Ronald F. Duska

ISSUES IN BUSINESS ETHICS 23

Contemporary Reflections on Business Ethics

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CONTEMPORARY REFLECTIONS ON BUSINESS ETHICS

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Contemporary Reflections on Business Ethics

by

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To my grand children—the joys of my present and the hopes of the future: Jack, Luke, David, Nicholas, Bryan, Mary Kate, Gabriel, Kyle, Kaitlyn, Sarah, Jessica, Jacob, Samuel, Jonathan, Daniel, Timothy, Genevieve, Beatrice and whomever else might join the family.

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PREFACE

John Donne proclaimed that no man is an island. One engaged in teaching and writing depends heavily on those who have taught him and interacted with him. Most people teaching ethics have learned their first lessons from their family. More in my teaching than my writing, I have had occasion to quote my grandparents and parents, from my grandfather's "If you can't keep your word, what good are you?" to my mother's refutation of rationalization, that it seems every mother knows, "I don't care if everyone does it. If everyone jumps off a cliff, are your going to too?"

I owe an enormous debt of thanks to two recently deceased colleagues: my mentor Henry Veatch, who, more than anyone, taught me what it meant to do philosophy, though he cannot be held responsible for my errors and shortcomings; and Clarence Walton, one of the pioneers of business ethics, who preceded me in the Chair at The American College I now occupy.

Besides them, I am grateful to two colleagues who have become dear friends: Norm Bowie, who helped me get started in business ethics many years ago, and who introduced me to Pat Werhane, with whom I worked for many years with the Society for Business Ethics, and who encouraged me to undertake this anthology.

I would also like to thank Joe DesJardins, my sometimes collaborator, and John McCall, for prompting me to get involved in loyalty and employee rights issues. Tim O'Hara has been a constant friend and supplied editorial and substantive insights into my work for years. John Kuhn has offered advice and encouragement over the years. Nicholas Rongione and Jim Clarke have been friends and co-authors over the years.

I must thank the people from The American College who have given me the opportunity to do research and writing, attend and organize conferences and events that have produced much food for thought: Sam Weese, who hired me at the College and Larry Barton, the current CEO, who invariably encourages me in my work. Most of all the College has allowed me to meet and nurture a friendship with Jim and Linda Mitchell, who in their desire to promote ethics in the financial services industry, have sponsored a yearly forum that brings together the worlds best business ethicists and top executives from the financial services industry for the Mitchell Forum.

Thanks are also due to those who have engaged with me in dialogue over the years and have worked with me at the Society for Business Ethics and on the Mitchell

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No thanks would be complete without mentioning my wife Brenda, who is not only my dearest friend, but a CPA who co-authored a book with me on Accounting Ethics, thereby introducing me to the world of financial statements and the ethics behind them.

Finally, I would like to thank all those other teachers, students, and colleagues with whom I have engaged in dialogue over the years. They have taught me more than I could ever return. To all of them I am grateful for the insights and affection they have given me, and can only ask their forbearance if their contributions have not taken root in the correct way. They should in no way be held accountable with whatever failures of intellect or reason follow in these pages.

Ronald Duska

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"The Ethical Responsibilities of Accountants," *Geneva Papers on Risk and Insurance Issues and Practice*, July, 2005.

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"What's Literature to Ethics or Ethics to Literature?" *Listening*, 17 (1982) pp. 29–39.

INTRODUCTION

I had always wanted to write a large and important philosophical tome. But that never happened. The conclusion I draw, whether justified or not, is that I have neither the talent, the scholarly aptitude, nor the persistence to complete such a formidable task. I am most assuredly envious of those for whom this activity comes easily and I admire the fact that they perform the task with a facility that seems nothing short of remarkable. These are writers of large books.

My work seems to have more in common with the persistent practice of the coal miner, who, after simply picking and picking for many hours and/or years, has a substantial load of coal. We philosophical coal miners write small articles. Hence, my life of philosophical writing and ethics which reflected on the economic system in general and business in particular produced a number of articles. When an opportunity comes to put those smaller writings together, it gives one the chance to get close to the dream of producing a large if not substantial book, even if it is not a book with a tightly developed theme.

In looking back on my bits of philosophical coal, I discovered some unifying themes that might justify putting them together in one place as a kind of promissory note of a coherent and consistent view about business ethics in general, and most recently financial services ethics in particular. Those themes that run through most of the articles that I have written, are not of sufficient gravity to constitute a theory such as "stakeholder" theory, or an iteration of a faculty called "moral imagination" or even an approach as clearly defined as "Kantian Capitalism." But they offer an example of a practical common sense way to approach the ethical issues facing business.

Let me enumerate some elements of that way. Following Anscombe's mid-twentieth century critique of ethical theory, there is a discontent with the more fashionable contemporary ethical theories such as utilitarianism and deontology, as well as an outright rejection of relativism and emotivism. There is an impatience with the reluctance of ethical theorists to talk about what constitutes the good life, and their retreat from an "essentialism" with an insistence that "autonomy" can do the job. Following Anscombe's critique, I have always found the literal meaning of the concept auto(self)nomos(rule) to be unintelligible if not self-contradictory. After all, it seemed the rules needed to reflect the nature of human beings.

Beyond that there was discontent with the failure of ethical theories to resolve moral dilemmas. In practical matters there are times when utilitarian considerations trump deontological ones and vice versa. So these theories seem to serve merely as starting points for discussion rather than bearers of principles that provide the final word. Finally, there is a discernible habit of sorting out issues by using a certain dogged common sense realism and "essentialism." There are necessary constituents for what would count as living life abundantly. Going along with that is an impatience with what I view as a capitulation to the supremacy of the passions coupled with a recognition that the relation of passions to reason has to be worked out.

