footprint: Managing Our Biocapacity Budget*. Gabriola Island, BC: New Society Publishers.

need for air conditioning. The city prospers in the desert with imported water and electricity, and tourists play golf on courses of regularly fertilized and irrigated Kentucky grass. The lights illuminating the city can be seen from the International Space Station. Its famous casinos have a return rate of 93 percent, which means that players will lose on their investment but are willing to do so for the thrill of gambling.

Sustainability

At the outset, we should make a critical distinction. The term *sustainability* is used loosely in much of the literature. We can see that it has at least two meanings. In the first, it has the sense of continuing at the present rate. If someone is running on a treadmill, say, they might be told to sustain the pace. In the same way a business may want to sustain its output or profitability. Another sense of the term is not depleting the world of its resources – for example, planting a tree for every tree that is cut down or deriving energy from the sun or the tides instead of burning fossil fuels. The literature often conflates these two meanings; they may overlap, to be sure, but have very different implications. An oil company, for instance, may rightly claim that it has a sustainable operation, suggesting that it can keep producing fuels for the future, but this nevertheless may have the result of lessening future resources. Similarly, an electronics company may be interested in sustaining its production by strategically designing improved cell phones, investing in the workforce, and building communities of future consumers, but with the effect of drawing down finite resources while the discards are routinely buried in landfills. So it is important to realize that a firm touting its sustainability efforts could merely be saying it will continue with business as normal.

The United Nations (UN) has promoted its 2030 Agenda for Sustainable Development⁸ adopted in 2015 by member states and laying out seventeen goals. The UN's approach to sustainability is holistic, as it says that efforts like recycling or moving to solar power are not enough without also addressing the background conditions of global poverty, poor education, and inequality.

⁸ <https://sdgs.un.org/goals>.

Perspectives on the World

Deep ecologists would suggest that the biosphere has intrinsic value and is priceless in the sense that, like love, it cannot be considered a commodity to be exchanged for money. For them, the issue of how to value a forest of old growth trees would be meaningless, because they do not feel that market terminology can even apply to decisions about the environment. Others feel that there are ways of assigning monetary values and applying cost/benefit analyses, and so the problem to overcome is in refining the methods involved. Additionally, some people believe that the world has abundant natural resources that should be exploited for our benefit, whereas others want to make sure that each generation lives in such a way that the world can be replenished without leaving a legacy of deficit.

Environmental Values

Philosophers make a distinction between good in and of itself, and good produced for the sake of some reward. *Intrinsic values* do not look to outcomes, and in environmental terms this means that we should care about the planet without regard to how we may benefit. A *prudential* approach suggests that what is good for the earth is likely to be good for humans, too. A purely *instrumental* view looks to the most efficient use of the world's resources for human benefit. Let us now look at them in turn.

Philosophy has typically been anthropocentric – that is, human welfare is the central concern, and humans are the creators and arbiters of value. Associated with the Norwegian Arne Næss, *deep ecology* challenges our current views of personal identity, suggesting that all beings are part of a universal system and that our current concept of individuality is mistaken – different lifeforms are merely different manifestations of an underlying unity.⁹

Similarly, proponents of intrinsic worth maintain that we should not treat the world as a commodity; in essence, it is priceless. That is, we should not put a monetary value on such elements as the natural landscape,

⁹ J. Seed, J. Macy, P. Fleming, and A. Næss (2007). *Thinking Like a Mountain: Towards a Council of All Beings*. Gabriola Island, BC: New Catalyst Books.

a beautiful view, or native animals. Other places and traditions may be held as sacred, again in the sense that they should not be subject to the market. There is much truth to these claims, but we should take some care in parsing out precisely what they mean.

The phrase “priceless” has three meanings. In the first, the sense is that the value is extremely high. This might include objects such as the British Crown Jewels or the Mona Lisa painting; it is not that they could not plausibly be traded, but the amounts involved are beyond regular market valuation. Perhaps the Mona Lisa could be sold for the amount required to restore the burned Notre-Dame cathedral; this would involve a huge amount of money, but significantly we can imagine such an exchange. The second sense is that something is irreplaceable, and so even if it were duplicated no amount could ever compensate for the loss of the original. The third sense is that something is literally off the market. For instance, most people do not treat their religious beliefs as a commodity that they would change if paid to do so – there are some things that just cannot be bought and sold, and even though it is sometimes claimed that everything has its price, these prove the exceptions.

One derivative thought experiment is known as the “last man argument” where we are asked to imagine that a sole human survivor remains on the planet and has a limited time left to live. They destroy the flora and fauna that would have persisted after their death, and the question is how we would judge the action. The claim is that if we condemn the action, there must be values adhering to the plants and wildlife in and of themselves independent of human utility. However, the claim is probably less persuasive than it initially appears, since in the experiment it turns out humans are still involved in that we as individuals are reflecting our own views about the behavior rather than asserting an intrinsic value in the absence of people.

Another sense of intrinsic value is as a rhetorical label connotating moral significance – perhaps the ability to suffer in the case of animals or the way certain landscapes can provoke special feelings. Here again, though, we need to note that it is humans imparting values and not necessarily any metaphysical quality in the entity itself. In short, it is fair to say that *there are no valuable objects, only objects valued*, since humans are the originators and arbiters of value.

At the same time, people may value some things more than life itself. Soldiers in battle may risk their lives to retain a flag, for example. In the Second World War, there were cases of *Kiddush Hashem*, where Jews were willing to sacrifice themselves rather than renounce their faith or tear up sacred texts. This is not to deny the existence of the sacred in our lives, only to suggest that symbolic or reverential values come from our minds rather than qualities in the objects themselves. Clearly, there are times when we impart symbolic power to artifacts, but again this represents humans endowing value, and a regimental banner that once prompted heroic acts may now just be a fading object in a museum.

The upshot is that even if we agree that all living creatures and natural objects have intrinsic worth, then there may be little else to say beyond the initial assertion, since it leaves us in a practical stalemate where decisions are either arbitrary or impossible. If we say people and animals have equal intrinsic value and a developer wants to build a subdivision on an area that currently hosts songbirds, we have no means of deciding whose interests should carry more weight. A more moderate claim suggests that there are degrees of intrinsic value – perhaps humans, birds, and trees all have intrinsic worth, but humans have more than birds, and birds more than trees. This leads to discussions about what features result in more worth and the appropriate justifications for harm, arguments many deep ecologists would resist or discount out of hand. Nevertheless, practically speaking we need a decision procedure: Perhaps if the songbirds are in no danger and the tree population is not at risk, then development should be allowed. Still, if we concede, for example, that it is acceptable for human interests to prevail in building an airport while destroying flamingo habitat, do the number of birds affected matter and should we be concerned if only a few are put at risk, but they are the last flamingos on earth?

Proponents of using intrinsic worth accept that there are major theoretical issues to be worked out, but nevertheless see that framing environmental debates in these terms has tremendous importance in that it completely reverses the moral onus. They say that if the world is seen in purely anthropocentric terms, we do not need to justify interfering and exploiting it. On the other hand, if we start from the perspective that all of nature is valuable, then we need to justify actions that disturb a natural

state. In New Zealand, for example, conservation legislation has taken the view that developers need to justify environmental disturbance, which upends the usual stance of environmental activists having to create arguments for conserving and protecting the environment.¹⁰

In brief, some people believe that the world has abundant natural resources that should be exploited for our benefit, whereas others want to make sure that each generation lives so that the world can be replenished without leaving a legacy of deficit. Another view is that of ecofeminists, who consider the way we deal with the environment as mirroring the domination and exploitation that has historically characterized relations between the sexes, and their view is that we need to regard relationships between each other and the planet in more considerate and cooperative ways.

Web of Being

A prudential approach maintains that we should be conservative with regard to the earth, arguing there is a “web of being” where all the elements in the biosphere are connected and harm to one part may result in consequences that we cannot foresee. This does not deny that the value of the environment is relative to human satisfactions, but it reminds us that destruction of remote or seemingly unimportant flora and fauna may be detrimental to our future. Aldo Leopold (1887–1948), a forestry professor, articulated what he termed “the land ethic” in his book *A Sand County Almanac*.¹¹ Leopold considered *land* to be a fountain of energy flowing through a circuit of soils, plants, and animals, with food chains representing upward movement, and death and decay downward. All nature is thus connected, and humans are part of an overall biotic community. From this perspective, he believed our role should be as stewards of the environment instead of exploiters:

Most members of the land community have no economic value. Wildflowers and songbirds are examples . . . Yet these creatures are members of the biotic

¹⁰ W. Fox (1993). “What Does the Recognition of Intrinsic Value Entail?” *The Trumpeter: Journal of Ecosophy*, 10, p. 101.

¹¹ A. Leopold (1987). *A Sand County Almanac*. New York. Oxford University Press.

community and if (as I believe) its stability depends on its integrity, they are entitled to continuance . . . A system of conservation based solely on economic self-interest is hopelessly lopsided. It tends to ignore, and therefore eventually eliminate, many elements in the land community that lack commercial value, but that are essential to its healthy functioning.¹²

The sense of a functioning whole underlies Leopold's approach, leading him to state: "A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise."¹³ The impetus for caring for the environment, then, is that it is a system that ultimately serves us, and respect for the internal integrity of the system will result in greater eventual benefits or fewer harms for humans.

Consider the case of the Pacific yew tree. It became the most valuable tree on the North American continent when it was discovered that it was the source of a potentially life-saving drug that can combat cancer.¹⁴ It is small and resembles a shrub, and it was often discarded in clear-cut forestry. In the mid-1960s, the US National Cancer Institute screened over 35,000 species and discovered that an extract from the yew bark, Taxol, could be highly effective in previously incurable cancer cases, especially ovarian and breast cancers. However, the chemical mechanisms involved puzzled scientists, and it was not until 1977 that scientists understood precisely how Taxol interfered with the cancer's growth. By 1991 it was hailed as the most effective cancer medicine discovered in many years.

Over 800,000 pounds of yew bark were being collected annually from forests in Oregon and Washington, since it took the entire bark from 6 trees that were 100 years old to provide sufficient Taxol to treat one patient. If alternatives had not been synthesized, the demand for yews would have put the habitat of the spotted owl in jeopardy and the finite supply of suitable yews would have run out in a few years. Chemists still use the yew in developing the synthetic derivatives, and so they are currently being harvested but on a lesser scale.

¹² Leopold, *Sand County Almanac*, p. 210. ¹³ Leopold, *Sand County Almanac*, p. 225.

¹⁴ National Cancer Institute (2021). "Success Story: Taxol," https://dtp.cancer.gov/time-line/flash/success_stories/s2_taxol.htm.

Environmentalists point to the yew as a prime example of the continuing need to preserve biological diversity. Because we are unaware of the potential benefits of our surroundings, they claim it is only prudent to conserve as many plants and animals as we can in what has sometimes been termed an “ark” approach, where even if we disrupt flora and fauna we should preserve them in such a way that they could potentially rebound in the future.

Another useful example of the unknown consequences of interfering with nature is the saga of the Australian cane toad (*Rhinella marina*) where a non-native species was introduced with the best intentions but with disastrous consequences. Prior to the development of appropriate insecticides, the Australian government imported a few toads from Hawaii to deal with a beetle that destroyed sugar canes. The toad has poisonous glands on its skin which can kill many predators instantly, and they are capable of eating birds, mice, and other rodents. A female can lay up to 25,000 eggs at a time, and both the eggs and tadpoles can be deadly to other species. It is hard to stop their spread and they have massively disrupted the ecosystem in Northern Australia. Ironically, the toad was totally ineffective in dealing with the sugar cane beetle. The lesson, perhaps, is that we rarely have sufficient information to interfere without provoking unintended consequences.

Monetizing the Environment

Many think that environmental concerns can be addressed by *monetization*, that is, assigning monetary values and applying cost/benefit analysis, and so the problem to overcome lies in refining the accounting methods involved. For example, if we buy tuna that puts dolphins at risk, that is a human-centered decision based on the relative value we place on inexpensive food and what dolphins mean to us, and it presumes that we have the authority to dictate the fate of other animals. Under an economic analysis, the value of a pet dog is understood as the benefits it brings to its owner, and there are ways we can put a price on it by, for example, looking at the amount the owner spends on the animal and how much they would be prepared to spend in veterinary bills. In a legal forum, if a pet were harmed, the owner would be compensated. In that sense, humans are the creators and arbiters

of value for animals and the environment. The value of a pristine stream is only what those humans concerned about the stream deem it to be. Similarly, in the political arena, a country may consider development to be in the best interests of its citizens even if it realizes that it may result in environmental degradation.

A practical difficulty in dealing with business and ecology is that the environment is not privately held; as we saw in Chapter 3, it may be termed a *commons*, derived from the ancient village practice of designating an area where anyone could graze their livestock. In the absence of personal property rights and external regulation, the grass might become depleted to the point that the area becomes useless to everyone. Similarly, we share many environmental resources, and there are cases where there is great individual benefit to using the resource while inadequately compensating everyone else involved. For example, if a business disposes of its industrial waste untreated in the city sewers, it lowers its costs but passes them on to everyone dependent on local water treatment. If everyone acted the same way, we would have a situation in which people do not recognize the mutual enterprise of our existence and only focus on what is in their immediate and local interest – and, what is more, when we realize what others are doing there is a tendency to join in the practice. We need to recognize that there is inevitably a tension between our short-term personal gratification and the long-term benefits to everyone who may be affected by our actions. Additionally, some parties will have more leverage as not all members of the commons have equal resources or utility functions. For instance, a wealthy person might be more willing to buy water filters or bottled water than someone living on the margins of society.