I was taught that, when engaging in the philosophical enterprise, one needs to be both skeptical and reverential about received wisdom, analyzing the claims of such wisdom to see how much is true and how much is false. Whether that wisdom is imbedded in the clichés of the times or the language we speak is of little import since it most probably resides in both. Either way, it behooves the philosopher who wants to practice his or her craft in an acceptable fashion to examine common opinion (what Aristotle called *endoxa*) carefully, looking for the evidence which supports it and modifying those opinions when the evidence falsifies them.

In looking back over some of my work, I find that quite often my philosophical musings begin with some common sense outlooks and go from there. To paraphrase John Austin speaking about ordinary language analysis, common sense outlooks provide the first word, but not necessarily the last word. Such a methodology of common sense getting the first (but not necessarily the last) word, has enabled me to reduce a great deal of ethical theory to an examination of the popular reasons that are usually given in day to day practical or ethical discourse—reasons that are used in defense of one particular ethical position or another.

Along with the skepticism about contemporary ethical theory and the use of common sense as a starting point, there has also been a persistent fascination with the question of where nature leaves off and convention starts. It has always seemed true to me that human beings are a blend of a core of unchanging nature molded by the conventions of their times. The economic system and business as we know it is a conventional "form of life" (to borrow a phrase from Wittgenstein). It could have evolved differently, but not in an indefinite number of ways. The successful development of any system requires taking into account the fixed properties of the individuals in the system. To echo Charles Taylor, there are hyper-goods (health, wealth, friendship, liberty) that transcend all systems. Those systems that appreciate them and utilize them will succeed. Those which don't will fail.

Finally, there has also been a fascination and utilization of teleology, or perhaps more accurately with the questions "Why?" or "What's the point?" I have always believed that to understand the nature of anything it is imperative to grasp its purpose—what Aristotle would call the final cause, which he at times equated with the formal cause. This seemed to me to coalesce with Wittgenstein's notion that "the meaning is the use." In short, to understand what an action, a practice, an institution, or a system is, one must understand what it is for.

All those considerations seem to come together in the various topics covered in this set of readings. The initial piece, "What is Ethics?" is an attempt to explain current ethical theory in simple terms by showing how it provides the reasons that we need to utilize to thoroughly evaluate the ethical import of any action. It concludes with a brief discussion of what would constitute virtue ethics. Although I have done some work in pure ethical theory, most of my writing has been in the area of business ethics.

Getting involved in business ethics helps one recognize that ethics as a public enterprise not only needs to evaluate individual actions, but also needs to evaluate organizations and institutions. Within and alongside those organizations and institutions are various other ethical communities involved with those institutions and systems. Thus ethics is in some sense inseparable from what Aristotle would have called politics. Consequently one needs to examine the conventional systems that human beings have set up. This implies that if one looks at business ethics issues one must examine the capitalist free market system within which this convention of doing business, that human beings have invented, functions.

After the initial exposure to ethical theory in "The Why's of Business Revisited," we adopt a teleological approach and examine the purpose of business, maintaining that its purpose, quite different from its motivating principle of fulfilling self-interest through maximizing profit or shareholder value, is to provide goods and services for consumers. The article takes pains to make the distinction between a purpose and a motive clear and claims that, while what motivates business is a pursuit of profit or shareholder value, that is not its purpose. Such a position clearly contrasts with the well known neo-classical notion that the purpose of business is profit. Nevertheless we argue that it accords with the notions of Adam Smith who reminds us that all business activity is ultimately for the purpose of satisfying the consumer. What follows from this is that business practices that don't lead to consumers being better off are unethical and flawed.

In the next essay, "Business Ethics: Oxymoron or Good Business?" we develop the argument more thoroughly, indicating how the dependency on the Friedmanian notion of corporate responsibility creates a moral schizophrenia because of the conflict between the pursuit of self-interest and the concern for justice that Adam Smith expressed. At this point the notion of a soulless corporation, meaning one without a proper final end, makes its first appearance in our writing. It is a theme driven by an Aristotelian view that the final cause, the "what a thing is for," often is equivalent to the formal cause, the what a thing is (that which defines the thing). In short we assert that human institutions as "forms of life" (to again borrow a concept from Wittgenstein) get their nature from their purpose.

This teleological approach of Aristotle, along with our themes of starting with common sense is dealt with again in the fourth reading "Aristotle: A Pre-Modern Post-modern? Implications For Business Ethics." Here we recount various Aristotelian views about the limitations of certitude and the use of reason and fallibilism in ethics. We recommend Aristotle's rhetoric as a method for doing ethics and remind the reader that common opinion is always the first word, though not necessarily the last, and that reason is the ultimate guiding principle. We compare and contrast an Aristotelian approach which has room for reason, albeit fallible reason, with the current post-modern approaches to ethical matters. We try to show that an Aristotelian approach to the possibility of ethical knowledge while critical of modernity can overcome the failure of postmodernism and account for the existence of some truth in ethical judgments.

If there is a schizophrenia in dealing with business, and if there is a sense of justice that puts constraints on the pursuit of self-interest, it bespeaks a form of life that has two threads and must have their source somewhere. One of the threads comes from the Judaeo-Christian tradition. In the essay "The Religious Roots of Business Ethics" we claim that the fact that the capitalist form of life, according to some, supplanted the Judaeo-Christian view makes it important to look at the religious roots of our current ethical viewpoints. The article points out the shift from the medieval principle of distributive justice that whatever property is held in super-abundance is owed by natural right to those in need, to the more contemporary view of property developed by John Locke, which allows for accumulation. The question is how to get the capitalist form of life aligned with some notion of stewardship or some Rawlsian version of justice, a version which is vaguely reminiscent of that earlier religious principle of distributive justice.