As well as commons problems, there are other difficulties caused by market failures: Environmental effects are often treated as negative externalities, so that the pollution or degradation costs are not considered part of the cost of production. Thus, pollution from mining is left untreated, and people buying wedding bands do not pay for the considerable pollution caused in bringing the product to market.

Another confound for decision-makers is that many effects of business operation are incremental and long term. For instance, mercury takes a long time to work its way up through the food chain. Similarly, some

have denied climate change due to CO₂ emissions because the effects are not necessarily dramatic or noticeable from year to year. This leads to what might be termed a *ratchet effect*. A ratchet is a tool that has a locked cog so that in, say, hauling a heavy object all the effort can be concentrated on repeated small moves. The parallel is that if the baseline for comparison keeps changing and only reflects small changes we are unable to see the overall effect, whereas if we had fixed data, perhaps the state of the world in a given year, then we could use that as a standard rather than looking for minute annual changes. For instance, although we may not perceive much difference from one year to another, the overall surface temperature of the world is increasing year by year.¹⁵ Additionally, psychologists tell us that we are inclined to discount or ignore negative information and look to data that favors our immediate and personal interests as well as routinely underestimating the drain on common resources and the time it would take to replenish them – so-called temporal traps.¹⁶ Because of the widespread problems in measurement, we will now turn to examine some of the ways of we can put a value on the environment.

Accounting Techniques

Tangible goods are things we can touch, like computers, hammers, or apples. We can also trade services, so there is a price on being entertained at a theater or getting a haircut. When there is an active market the benefits and costs are clear to all the parties, and individual preferences are fairly easy to determine. We can choose to buy exotic chocolates, enroll in a gym, or save for a rainy day, reflecting our personal utility functions. In contrast, there are intangible commodities, and in general their prices are much more speculative. The value of computer software comes from the embedded coding rather than the hardware that houses it, and it could be worth a fortune one day and be completely outmoded the next.

¹⁵ R. Lindsey and L. Dahlman (2021). *Climate Change: Global Temperature*. National Oceanic and Atmospheric Administration, <https://bit.ly/3J4Rz1q>.

¹⁶ D. Messick and C. McClelland (1983). “Social Traps and Temporal Traps.” *Personality and Social Psychology Bulletin*, 9 (1), pp. 105–110.

Some elements of the environment can be treated as tangible goods: ore from mining or crops, for example. However, the disrupted landscape of an open cast mine or the effects of chemical fertilizer runoff may be harder to monetize. The challenge we face is whether to consider such things as off the market or alternatively imagine what something might cost if it could be traded, a so-called *shadow market*.

Key to the discussion, though, is identifying an important logical fallacy. It may be true that *we pay for the things we value*; the converse, that *we only value the things we pay for* does not automatically follow (formally, the fallacy of the false consequent: " $p \rightarrow q \neq \neg p \rightarrow \neg q$ " or "pigs are mammals, therefore if it not a pig it is not a mammal"). When researchers in New Zealand asked residents how much they would pay to preserve a pristine island off the coast, they found that many rejected the assumption that it could be assigned monetary value by putting either zero or infinity on their responses. The message the researchers got was that the development scenario elicited feelings of grief or loss when reduced to dollar amounts, and there was a sense among those polled that using monetary comparisons ignored crucial issues of disparities in wealth and power.¹⁷

The umbrella term for economic assessments of the environment is *contingent valuation*, where questions are posed in an "if/then" format. For example, people may be surveyed about what they would be willing to pay for conservation or restoration of an ecological resource. The polling agency must work out who the relevant population is and what resources are at risk. For example, the question could be posed as a simple choice between logging interests and preserving the habitat of spotted owls in the Pacific Northwest. The way questions are framed is critical: Asking people if they would be willing to pay more for energy in order to preserve wildlife (a personal loss) may elicit a different response than asking if they want to avoid a price hike (a personal gain) although some animals may be put at risk. Responses may be unreliable because individuals are not asked to make any actual purchasing decisions. Nevertheless, the method does have the potential to provide some data that can be used to develop policy.¹⁸

¹⁷ D. Vадnjal and M. O'Connor (1994). "What Is the Value of Rangitoto Island?" *Environmental Values*, 3, pp. 369–380.

¹⁸ See www.ecosystemvaluation.org.

For example, Svalbard (or Spitzbergen) is a remote archipelago between Norway and the North Pole with a land area greater than Denmark, but a population of under 3,000. It is notable for its polar bears and Arctic seabirds. One study found that 89 percent of fulmars, a bird resembling a seagull, had ingested plastic. Norway has sovereignty over Svalbard, and Norwegians were asked how much they would pay to reduce the marine plastic pollution. The researchers found that the average willingness-to-pay (WTP) came to over \$600 a year, and those with an especial interest in maintaining wildlife said they would pay almost \$1,000.¹⁹ A similar study looked at the adverse effects of plastic waste on the Galapagos Islands west of Ecuador, and determined that Ecuadorians would pay just over \$7 a year to remediate its effects.²⁰ Another study compared the amount of additional taxes people would pay to reduce carbon emissions in China and the United States, respectively, and found that the Chinese respondents came in around \$370 whereas the Americans were at about \$570.²¹

Research suggests that people tend to respond in ways they believe sound good, even though their economic behavior indicates they would act otherwise. Other confounds include the relative wealth of respondents. One way the carbon emissions study dealt with this was to assess WTP in terms of annual income and, when adjusted for this, the proportional amounts between Chinese and Americans become much more comparable. Moreover, given varying national wealth and stages of development worldwide it would not be surprising to see widely different utility functions reflected in these figures, since conservation might be considered a luxury in a poorer country. Another issue is that some people are liable to respond

¹⁹ T. Abate, T. Börger, M. Aanesen, et al. (2020). "Valuation of Marine Plastic Pollution in the European Arctic: Applying an Integrated Choice and Latent Variable Model to Contingent Valuation." *Ecological Economics*, 169, <https://doi.org/10.1016/j.ecolecon.2019.106521>.

²⁰ M. Zambrano-Monserrate and M. Ruano (2020). "Estimating the Damage Cost of Plastic Waste in the Galapagos Islands: A Contingent Valuation Approach." *Marine Policy*, 117, <https://doi.org/10.1016/j.marpol.2020.103933>.

²¹ M. Winden, E. Jamelske, and E. Tvinnereim (2018). "A Contingent Valuation Study Comparing Citizen's Willingness-to-Pay for Climate Change Mitigation in China and the United States." *Environmental Economics and Policy Studies*, 20, pp. 451–475, <https://doi.org/10.1007/s10018-017-0202-9>.

that they would pay nothing at all toward these causes, which can skew the findings dramatically; so these figures have to be taken with some caution. Additionally, the way such questions are framed is all important: Some studies might aim to provide a baseline amount to charge polluters, whereas if people had been asked if they would agree to a national tax increase for a very specific project involving their direct personal payment – such as a “bird tax” – the answers might be quite different.²²

The main means of measuring ecological value are: (a) *revealed preferences*, (b) *imputed willingness-to-pay*, and (c) *expressed willingness-to-pay*. Revealed preferences refers to the standard way of putting a value on market goods, so there is a price on fish or on exotic woods. Imputed preferences do not reflect an actual market, but make assumptions based on the buyer’s other purchasing behavior. Expressed willingness-to-pay tells us what the individual claims they would spend. Both the imputed value and expressed willingness are somewhat speculative, and in cases such as environmental values it turns out that people’s actual spending is often less than they assert.