The section ends with an early essay, "Life Boat Ethics: A Problem in Economic Justice," which, as the title states, considers the question of economic justice, that is, how should the goods and burdens of the world be distributed? The article contrasts the views of Peter Singer as found in "Famine, Affluence and Morality," with those found in Garrett Hardin's "Life Boat Ethics: The Case Against Helping the Poor." Singer presents an early version of a prevent harm theory (albeit with few limitations on proximity concerns) while Hardin presents an early version of a trickle down theory reminiscent of Smith's invisible hand. These two poles of the argument both have persuasive sides that are intermittently used throughout my later work.

This general section on business ethics concludes with another teleological question, "What's the Point of a Business Ethics Course?" We claim that the point is simply to improve business behavior. That rather bold claim sets the stage for the article, which examines a range of arguments, including the argument of those who claim behavior cannot be improved with a course in business ethics. The article also looks a more tendentious argument, the argument of the skeptics/relativists whose theories must logically require them to claim that truth in ethics is impossible. To counter skepticism we argue for the possibility of ethical knowledge starting from common sense beliefs bolstered by rational analysis of difficult issues. Such a presentation and defense will enable students to experience what is involved in a serious, responsible evaluation of actions and critiques of society and its institutions. To the extent that knowledge is virtue or at least contributes to virtue, that should lead to improved behavior.

Some of the first writing that I engaged in after considerations of economic justice were the rights and obligations of employees. Early on I was asked to contribute an article on whistleblowing and employee loyalty to an anthology put together by Joseph DesJardins and John McCall.

Being the son of a factory worker who lived through the early years of the labor movement gives one a perspective on companies that is at best distrustful. It also gives one a perspective on the common opinion. Those perspectives lead me to argue rather strongly that the employee owed no loyalty to a corporation because corporations are not the kinds of entities that deserve loyalty, that is, they are not proper objects of loyalty. The article goes on to examine not only the permissibility of whistleblowing, but the conditions under which whistleblowing is ethically required. In developing that set of conditions I relied on what I take to be a seriously overlooked responsibility, laid out by John Simon, Charles Powers, and Jon Gunnemann, the responsibility to prevent harm. While we can argue for obligations to keep one's promises and to treat others fairly and with respect, there is a question of how much responsibility lies between avoiding harm and doing good. Simon, Powers, and Gunnemann lay out specific conditions under which there is a clear obligation to prevent harm. There must be need, capability, proximity, and a last resort. (As an aside, the proximity requirement is one not mentioned by Singer in his article.) Those criteria and that obligation have been of immeasurable use to me in resolving any number of business ethics conundrums through the years.

The next article in this section, "Employee Rights," is simply a straightforward article laying out the notion of rights in general and of employee rights in particular.

In the next article, "Why be a loyal agent? A systemic ethical analysis," I revisit the notion of loyalty and weave it together with other themes: the purpose of a corporation and the problem of agency. The question is why, in a system where the operative principle is maximizing one's self interest, is it not in one's self interest to look out for another person or an organization it is not in one's own interest? The answer, of course, is that there is no answer. To counter the self-interested model we suggest two things. There is a non-egoistic paradigm for business, and it is found in professionalism. The article was my first dealing with the issue of professionalism, and it is serendipitous given my later dealings with the financial services profession.

The final section of the book reflects my most recent endeavors, work in the field of financial ethics or perhaps more properly the ethics of financial services. It begins with an article, "Ethical Issues in Financial Services," which lays out the structure of financial markets and the responsibilities of those in those markets if we accept the goal of efficient markets as ethically legitimate.

The next article, "The Corruption of the Financial Markets: Systemic Inevitability or Aberration?" looks at what I have recently come to see as a major cause of the corruption of the financial markets witnessed in the last decade of the twentieth and early part of the twenty first century—the accumulative spirit or greed. Yet again these are reflections prompted by Aristotle's reflections on the limiting force of greed and the consequences of being bewitched by greed. The article views a number of recent events and shows how common it is for heads of corporations to forget the authentic purpose of the corporation for the sake of bolstering profits or accumulating wealth.

Three articles follow that look at various players in the financial services market. In "Should Mutual Fund Mangers Be Banned From Personal Trading?" we analyze the role of mutual fund managers and ask why there is not a ban on their personal trading, which is obviously a great source of conflict of interest.

In "The Ethical Responsibilities of Accountants," we turn to examine what is required to be an ethical accountant. We ask what the role of the auditor should be and focus on the need for independent attestation and professional skepticism toward the financial statements that need auditing.

Finally we conclude the section with "The Ethics of Financial Planning in the New Century," an article that returns to the theme of professionalism and the obligations that professionalism lays on the financial planner. The article reviews the principles that are found in the professional code of almost every financial service professional organization: integrity, objectivity, competence, fairness, confidentiality and diligence. Clearly, financial services professionals take ethics seriously, and for them not only is it not true that business ethics is an oxymoron, it is rather the case that they believe good ethics is good business.

We conclude the set of readings with an article "What's Literature to Ethics Or Ethics to Literature?" that serves as an epilogue. I have learned over the past several years that the best way to talk about and teach ethics is to use scenarios and cases. It put me in mind of an article I had written early on in my career, when, as a former literature major, I reflected on the relationship of literature to ethics. "Literature, in allowing us to identify with others, allows us to develop empathy, a requisite for developing our ability to care. It also shows us ways of coping with certain problems and perhaps even shows the shortcomings and flaws of certain lives."

BUSINESS ETHICS

CHAPTER 1

WHAT IS ETHICS?*

Stories about "unethical" behavior in business abound. The recent scandals permeating the financial services, savings and loan, and other industries have caused a growing concern about ethics in the workplace. Success often appears to be measured in only dollars. The claim that "greed is good" seems to reflect the behavior of many people in our society. Indeed, the desire to possess more and more seems pervasive—and business, like other institutions, reflects the values, beliefs, and personal goals of our society.