Furthermore, we can calculate the value add during production. Because a dining room table made out of Philippine Teak might have a fancy pattern with fine workmanship, we can’t merely look at the end price; so revealed preferences trace the price actually paid for goods along the supply chain – for example, how much raw cut wood retails for. We can also put a value on less tangible elements such as a mountain view by the differential that people are willing to pay to live there (so-called *hedonic pricing*). In some cases, such as recreation spots, we can look at the amount that people are willing to spend in order to visit them (*travel cost*). Thus, we could do a straightforward cost/benefit analysis to work out whether a forest should be kept as a recreation area or logged for timber: We look at the resources expended by the number of annual visitors over time and compare that to the market value of the lumber.

²² A. H. DeGolia, E. H. T. Hiroyasu, and S. E. Anderson (2019). “Economic Losses or Environmental Gains? Framing Effects on Public Support for Environmental Management.” *PLoS One*, 14 (7), p. e0220320, <https://doi.org/10.1371/journal.pone.0220320>.

When a company announces the price of its goods, we can get fairly reliable data about how consumers react through their buying behavior. So if the price of gasoline goes up by 15 percent, and people do not change their driving habits, it shows that they are willing to tolerate the price hike, whereas if the price of yellow cars goes up by 10 percent, people would probably shift to buying a ready substitute, for instance, cars of a different color. However, the data in environmental cases tend to be much more hypothetical; we have to ask people how much they would be willing to spend if, say, the giant panda were in danger of extinction (*existence values*). In the absence of a real market, economists impute or assign projected amounts such as *legacy values* to conserve resources for the future, *options values* which keep choices open, or *nonuse values* where people are willing to preserve an otherwise exploitable resource.

Confounding the data is the fact that people react to dramatic events and news coverage, such as the *Exxon Valdez* tanker oil spill in 1989 that led to pictures of oil-soaked wild animals, but care less when the issue is not in the foreground. In effect, people may express values, but these often represent their best intentions rather than actual transactions. Evidence shows that we react more to cute or appealing animals, so dolphins or otters stimulate more sympathy than slugs or beetles, for example. Economic valuation is made even more complicated by the fact that we are often dealing with so-called passive use or existence value. That is, people may not get any tangible benefit from something they may never use or see – for instance, whales in the deep ocean. However, many people are willing to pay to protect something they may never encounter, merely because they value its existence.

We can also assess willingness-to-pay by looking at how much people might pay to avoid the consequences of not having a resource. For example, wetlands often act as a flood barrier, and so we can look at what people would have to pay to achieve the same degree of protection. This requires some conjecture on the part of the researchers, especially as people make risk assessments that are not always completely rational – for instance, many people ignore earthquake risks or construct buildings in known flood plains. Therefore, the value we place is similar to our thinking about

insurance: we may not know how much we actually need until something catastrophic occurs.

Monetization Applied

Traditionally, management decisions about the environment have been made using a market model, and hence it has been important to calculate values in order to make a cost/benefit case to preserve the environment. As we have seen, there are several ways to do this and by incorporating the terminology of the market, environmentalists can argue for changing practices. Thus, for example, if consumers are willing to pay a premium for organic food, fair trade coffee, or recycled goods, they will send an economic signal to producers that stimulate offerings and competition in these areas.

New markets may also alter what companies do. For instance, about three billion automobile tires are produced annually from petroleum derivatives and until recently most were dumped, often causing health hazards as they are a breeding ground for rodents and mosquitoes and accidental fires send plumes of toxic smoke into the air. Today, about half of all used tires are recycled for fuel and crumb rubber, which is used for playgrounds, roads, and hoses. Still, market analyses are highly dependent on public visibility and transparency; if a documentary shows the distress of Peruvian villages affected by mercury, viewers will likely respond, but it remains economically advantageous for a company with shady environmental practices to keep them secret.

An alternative means by which a business may make ecological decisions is to look at the cost of litigation. If a firm stands to benefit by \$1 million by polluting an area and will only be fined \$200,000 if it is discovered and prosecuted, then, absent any reputational effects, the company will treat the fine as a license fee. Hence it is important for the courts to be a reasonable gauge of the cost of environmental harms. For instance, after the *Exxon Valdez* negligently discharged oil in Alaska – polluting more than 1,000 miles of shoreline and killing hundreds of thousands of birds and marine mammals – the company, Exxon Corporation, was fined \$287 million in compensatory damages. In contrast British Petroleum (BP) has recently been fined almost

\$30 billion, largely because of the 2010 Deepwater Horizon disaster where a drilling platform in the gulf of Mexico erupted in a fire and sank, leading to pollution in southern coastal states across America.

Another way to assess the cost of pollution is for governments to impose regulation that may in turn create a market in tradable pollution permits. For example, in the United States, industries are allocated a number of “pollution credits” that they can then sell to other companies if they fail to use them. The credit amount should ideally reflect the compensation costs of the damage caused by the discharge. The European Union governs the emission of greenhouse gases at some thousands of industrial sites, and energy intensive industries and utilities must report their annual emissions in order to get permission to operate the following year. If a business has surplus emissions credits, it may trade them to another company. In 2021, the cost of carbon offsets was around \$3–\$5 per ton of CO₂, whereas some predictions suggest that a more realistic price could rise to be ten times as much.²³

A potential result of a market for this kind of pollution credit is that the regulating body could reduce the amount of allowed emissions over time and thus provide economic incentives for cleaner industry. At the same time, we should note that the value of a credit reflects the availability in a regulated market rather than the actual cost of remediation. Moreover, the payments involved need not go toward environmental remediation, as they are primarily designed to send the appropriate signals to the market; that is, to reintegrate negative externalities so producers realize there is a cost to allowing CO₂ into the atmosphere. The 2016 Paris Climate Agreement is an international commitment that set goals for restrictions on emissions at the national level. It was signed by 195 countries. Although it lacks punitive authority, it does express that there are real environmental risks caused by human activity and it provides practical targets for participants.²⁴

²³ UCL News (2021). “Ten-fold Increases in Carbon Offset Predicted,” June 4, <https://bit.ly/3Agvn1P>.

²⁴ M. Denchak (2021). “Paris Climate Agreement: Everything You Need to Know.” Natural Resources Defense Council, February 19, www.nrdc.org/stories/paris-climate-agreement-everything-you-need-know.