Time, Newsweek, the *Wall Street Journal*, and countless other magazines and newspapers have called attention to unethical practices, bemoaning the "sleaze, scandals, and hypocrisy"[1] undermining our moral bearings. In short, there is a great deal of concern about ethics in general, and business ethics in particular. This reading will examine what ethics is and how people decide what is "right" and "wrong."

The word *ethics* has a number of meanings. *Merriam-Webster's Collegiate Dictionary* gives several definitions of *ethics*, including:

- the discipline dealing with what is good and bad and with moral duty and obligation
- a set of moral principles or values
- a theory or system of moral values
- the principles of conduct governing an individual or a group.[2]

Ethics, in all of these definitions, is concerned with right or wrong behavior. This reading focuses on the discipline or study of ethics.

1. THE DISCIPLINE OF ETHICS

This discipline consists of the examination and evaluation of actions, social practices, institutions, and systems to determine whether and why they are good or bad, right or wrong, and whether they should be promoted or reformed—in short, whether particular actions, practices, or systems are moral or immoral. For example, ethics examines whether capital punishment is morally acceptable and why. The discipline of ethics could be used to examine and evaluate the practice of capital punishment, asking what it involves and on what grounds it should be continued or discontinued, for the ultimate purpose of encouraging or discouraging the practice. The examination would continue by asking on what grounds one could justify such an action or practice, perhaps using a general principle of retribution ("a life for a life"). These justifications would then be examined and evaluated to see if they are acceptable.

The subject matter of ethics as a discipline is human actions. However, ethics does not merely observe or explain human actions; that would be the function of psychological, sociological, or anthropological disciplines. Ethics is more than descriptive; it is prescriptive—that is, it is used to evaluate human actions and recommend or disapprove of them. Ethics is what philosophers call a practical discipline. It is a futile activity unless it eventually leads to actions in accord with those evaluations.

How to determine whether an action is right or wrong is a complicated issue that will be discussed later. For now, suffice it to say that everyone has a set of ethical or moral beliefs. (We use the terms *ethics* and *morals* and the words *opinions* and *beliefs* synonymously.) For example, almost everyone has an opinion or belief about the moral acceptability or unacceptability of euthanasia, abortion, capital punishment, adultery, lying, stealing, cheating, and the like. Each of these is a moral belief. If you were to write down what you believe about each of these actions or practices, that would constitute part of your moral system, or your *ethic*.

Furthermore, most individuals agree about many of their beliefs. But there are areas of disagreement where some of a person's beliefs might conflict with another person's. In that case, who is right? Is it possible that both are right? To see if and how it can be determined whose belief is correct requires a closer look at what a moral belief is.

1.1 Moral Beliefs

A moral belief is a judgment about whether certain human actions, practices, institutions, or systems are right or wrong. Any belief has several constituent parts, much like an indicative sentence in grammar. A belief is about *something*, which is called the subject. The second part of any belief, the predicate, is what one thinks or says about the subject; in the case of a moral belief, it is how one evaluates the subject. For example, if one believes euthanasia is acceptable, the subject is "euthanasia" and the predicate is "acceptable." Other thoughts one might have about euthanasia—for example, that it will save money for the family of the terminally ill patient, that it is accomplished swiftly and painlessly by massive overdoses of morphine—are predicates that do not evaluate the act; they give some sort of description of the act.

1.2 Actions, Social Practices, Institutions, and Systems

We need to say more about the subject matter of ethics. The primary subject matter of moral beliefs is actions, but it also includes practices, institutions, and systems.

An *action* in this context is an activity or behavior that is *deliberate*—resulting from careful consideration and performed by choice. An action is something one *intended* to do, requiring one to look into the future with a project or plan in mind and act accordingly, or to look into the past at some commitment or plan made then and deciding to act in accord with it. Those things about which one deliberates are those over which one has control and for which one is held responsible. People do not hold animals (other than humans) responsible for their actions, because they do not believe nonhuman animals do things "deliberately" in the same way humans can and do. Humans, then, are capable of conscious, deliberate actions, and those actions are the subject matter of some moral beliefs.

Still, we do not have the time to evaluate every action. Some actions resemble others, having the same characteristics; for example, taking the life of a terminally ill patient to relieve her pain is similar to taking the life of another terminally ill patient to relieve his pain. We tend to call such actions having a shared characteristic *practices*; we also tend to evaluate such practices.

However, not all evaluations are ethical evaluations. Or put another way, not everything we say or think about an action is an ethical evaluation, an ethical predicate. For example, one can think that eating shrimp with one's fingers is acceptable, but eating mashed potatoes with one's fingers is not. One can think that wearing a red-striped tie with a polka-dot shirt is not acceptable. These are not ethical evaluations, even though the evaluations involve using value predicates. Such evaluations constitute rules of etiquette or fashion; but beliefs about what ties one should wear are not moral rules. So the actions examined in ethics are those that affect other people and ourselves positively or negatively in some serious way.

Besides actions, ethics can examine and evaluate *social practices, institutions*, and *systems*. What is the difference? Actions are individual activities, such as John stealing my money. A social practice would be a class of individual actions, and these are often the subject of our ethical beliefs. Thus, we could say, "Stealing is wrong." Here, we talk of the general practice of stealing, of which John's stealing is but an instance. Insider trading is a general practice. John's action of using insider information to buy stock is an individual action, which is an instance of that practice. Thus, sometimes our ethical beliefs are evaluations of the individual action, and sometimes we evaluate the general practice. Sometimes, we go even further and ethically evaluate an institution. When we evaluate our schools or hospitals and how they work, we are evaluating institutions. We also evaluate systems. For example, our economic system is a form of capitalism that stresses making a profit. Some believe that capitalism is a corrupt system for this reason. Therefore, in business, ethics can examine and evaluate actions and practices, at both the institutional and individual levels.

To summarize, ethical beliefs are evaluations of actions, practices, institutions, or systems. We evaluate such actions by saying they are "right," "wrong," "good," "bad," "should be done," "shouldn't be done," "ought to be done," "ought to be avoided," "our duty," or "an obligation."

There are actions which we have called ethical actions to distinguish them from such actions as what we wear or how we eat. Still, as we have seen, those life and death actions can be studied in a manner other than that of the ethicist. For example, one can study capital punishment to show whether or to what extent it is unacceptable as a social practice. That would be the chief task of the ethicist. However, one could view capital punishment from a whole host of other perspectives, which would not evaluate it. Those are called *empirical* approaches. Thus one could study the correlation between capital punishment and the rate of capital offenses. One could study the costs of capital punishment and compare it to the cost of life imprisonment. One could study which societies utilize capital punishment and which do not, or study which forms capital punishment takes in different societies. One could study why certain people are attracted to capital punishment and why others are not. One could speculate whether capital punishment is more congenial to a socialist society or a democratic one. All of these approaches are descriptive empirical approaches to a practice thought to have ethical import. But, to say capital punishment costs more than life imprisonment, or that certain tribes believed in "An eye for an eye, a tooth for a tooth, and a life for a life," or that the desire for capital punishment arises out of an instinctual lust for death is to make assertions about a practice that is in the domain of ethical subject matter without approaching it from the point of view of the ethicist. Thus we can have different disciplinary perspectives about moral matters.

1.3 Why Study Ethics in Business?

Why should a manager get involved in this study of ethics? Doesn't a manager already have a set of moral beliefs that he already follows? Certainly, but there are still several reasons for studying ethics.

First, some beliefs might be inadequate because they are simple beliefs about complex issues or are outdated. The study of ethics might help a person analyze these complex issues or help adapt old beliefs to changing times.

For example, managers at one time thought it was acceptable to fire someone for little or no justifiable reason. Ethical reflection and examination now shows that this practice is questionable. It is generally accepted that, although managers have obligations to stockholders not to retain unneeded employees, they still have some obligations to employees, even terminated ones. Another example involves the principle of *caveat emptor* ("Let the buyer beware"). At one time, this principle was acceptable; but now it is generally believed that, in a great number of cases, the manufacturer has the obligation to inform the buyer of any defects. *Caveat emptor* has become *caveat vendor* ("Let the seller beware"). So ethical reflection can make managers more knowledgeable and conscientious in moral matters.

Second, in some situations, it might be difficult to determine what to do. In this case, ethics can provide insights into why certain courses of action are desirable.

Studying ethics allows one to apply ethical principles to actions. This is the skill of determining what to do and when to do it. When determining what to do in a specific situation, one not only needs to evaluate the situation in the light of ethical rules and principles; one needs to look over the situation and see just exactly what the ethical issues are. Just as an engineer learns the principles of construction in order to apply them to certain activities, and a manager learns the principles of good management in order to apply them to day-to-day operations, one learns the principles of ethical behavior in order to apply them to actions and practices. Furthermore, engineers learn the principles of physics and managers learn the principles of management in order to analyze situations to anticipate problems and test solutions. Similarly, one can study ethics to be aware of the ethical problems that exist and the principles that can be used in determining how those problems might be resolved.

A caution is in order at this point. Just as some people excel at baseball or golf without knowing the principles of a good swing, some people can act ethically without knowing the principles of ethics, or without knowing why an action is ethically "right." But just as most people can improve their golf game by learning the principles of the sport, it follows that they should be able to improve the ethical dimension of their behavior by studying why certain actions and practices are correct. Besides, even the best baseball players or golfers periodically develop a glitch in their swings; they can be helped by an analysis of the problem and suggestions of remedies that apply the principles of a sound swing.

A final reason for studying ethics is to understand. Plato said that beliefs without understanding are like birds that can fly away with every shift in the wind. If our ethical beliefs do not rest on something, they are like those birds; we are likely to change our minds depending on the prevailing winds. To a large extent, we are our set of beliefs. Since those beliefs define what we take to be worthwhile and valuable, it is important that they rest on a sound foundation and that we know what that foundation is. Our goals in life implicitly reflect what we value and what we think is worth living and working for. Socrates suggested the unexamined life is not worth living. If our ethics is a large part of our life, then we ought to examine those beliefs that rule us and guide us. What reasons do we have for believing this or that? Are they good and sufficient reasons? Ethics as the analysis and evaluation of moral beliefs is precisely that discipline which examines those reasons for our beliefs.

2. ETHICS IN BUSINESS

There is an old saying that one unfortunately still hears: "There's no such thing as business ethics." There is also a more sophisticated version that says, "Business ethics, that's an oxymoron, a contradiction in terms, sort of like military intelligence or jumbo shrimp." Generally these quips elicit a nervous laugh. The nervousness is probably due to the fact that they are outmoded.

Consider what the repercussions would be if a businessperson really believed there was no such thing as business ethics. Does that mean he is dishonest in his dealings with you? Does that mean he is likely to give you a faulty product if he can get away with it and make more profit? If he really believes what he says, aren't you a fool to do business with him? Doesn't the fact that he thinks there is no ethical behavior in business indicate that he is really just an unscrupulous person? The saying is old and has outworn its welcome. Business ethics is an idea whose time has come. Furthermore, more often than not good ethics is good business, and if at rare times good ethics is not good business—that is, will not lead to profit—then shouldn't the pursuit of profit defer to what is right?

In this section, we will attempt to illustrate two points: first, that being ethical can and usually does have good consequences for business in general and the insurance industry in particular, and second, that the primary purpose of business is to benefit society, not as has been held by some just to make a profit.