Industries have also developed a voluntary standard, ISO 14001, which acts as a benchmark for minimally acceptable environmental management systems (EMS). An independent authority awards the standard when a firm satisfies three criteria: (a) implementation of an EMS; (b) having procedures in place to maintain compliance with applicable regulations; and (c) an institutional commitment to both continual improvement and the overall prevention of pollution.²⁵ There has been a steady growth in environmental awareness in business and international bodies such as the International Monetary Fund and the World Trade Organization reserve the right to assess the environmental impact of development projects. Furthermore, sixty-four governments including the United States, UK, and India, as well as the European Union, encourage firms to incorporate social and environmental impacts in their annual reports and over half make it mandatory for large and state-owned corporations.²⁶

Beyond Cost/Benefit

In short, many researchers have claimed that cost/benefit reports are highly useful but must take into account the specific community context and not simply default to the economic bottom line in the terms framed and legitimized by those doing the analysis. This can also lead to a form of circular reasoning: If we assume that the end goal of an economic system is solely to fulfill consumer demands without any further discussion of the nature or scope of those ends, then those metrics will dominate any analysis and we will miss any meaning that emerges from honoring the past or finding meaning in the present by situating it in a flow of cultural heritage.²⁷ The idea that we only value what we pay for led early thinkers to rebuke economics for not taking into account those aesthetic and spiritual intangibles that allow us to flourish. In John Ruskin's words: "The real science of

²⁵ www.iso.org/iso-14001-environmental-management.html.

²⁶ Industry Today (2020). "Mandatory Sustainability Reporting," April 15. <https://industrytoday.com/mandatory-sustainability-reporting/>.

²⁷ G. A. Smith (1996). "The Purpose of Wealth: A Historical Perspective," in H. E. Daly and K. N. Townsend, eds., *Valuing the Earth: Economics, Ecology, Ethics*. Cambridge, MA: MIT Press, pp. 183–210.

political economy, which has yet to be distinguished from the bastard science, as medicine from witchcraft, and astronomy from astrology, is that which teaches nations to desire and labour for the things that lead to life: and which teaches them to scorn and destroy the things that lead to destruction.”²⁸

However, the clear benefit of a straightforward economic analysis based on aggregated preferences is that it does provide a metric, whereas claims about the value of the past or inherent meaning tend to be vague and contentious. We can imagine, for example, that textile workers might prefer using machines that save hours of tedious labor at the cost of abandoning unique designs for each garment, and so we cannot automatically presume that people will agree and be willing to subsidize tradition for its own sake. The appeal to context may also be open to charges of relativism and elitism insofar as there are few experts who are so authoritative that people will defer to their judgments about what should be preserved or what could be abandoned.

Sometimes it is said that nothing is sacred, and everything has its price. As a test case, we can look at the controversy surrounding the monolith at Uluru in Australia where competing value systems are difficult to monetize or balance. At daybreak several hundred visitors wait every day for the sun to rise over a spectacular monolith in the northern Australian outback. Uluru, also known as Ayers Rock, rises dramatically from the surrounding desert. Over 1,000 feet high, it turns vividly red and orange in the morning and evening light. Almost half a million visitors come every year to view the rock. There is an upscale resort nearby, and many commercial operators run tours. The area was the subject of lawsuits in the 1980s when it was handed back to the traditional aboriginal tribes known as Anangu, who then leased the area back to the Australian Nature Conservation Agency for ninety-nine years. A condition of the transfer was that visitors would be given access to climb the rock. Petitions from the native peoples led to a complete ban on climbing in 2019.²⁹

²⁸ J. Ruskin (1985 [1862]). “Unto This Last and Other Writings,” ed. C. Wilmer. London: Penguin, p. 209.

²⁹ P. Everingham, A. Peters, and F. Higgins-Desbiolles (2021). “The (Im)possibilities of Doing Tourism Otherwise: The Case of Settler Colonial Australia and the Closure of

The Anangu have lived a nomadic hunting and gathering existence in the desert for thousands of years and believe the world was created by beings whose legacy includes sites where they shaped the landscape and left behind their spirit. Tour operators, who encouraged motel building and other commercial development, had forced them from the area in the 1960s. Ten years later, the Anangu established a camp at the base of the rock to reassert their claim to the area, eventually resulting in the deal that established the reserve in 1985. They believe the area to be a sacred site. Under their tribal law, only senior Anangu initiates are allowed to follow the trail to the top or to visit special areas, and they believe that the government has allowed their heritage to be desecrated by visitors. Before the climb was prohibited, they posted signs banning photography in various sacred places and claimed that overcrowding and damage would rob the area of its unique character, as well as that the fragile ecosystem would be put at risk by species inadvertently introduced by tourists. The Anangu also attach great significance to deaths that occur on Uluru. The climb is moderately difficult, and a chain handhold was installed in 1964 to help people deal with the steep and exposed ascent. Nevertheless, over thirty people have died on the climb, mainly from heart-related ailments.

Tour promoters used to offer deals including unescorted climbs but qualified their advertisements with a statement along the lines, “The traditional owners prefer that people not climb the rock.” There were notices nearby stating that the Anangu would like people to show sensitivity toward and respect for their traditional law and culture and refrain from climbing. In an attempt to balance the interests of both sides, the Anangu community and the Nature Conservation Agency jointly developed a cultural center dedicated to informing the public about the significance of the site; in response, the proportion of climbers dropped from about half of the number of visitors to just over a third. Still, many visitors saw climbing as a right. In the words of one photographer: “Of course people should be able to climb it . . . Aboriginal people have no more claim on it than any other groups. We as Australians and as tourists are being locked

the Climb at Uluru.” *Annals of Tourism Research*, 88, <https://doi.org/10.1016/j.annals.2021.103178>.

out of this beautiful icon.”³⁰ Echoing this thought, another commentator said, “I believe people should climb . . . It’s an exhilarating experience. Ayers Rock belongs to all Australians.”³¹

In economic terms, the aboriginal people had little to offer – the Anangu could not pay off the tour promoters by compensating them for lost business and thereby protect Uluru from desecration. Moreover, most visitors to the area were there to witness the rock itself, and the fact that it is religiously significant was less important; thus, emphasizing the religious dimension of the site would probably not overcome secular interests. Nor could many Anangu be paid off with any amount since the significance of the rock to them is beyond price.

The philosophical response to a purely economic analysis of the case could be framed in terms of rights; for our purposes, the rights might append to the site itself or the aboriginal peoples who regard it as sacred. Nevertheless, if viewed only as an economic resource, the developers would likely prevail. The Australian federal government responded to an aboriginal “letter from the heart” and deemed the area out of bounds to tourists. In similar circumstances, perhaps the environmental, historical, or cultural aspects of place or tradition may be of special importance and so significant that they should never be on the market. The UN, for example, organized a ban on the sale of ivory that helped protect elephants from extinction, despite the fact that there is a strong market. In a similar vein, the US government resisted development on the historic Gettysburg battleground.

Some philosophers, including Mark Sagoff, have argued that the only way to deal with these cases is to reject economic analyses and leave ecological, cultural, and historical decisions to the democratic process rather than the market.³² Yet there are still drawbacks. This process puts weight on the values of the voting majority, who may be more concerned with their immediate well-being rather than preservation. That is, if we take

³⁰ K. Duncan quoted in L. Popic (2005). “Should You Climb Uluru?” *Guardian*, December 17, <https://bit.ly/3PZrtiQ>.

³¹ K. Gillespie (2018). “A Strange, Sad History of People Climbing Uluru.” *Vice*, February 21, <https://bit.ly/3oyaf09>.

³² M. Sagoff (2004). *Price, Principle and the Environment*. Cambridge: Cambridge University Press.

decisions away from the marketplace we need to have a clear idea of what an impartial and equitable alternative would be.

Sustainability and the Triple Bottom Line

Many businesses are moving toward the belief that we should be able to meet our own needs without leaving a legacy of depleted resources for future generations. Some commentators trace the movement to the 1992 Earth Summit where corporate leaders wanted to explore ways in which they could be more ecologically responsible while at the same time meeting their commitments to increased efficiency. Later the Harvard Business Review published a seminal article that suggested the challenge was to develop a world economy that the planet could sustain indefinitely; that is, business needs to move from expedient solutions to more long-term strategies and competencies that will benefit them in the long run.³³

Subsequently, many firms adopted *triple bottom line accounting*, a term popularized by John Elkington, and a profound new initiative to promote sustainability.³⁴ The idea is that to survive in the coming century, businesses need to adopt a wide perspective on what they are doing: They need to be profitable, but they also need stable markets, affluent consumers, and an environment that will sustain both business and people for the foreseeable future. In that sense, triple bottom line accounting is a prudential instrumental approach that does good for the sake of promoting business, but at the same time is enlightened in that it necessarily furthers human and biotic welfare. The first bottom line is traditional business performance, assessed in terms of profit and loss where the company does well if the bottom line is a positive amount; other factors are secondary. However, given an expanding global market, a forward-thinking company should also consider whether there is a sustainable market for its products and if it is innovative enough to sustain its profitability.

The second bottom line is social, so a company needs to assess its impact on society and the degree of trust and dependability the organization has

³³ S. Hart (1997). "Beyond Greening: Strategies for a Sustainable World." *Harvard Business Review*, January.

³⁴ J. Elkington (1998). *Cannibals with Forks*. Stoney Creek, CT: New Society Publishers.

with its stakeholders. This bottom line considers whether the firm has a net positive or negative impact on the communities it deals with, and how that may affect the company's performance. One way of thinking about this is as reputation or good will capital, that is, the amount that a company benefits by having loyal customers or those willing to pay a premium to deal with an institution they trust. Among other things, this reputation can be undermined by the reaction of socially conscious investors to bad press or by condemnation by nongovernmental organizations. If potential customers are discouraged by reports of a firm carelessly killing wildlife or using child labor, it would be appropriate for investors to receive reports showing the effect of these practices.

The third bottom line is environmental. This considers whether company operations have affected the integrity of essential ecosystems and how it deals with substitutable resources. This is not very different from current practice, in that companies have legal responsibilities in many developed countries to report emissions of various substances and to keep within set limits. The change is that the information would be incorporated into a more comprehensive view of the overall impact of the firm.

As an illustration, take the case of coastline fishing in India. Government initiatives opened waterways to joint ventures with foreign factory fishing ships and fishing became an efficient industry using modern trawling methods. Fish were also farmed along the coast, and minced fish was often used to foster lucrative shrimp production. The fishing industry has been an economic success if judged solely on the basis of return on investment. However, there is more to the story. Factory fishing drags nets along the sea floor, with subsequent destruction of the marine habitat. It is often so good at catching fish that the stock cannot replenish itself and so diminishes over time. Each pound of shrimp produced has been nourished by ten pounds of minced fish, and the development of coastal fish farms has been devastating to mangrove swamps and marine forests. In the terms we used earlier (see section on Sustainability), the industry is sustainable in the sense that it can maintain output efficiently – once an area is depleted the industry simply moves on somewhere else. But, at the same time, livestock resources are diminished faster than they can be replaced.

There is also a human cost. Indian traditional fishermen cannot compete with the factory fishers, and the routine use of fish as shrimp feed has led to scarcity. A centuries-old way of life has been threatened by an industry that took most of its catch for export. Many coastal dwellers have been deprived of their means of sustenance. They staged strikes and protests that gained popular support, and eventually the joint ventures were significantly scaled back and many of the smaller shrimp farms closed.

Triple bottom line accounting requires us to make the different kinds of costs explicit. In this way we can assess the success of a commercial operation not only in traditional economic measures, but in terms of its clear environmental and social impact as well. Moreover, it illustrates that we cannot easily segment the impact of business: Its economic functions are intimately bound up with its impact on communities and the environment.

One of the chief difficulties of triple bottom line accounting is measuring environmental and social impact in a consistent and reliable way – in essence, with a methodology comparable to the Generally Accepted Accounting Principles (GAAP) that standardize corporate profit and loss calculations. The more recent Global Reporting Initiative (GRI), which emerged from work by the UN Program for the Environment and the Coalition for Environmentally Responsible Economies (CERES), provides a structure for major environmental accountability and has become the worldwide standard for sustainability reporting.³⁵ The accounting firm KPMG reports that, in 2020, 80 percent of companies now provide information on sustainability and most rely on impartial third-party analyses. Moreover, firms are increasingly addressing issues such as climate change, child labor, working conditions, and diversity and equality as part of their standard reporting.³⁶

Summary

Perhaps an answer to many of the problematic environmental issues confronting business can be found by going back to the first principles that anchor notions of property rights drawn from the work of John

³⁵ www.globalreporting.org/.

³⁶ KPMG (2020). *The Time Has Come: The KPMG Survey of Sustainability Reporting 2020*, <https://bit.ly/3JK7kLN>.

Locke. Locke makes a convincing claim that we become entitled to goods through investing our labor in them, and then we may trade them as we see fit. However, he has three important qualifications when talking about ownership. The first is that there have to be sufficient goods to go around; we can catch as many fish as we like as long as the stock is not depleted: “at least where there is enough, and as good left in common for others.”³⁷ Second, we may not unjustly infringe on the rights of others. Depending how the case is argued, it may turn out that the fundamental religious rights of the Anangu trump the desire of tourists for a pleasant view.

The third provision is less well known. Locke says we cannot acquire goods if we will not use them. For example, he says there is no right to catch venison if it we are only going to allow it to rot.³⁸ He states that acquiring something that could be useful to others and then wasting it is an offense against the “common Law of Nature” and warrants punishment.