Thomas G. Labrecque has this to say about the first point:

> Although behaving ethically should be an end in itself, there also are valid business reasons for doing what's right. If you look closely at examples of unethical business behavior, you discover two things: the company derives only short-term advantages from its actions, and over the longer term, skimping on quality or service doesn't pay. It's not good business.
>
> Consider the food company which, a few years ago, came under fire for selling a sweet-flavored and colored drink labeled as pure apple juice. Whatever short-term profits it gained in passing off the cheaper drink as fruit juice, the damage to a good company's reputation was far more costly in the long run.
>
> Another example is the Lockheed Corporation, whose aircraft have served this country in times of war and peace. Yet, some people remember it for a long-ago bribery scandal, and the company has had to spend years fighting the adverse publicity generated by the case.
>
> On the other hand, Johnson & Johnson immediately took its pain reliever, Tylenol, off the market when faced with claims of product tampering. J&J knew the decision would be costly in dollars, but refused to put a price tag on its integrity. Some thought their sales could never recover, but the company ended up reinforcing its strong market leadership.[3]

Consider also the picture that Archie Carroll paints of the immoral manager:

> If management is actively opposed to what is regarded as ethical, the clear implication is that management knows right from wrong and chooses to do wrong. Thus, it is motivated by greed. Its goals are profitability and organizational success at almost any price. Immoral management does not care about others' claims to be treated fairly or justly.[4]

In short, most times, unethical behavior will have a negative effect on the business. Now as David Vogel is careful to point out, ethics and profit don't always go hand in hand, and sometimes management will have to make a choice between what's right and what's profitable, but by and large it is more prudent to be ethical than not, and we would hope that at those times when the right choice is the non-profitable one, business would choose the right.[5] Let's now look at how this maxim that good ethics is good business applies to the insurance industry in particular.

Certainly an insurance company has a responsibility to the stockholders or policyholders to make some profit or increase the value of the holdings, but aren't there limits on profit making? And doesn't an insurance company have other responsibilities besides concern for the bottom line? To be sure, no company can stay in existence without paying attention to the bottom line, but in the insurance industry there are other concerns as well. To begin with, the very existence of an insurance company comes about to provide a service and benefit to its subscribers—security and help in time of need. The insurance industry is a service industry. Hence, shortchanging customers and charging them too much violates the very purpose of the organization. Furthermore, to shortchange customers for short-term gain will only erode the good name of the company. How many of us use a repairman because of his good name? How many of us refer restaurants, service stations, and even insurance companies because they treat customers well?

Furthermore, if a company treats its clients or customers well and fairly, not only might sales increase, but there will be positive effects on the employees of the company. As Carroll said, if a company is concerned with profit and success at any cost, then its motive is greed. Employees know when a company is greedy, and that greed, that uncaring search for profit, must erode the morale and the loyalty of employees. Such an attitude on the part of the company must be counterproductive, for, if the company is seen as putting the customer second, behind profit, where will it put the employees?

Being ethical has a more subtle benefit for managers than for the other employers. Kenneth Lux points out:

> From the self-interest doctrine we inherit the picture of the businessman or woman as only greedy. This is exemplified by Dickens' portrayal of Scrooge, which is just one among scores of such portraits. But the real story may be rather different. The book that is the foundation of modern management theory, *The Human Side of Enterprise*, by Douglas McGregor (1960), recognized the virtues of the businessperson, as well as the economic value of those virtues. All contemporary business texts (which are distinguished, ironically, from economic texts) of any influence reflect the same humanistic values that McGregor recognized and advocated.[6]

The benefit, then, is that in an ethical company the manager will be allowed to let his humanism show. Most of us learned to disapprove of Scrooge. It is regrettable that an emphasis on profit driven by greed would make us dampen our moral sensibilities and become like the Scrooge we despise. Our society, with its emphasis on business ethics, is telling us that we don't have to, that the cynical phrase justifying inhuman behavior, "That's just business," is no longer acceptable. The manager, if ethical behavior can override the greed of business, does not need to live in two worlds—the one of his humanistic ethical life, the other of his ruthless business life. He does not need to check his ethics at the door when he comes into work.

So the consequences of ethical behavior could be seen to be fourfold: long-term profits for the company, personal integrity and satisfaction for the management, honesty and loyalty from the employees, and confidence and satisfaction from the customers.

In effect, the idea whose time has come is the idea that corporations should behave ethically. We have just shown that behaving ethically can have good consequences. But even if the consequences of behaving ethically aren't always profitable and beneficial, it can be argued that in those cases businesses have responsibilities over and above making a profit. But to assert that is to run counter to a popular belief that the sole purpose of business is to make a profit, the belief that defends some behavior simply on the grounds that "that's business." But just what is the social responsibility of business?

2.1 The Social Responsibility of Business

Business, as we know it in the world today, is a social institution that developed according to a certain perception which saw it as fundamentally concerned with making a profit. That perception is stated by Milton Friedman in his now-classic utterance, "The primary and only responsibility of business is to make a profit."[7] So business' purpose was seen to be the generation of products and services for the sake of profit.

Friedman based his notion of the primary function of business as profit making on the teaching of Adam Smith, as presented in his eighteenth-century classic *The Wealth of Nations*.

In that book, Smith sets up the model of the self-interested maximizer, the person concerned with increasing his own utility. Smith sees humans as motivated by self-interest. He notes, “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.”[8]

Smith maintains and concludes that, self-interested pursuit will make commerce flourish. He adds to that the further belief that, if each businessperson pursues only his interest, then, as if “led by an invisible hand,” the entire society will be better off.[9] Friedman claims that has happened. The success of our economic system, which governs how business works—that is, which encourages business to single-mindedly pursue profit—is attributable to the fact that, when we let business worry about nothing but profit, competition is created, more goods are produced, and the entire society enjoys a higher standard of living and hence is better off. As a matter of fact, two flaws in Friedman’s position have become apparent. First, it is not always true that exclusively following one’s own interest will make people better off. The invisible hand sometimes doesn’t work. Second, Friedman mixes up the purpose of the institution of business with what motivates one to do business. Let’s consider this second point.