Consider buying a burger at a popular fast-food restaurant. The item is wrapped in waxy tissue and then put in a bag, perhaps with plasticware and a single serving pouch of ketchup or mustard. Typically, the burger will be eaten within a few minutes, and the purchaser will put the trash in a container owned by a municipality. The coated wrapper is hard to recycle, and most often all the material will end up in landfill. The producer is not burdened with the cost of disposal as the packaging is effectively paid for by the consumer, who in turn passes it on to governmental institutions. Perhaps the material is left as litter and the costs are passed on to unknowing third parties or even future generations.

Waste is not usually distinguished in economic discourse, as it is thought of as an element of property ownership. That is, if we buy food and then let it go bad it is our choice and, as with most other approaches to private property, we can buy, transfer, and dispose of goods as we wish. As it turns out, the average daily dry waste per person is about half a kilogram, or a pound, and some estimates have high income countries producing up to

³⁷ J. Locke (2016 [1690]). *Second Treatise on Government*, ed. M. Goldie. Oxford: Oxford University Press, p. 16.

³⁸ Locke, *Second Treatise on Government*, Section V, “On Property.”

four kilograms or ten pounds a day. The World Bank estimates that globally we produce over two billion tons of waste a year.³⁹

The standard assumption is that the consumer is responsible for the disposal of waste since packaging, for example, becomes their property once it has been acquired. Campaigns such as “Keep America Beautiful” (an industry initiative) and “Keep Britain Tidy” reinforce the notion that it is not the job of the producer to recapture potential resources or properly dispose of discards. One response is to promote what is known as Extended Producer Responsibility (EPR).⁴⁰ These initiatives advocate that manufacturers finance the cost of collecting, recycling, or disposing of the goods that consumers no longer want and there has been some success – for example, with mercury thermometers, batteries, and cell phones. However, these initiatives have to be seen in context, as it is estimated that collection of e-waste still hovers around 15 percent at best.

Food is often wasted in ways that would appall Locke. Some reports suggest that almost a third of edible groceries do not reach shop shelves because they look unappealing and get discarded. One study concluded that a quarter of food by weight is dumped, representing 7 percent of cropland produce.⁴¹ Globally, the UN estimates that 1.3 billion tons of edibles are wasted.⁴² Food makes up over 20 percent of American landfills, and once covered by dirt and starved of oxygen it can take decades for vegetables to biodegrade.

Over 300 million tons of plastic are produced annually from fossil fuels, and it is estimated that 40 percent is used just once. Many plastic bags and wrappers have a lifespan of less than a day. At least eight million tons make their way into the sea, described as five garbage bags for every foot of coastline around the world.⁴³ Discarded plastic tends to disintegrate into

³⁹ World Bank (2021). “What a Waste 2.0,” <https://bit.ly/3PUUpUmc>.

⁴⁰ J. Nash and C. Bosso (2013). “Extended Producer Responsibility in the United States.” *Journal of Industrial Ecology*, 17 (2), pp. 175–185.

⁴¹ Z. Conrad, M. T. Niles, D. A. Neher, et al. (2018). “Relationship between Food Waste, Diet Quality, and Environmental Sustainability.” *PLoS ONE*, 13 (4), <https://doi.org/10.1371/journal.pone.0195405>.

⁴² Food and Agriculture Organization (2011). *Global Food Losses and Food Waste – Extent, Causes and Prevention*. Rome: FAO.

⁴³ L. Parker (2019). “The World’s Plastic Pollution Crisis Explained.” *National Geographic*, June 17.

small particles, and laundered nylon or acrylic fibers discharge into the sewage system and often end up in the soil as fertilizer. Many cosmetics contain small plastic beads which will last for hundreds of millennia, interfere with ecosystems, and harm birds and sea creatures.

The plain fact is that even under a private property regime where individuals can demonstrate their economic preferences as they wish, we are very inefficient at using our resources. There are three reasons for this: businesses, government, and individuals all deflect responsibility for wastage; we underestimate the environmental costs involved; and we externalize costs onto third parties, including future generations. If consumers are faced with inaccurate information, say, about the total cost of single-use plastic wrapping, it is unsurprising that, all things considered, they will prefer the cheapest option. Moreover, there are inconvenience costs involved in recycling efforts as items like glass need to be collected and sorted, and there needs to be both infrastructure in place and economic viability for these efforts to be effective. In the absence of incentives such as deposit schemes, we can predict that people will simply respond to economic signals and choose inexpensive plastic containers and send them to landfill.

Locke was writing at a time when there were places that were both bountiful and underpopulated, to be sure, but his point holds true today when there is little left in common and appropriation by one party inevitably affects others. It means that we can take from common resources as long as doing so does not harm others' ability to do the same, and that although we can use resources, we may not destroy them if that leaves scarcity for others – presumably including our descendants.

The very idea of property, which is fundamental to capitalism, already implies that we need to sustain the earth's resources. Additionally, these principles of property provide a hierarchy of duties – in short, needs come before wants. Although we may spend at our discretion, if we engage in economic development, we also have specific moral duties: to avoid putting people in peril; to maintain minimum levels of clean air, water, and soil; and to allow people to sustain themselves. Another way of putting this is to introduce the clunky-sounding legal term *usufruct* – literally, use of the fruit. The idea is that another approach to property rights is to think of our

responsibilities as more like those of a tenant or steward. Take the case of a leased orchard, where the tenant is allowed use of the property and is entitled to its fruit, but in return has to tend to it and return it in at least the original condition. The same is true of a water mill or cooling station that takes water from a river but then has to return it to the stream. There is no prohibition on benefiting from the use, but it imposes duties on the user not to waste or destroy finite resources.

Finally, it is noteworthy that environmentalists are learning from indigenous peoples who have long lived in harmony with the world. For example, the Karuk and Menominee tribes in North America have a long history of sustainable forest management; buffalo are now returning on the Blackfeet reservation in Montana and there is a renaissance of Native Hawaiian agriculture.⁴⁴ In Alaska, native knowledge is contributing to scientists' understanding of depleting sea ice.⁴⁵ New Zealanders are benefiting from incorporating Māori insights in Earth Science.⁴⁶ As we face significant challenges that may fundamentally affect the way we live and do commerce in the future, it is increasingly imperative that we listen to many voices as we adapt.

Issues for Reflection

1. How much information about the environmental practices of a business should be available to investors and consumers? What form should it take?
2. One claim is that pollution is often the cost of development: Europe and America experienced times when industrial waste was largely unregulated during periods of significant economic expansion. Are there

⁴⁴ G. Wozniacka (2021). "Inhabitants' Digs Deep Into Indigenous Solutions to Climate Change." *Civil Eats*, May 24, <https://bit.ly/3zb2u5k>.

⁴⁵ Columbia University Climate School (2022). "Ice Edge: The Ikaagvik Sikukun Story" [documentary], www.climate.columbia.edu/events/ice-edge-ikaagvik-sikukun-story.