My motive for doing an action is not necessarily the same as the purpose of the action. For example, the purpose of giving to charity is to help the poor. But I might not be in the least bit interested in helping the poor when I give to charity. I might give to charity simply to impress my friends. So there is an “outside” social view of the purpose of charity and an “inside” personal view of my motive for the charity. If giving to charity not only fulfills my duty but rewards me as well, I’ll be more inclined to give to charity. But whether or not I am inclined to give to charity does not take away the *reason* for charity. Similarly, the purpose of business is not to benefit me, primarily. It is not to make a profit. If doing business rewards me with a profit, I will be inclined to get into it, but the purpose of business—why society allowed it to be set up or allowed it to exist in its profit-oriented form—was so that it would provide goods and services.

It is important to understand clearly the purpose of some thing or activity, for if we know its purpose, we have a standard by which we can judge it. Thus, just as we judge a knife as good or bad by whether it fulfills its purpose, so we can judge a business by whether it fulfills its purpose. If the purpose of business is to make a profit, then a good business is one whose bottom line is healthy, and keeping a healthy profit becomes paramount. But if the purpose of business is to provide goods and services (and, from society’s point of view, why else would society allow business to exist?), then making a profit is not the “primary and only” concern of business, as Friedman says. Making a profit might be a necessary condition for business, and it is certainly a *motive* for doing business, but it is not business’ purpose. A good business, then, is one that provides a good service while making a profit.

A more adequate view of business—a view that is becoming more prevalent—is as an institution that society has allowed to develop, whose primary purpose is to provide goods and services for society. Indeed, society bans some businesses precisely because their products are seen as detrimental to society—for example, the production and distribution of heroin or cocaine. It is certainly true that we might go into business to make money, but that is our motive for doing business, not the purpose of the business. Friedman's mistake is to attempt to justify profit making by turning a personal motive into a societal purpose.

Contemporary views of business ethics, then, view business from society's point of view, and society sees the function or purpose of business to be the providing of goods and services. But beyond that, recent thinking has shown that, if we look at any business as a kind of citizen or person, other responsibilities arise. A corporation is a legal person empowered by law to do things that affect others. Recent business ethicists have argued that, if this is the case, it is necessary to view businesses as persons. That means that businesses, through their owners or their managers, enter into relationships with individuals and groups, relationships that carry responsibilities with them.

Philosophers like Edward Freeman have called these constituencies that businesses relate to *stakeholders*, because they have a stake in the business' behavior and success or failure. The stakeholders include such people and groups as the community where the business is located, the employees of the business and their families, the customers, other businesses, and of course the shareholders or owners. Clearly, the shareholders are not the only stakeholders. So, a business, in doing business, gets involved in relationships, which become the basis of ethical obligations that the business has toward those stakeholders and that the stakeholders have toward the business.

If we apply that to insurance companies, what can we say about their responsibilities? Insurance companies have a specific function, a commitment that society has licensed—providing certain goods and services. They provide freedom from worry and fear. They provide security. Thus, one of their purposes is to attempt to alleviate harm, and any practice that violates this purpose would contradict the very essence of the insurance company. Doing something that would harm customers in the name of profit would be contrary to the purpose of being an insurer.

It should be clear that, if it is the responsibility of an insurance company to provide the kind of service we just described, there is a limit on the profit it can make. It is the function of ethics to examine how to determine those limits, and to determine what are the ethical responsibilities of the company, its managers, and employees. We need, then, to look more closely at what it means to be ethical.

2.2 How to Determine What is Ethical

We have just seen that corporations have ethical responsibilities. As an employee of that corporation, you too have ethical responsibilities. If you are a manager, you have a fiduciary responsibility to carry out the purposes of the company you work for and to work for the best interests of the stockholders and/or the policyholders (depending on whether it is a for-profit corporation or a mutual company).

What is your basic responsibility? What should you do? Let us suggest a quite simple answer to begin with. You should do your job! That's the ethical thing to do.

We will show why later. For now, though, suffice it to say that you promised to do it when you took the job, and promises should be kept. So if your responsibility is to do your job, that fills in a lot of content about specific responsibilities. The responsibilities of that job are spelled out in either the job description, your employee handbook, the managerial guide book, the company's code of conduct, and/or your profession's code of conduct or ethics. So a code of ethics for the profession and a job description sets the standard for what one should do. For example, the Chartered Property and Casualty Underwriters (CPCU) code of ethics quite clearly mandates certain types of behavior in its nine canons:

- CPCUs should endeavor at all times to place the public interest above their own.
- CPCUs should seek continually to maintain and improve their professional knowledge, skills, and competence.
- CPCUs should obey all laws and regulations and should avoid any conduct or activity that would cause unjust harm to others.
- CPCUs should be diligent in the performance of their occupational duties and should continually strive to improve the functioning of the insurance mechanism.
- CPCUs should assist in maintaining and raising professional standards in the insurance business.
- CPCUs should strive to establish and maintain dignified and honorable relationships with those whom they serve, with fellow insurance practitioners, and with members of other professions. (This rule includes the keeping of confidences and avoiding misrepresentation.)
- CPCUs should assist in improving the public understanding of insurance and risk management.
- CPCUs should honor the integrity and respect the limitations placed upon the use of the CPCU designation.
- CPCUs should assist in maintaining the integrity of the *Code of Professional Ethics*.[10]

When one looks at these canons, one sees what will appear in most professional codes. The first canon insists that a professional is one engaged in service to others, and hence one who becomes an agent for others is obliged to look out for their interests first, even if that means sacrificing one's own. The second canon further specifies that one of the ways to look out for the client's interests is to keep abreast of one's field. The third lays down the important obligations to obey the law and to avoid doing harm. The fourth canon reiterates what we said earlier—that a person should do his job—and adds that the job should be done "diligently." The fifth canon insists that there is also an obligation to uphold the standards of one's profession, while the sixth requires honesty in dealing with others. The last three canons deal with obligations to the profession itself.