⁴⁶ C. Wilkinson, D. C. H. Hikuroa, A. H. Macfarlane, and M. W. Hughes (2020). "Mātauranga Māori in Geomorphology: Existing Frameworks, Case Studies, and Recommendations for Incorporating Indigenous Knowledge in Earth Science." *Earth Surface Dynamics*, 8, pp. 595–618, <https://doi.org/10.5194/esurf-8-595-2020>.

philosophically robust grounds to justify restraint on the part of developing countries today?

3. Is compensation ever due to those harmed by the effects of pollution? Who would pay, and how should it be calculated? What problems do you envisage?
4. Should a business be concerned about wider issues such as the health of the planet or maintaining species diversity? How should it justify expenses put toward those ends?
5. Do we have any environmental responsibility to future generations?

Case: Industrial Farming

Agriculture has become industrialized in many countries across the world and small farms are rapidly being replaced by highly automated operations. At any one time there are roughly three times more farm animals in the world than people – 19 billion chickens, 1.5 billion cows, and 1 billion sheep and pigs.⁴⁷ A concentrated animal feeding operation (CAFO), sometimes known as an intensive livestock operation, is a farm that applies industrial techniques to raising animals, typically cows, pigs, or chickens. These farms aim for maximum efficiency by making the most efficient use of space, feed, and other resources by raising and keeping animals in confined situations. Food is brought to them rather than having them graze in open fields and this can be controlled by computers while human operators monitor them by video. CAFOs began in the 1920s when the vitamins A and D were synthesized, which meant that animals could grow larger despite being kept indoors and lacking exercise. However, animals in close confinement tend to spread disease, and this proved to be a problem until antibiotics became widely available just after the Second World War. Today, half the antibiotics used in the United States are given to farm animals.

The impact of industrialization on farming has been striking. In Missouri, for instance, there were 23,000 independent pig farmers in 1985, a number that has dropped to fewer than 2,000 today.⁴⁸ Farms are

⁴⁷ The Economist (2011). “Counting Chickens,” July 27, <https://bit.ly/3vSgCzl>.

⁴⁸ C. McGreal (2019). “How America’s Food Giants Swallowed the Family Farms,” March 9, <https://bit.ly/3oAKTPa>.

now larger and fewer in the high-income world: The average size of a farm in Canada is about five times what it was a century ago. Four percent of all American farms make over \$1 million in sales but represent 66 percent of agricultural sales overall.⁴⁹ Three-quarters of the world's poultry are raised in industrial systems, and fifty billion chickens are slaughtered every year for human consumption. According to the World Economic Forum pork and chicken are the most popular meats for consumption, with about 120 million metric tonnes each produced annually, followed by beef, goat, and lamb. One-third of the world's grain goes toward feeding livestock.⁵⁰

Proponents point to the advantages of raising animals in this way. It provides plentiful food at affordable costs; the animals can be managed more easily; it is more likely to be profitable than a small family-run operation; and the product is more consistent, reliable, and safe. Critics, however, point to the dangers of this system. They warn that the large-scale use of antibiotics will lead to resistant bacteria that may put humans at risk; the treatment of the animals is inhumane as it includes crowding and crude surgery, such as debeaking and declawing chickens to stop them attacking each other in confined spaces; and it produces significant pollution. A single cow, for example, can produce up to two tons of manure annually and, according to the Centers for Disease Control, a pig produces between three and twenty times more unsanitary waste than humans: A feeding pen with 800,000 pigs can produce over 1.6 million tons of manure annually, one and a half times the amount produced in a large city like Philadelphia. And, unlike human communities, there are few legal requirements for the treatment of animal waste.⁵¹ Manure is one of the chief sources of nitrous oxide, which is fifty times more aggressive than CO₂ in its effects on the ozone layer. It has been suggested that cattle account for up to 15 percent of annual greenhouse gas emissions.⁵² Typically, animal waste is kept in holding tanks or spread on the

⁴⁹ M. Koba (2014). "Meet the '4%': Small Number of Farms Dominates US." CNBC, May 6, <https://cnb.cx/3S4fimD>.

⁵⁰ A. Thornton (2019). "This Is How Many Animals We Eat Each Year." World Economic Forum, February 8, <https://bit.ly/3PZIVna>.

⁵¹ C. Hribar (2010). *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities*, National Association of Local Boards of Health, www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf.

⁵² World Economic Forum (2019). *Meat: the Future Series – Alternative Proteins*, White Paper.

land, practices that result in flies and odors. If the soil becomes saturated, waste is likely to seep into the groundwater supply.

Meat has traditionally been regarded as a luxury in much of the developing world and demand is growing, especially in Asia. While the population of the world has doubled in the last fifty years, meat consumption has tripled. Countries like the Philippines now have large-scale animal production operations, and China accounts for half the world's pig population. Meat production worldwide has increased five-fold since 1950 and is growing most rapidly in Asia as industrial processes were routinely part of programs promoted by the United States and international agencies. Brazil has quadrupled its cattle production in the last fifty years, threatening the rainforest. Local reaction in developing nations has been mixed: Residents complain about polluted water and the prevalent odor but are reluctant to offend investors.

In a dramatic shift, the World Bank published a study in 2001 that reversed its previous position of supporting industrial farming production.⁵³ It realized that in the long term, industrial practices would not benefit local farmers and would ultimately lead to destructive pollution. Moreover, funding large-scale projects put small farmers at risk and threatened the environment. Its position paper now argues for a strategy in which “The transformations that accompany growth are an opportunity to move the livestock sector toward more sustainable development and improved contribution to human diets. Productivity levels and practices can be managed in ways that address adverse impacts on land, water and the environment, as well as the risks posed to animal and human health.”⁵⁴

Questions from the Case

1. Suppose you own a farm and the government imposes restrictive environmental regulations on farming practices in your area. Are there any philosophical or moral reasons why you shouldn't move your operations to another, less regulated, part of the world?

⁵³ C. de Haan, F. Le Gall, T. S. van Veen, et al. (2001). *Livestock Development: Implications for Rural Poverty, the Environment, and Global Food Security*. Washington, DC: The World Bank.

⁵⁴ World Bank (2022). “Moving Towards Sustainability: The Livestock Sector and the World Bank,” February 22, <https://bit.ly/3z8Lv3w>.

2. The World Trade Organization has resisted tariffs based on “process and production standards,” in effect saying that countries should not be concerned with how products from overseas come to market. This means that, with regard to meat products, although we know the country of origin, we would not know the conditions in which the animal was kept. Would such labeling be desirable, or is it unnecessary?
3. What is the best way to calculate the effects of current industrial farming practices? Are they negative externalities? Should pollution be accounted for in the costs of production and, if so, how?
4. What is the best way to account for the effect of industrial farming techniques on the environment and society?
5. Some argue that if pollution as a result of farming practices became an issue for consumers, they would demand alternatives, spurring research and innovation. Do you see any difficulties with this line of reasoning?
6. Do you think there are any moral differences between trees/plants, wildlife, and animals produced by humans for consumption? What are the implications of your view?

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