There is a good deal of ethics in these canons, which is not surprising. As was previously stated, we all have moral beliefs, a great many of which we agree on—particularly such beliefs as that we should be honest and that we should not unnecessarily cause harm to others. In those areas where most people agree on their moral beliefs, we don't need much study of ethics. In those cases, what is right or wrong is not very problematic. But sometimes disagreement arises. We might agree in general about what's right or wrong—for example, that we should be fair. But disagreements arise as to what counts as fair, or if we should be fair at all costs. When there are conflicts, ethics can be helpful. Since it investigates why actions are right or wrong, it gives us a powerful tool to employ in adjudicating those conflicts.

It is helpful to illustrate what those beliefs are based on, because, if we can determine that, we can then discover ways of justifying our moral beliefs, ways to determine what is right and wrong. Right now, you have a set of moral beliefs, one of which is "people should do their jobs." But why is that the right thing for them to do? Why should people do their jobs, and should people do their jobs under any and every circumstance, even when it is not beneficial to them?

Let us take the first canon and examine it. It says, "CPCUs should endeavor at all times to place the public interest above their own." Does that mean that I need to place my family's interests below those of the public? If I have an obligation to a client and one to my child or spouse, do I necessarily have to place the public's interest first? Furthermore, what should one do when the interests of the company—say, the need for more business—conflicts with the needs of the client?

So even if we agree that one ought to do one's job, there are times when it is not clear what one's job requires. There are times when there are conflicts within the job, and between the job and one's personal life. What does one do in those cases? What standards does one use to adjudicate those conflicts? How can one tell what standards, actions, and practices are acceptable?

3. ETHICAL THEORY

The study of ethics should help in answering some of those questions. How? As we saw, ethics involves the analysis and evaluation of moral beliefs. Let us expand on that definition. *Analysis* of a moral belief might involve determining what is meant by one of the words in the belief. For example, the second CPCU canon prohibits conduct that causes "unjust harm." Just what exactly do we mean by "unjust harm"? Here we need to analyze what counts as "just" and "unjust" behavior. *Evaluation* of a moral belief involves determining whether the belief is correct. Many people think that just holding a moral belief is sufficient to make it correct. They think moral beliefs are subjective. They will say something to the effect of "Well, that's your opinion, so I guess it's true for you." But that doesn't evaluate beliefs, it just accepts anyone's belief as correct. If holding a belief makes it correct, then Hitler's belief that the Jews should be annihilated, and the slave owner's belief that slavery was justified, and infant sacrificers' belief that infant sacrifice is acceptable would make those pernicious beliefs correct. That just won't do.

But how are we to evaluate beliefs? How are we to tell whether a moral belief is correct or not? Moral beliefs are not like factual beliefs—that is, beliefs about the way things are—and consequently they do not get verified or justified in the way factual beliefs do. For example, a factual belief might be something like the earth is a sphere. Such a belief is verified through observation and scientific theorizing.

Some beliefs, like "it's raining," you verify by simply going out of doors and looking. Other beliefs, like "light rays bend when they travel around the sun," you speculate about using a hypothetical deductive method. But we can't justify or verify moral beliefs like we do factual beliefs. Moral beliefs have to do with values, and values can't be seen or touched; they involve emotions, desires, and subjective preferences, among other things. That is why many people think each person's belief is "true for them." Everyone must judge, but sometimes those judgments are correct and sometimes incorrect. How are we to evaluate them? In a good number of cases, we have a perfectly straightforward procedure for evaluating moral beliefs. That procedure is to ask whether there are any *good reasons* why a certain action is morally acceptable or any *good reasons* why it is not.

Let me give an example. Go back to your youth and imagine you had a very important date. You wanted to show up for the engagement in a classy car, and your father had a Jaguar. You went to your father and asked if you could borrow the Jaguar on Friday. He said, "Sure, no problem." Friday came and when you went to ask for the car, your father said, "No, you can't have the car." How would you respond? Possibly with disbelief. You would probably say one of two things: either "But you promised!" or "Why not?" This is simply our way of indicating that, if your father thinks (believes) he is not obliged to give you the car, either his belief is not justified (correct), or he needs to justify it.

Suppose he answers your "Why not?" with "I don't feel like it." You wouldn't accept that as a good reason. Promises, after all, are made precisely because people might not feel like doing what they promised to do. If everyone always felt like doing what they promised, we wouldn't need promises. So your father's justification, that he won't give you the car because he doesn't feel like it, carries no weight. He, like everyone else, is expected to overcome his feelings and honor his commitments. Imagine if everyone did whatever they felt like. Human institutions would collapse. A spouse could wake up one morning and simply say, "I don't feel like being married today." At any rate, your father, if he believes he has no obligation to give you the car simply because he doesn't feel like it, has got it wrong. His belief is incorrect.

However, there might be a way he is correct. Suppose you ask, "Why not?" and he says, "Because the brakes just failed on my way home and there was no time to get them fixed." This is a perfectly *good reason* for not giving you the car and for not keeping his promise; his belief that he is not obliged under those circumstances to keep his promise, but, rather, that he is obliged not to keep it and you are obliged to let him out of it, is justified.

The point of this example is to show how moral beliefs are evaluated as correct or incorrect. They can be justified if there are good reasons for accepting them. These good reasons serve to justify moral beliefs in the same way observation serves to justify factual beliefs. Furthermore, these good reasons are the basis of ethical principles and are at the core of ethical theory.

When we look at the kinds of reasons given to justify our moral beliefs, we find two kinds: those that justify actions and those that condemn actions. A good reason for doing anything is that the action benefits you or that it benefits society. Further, good reasons for performing an action are that it is just or fair, or because it is something you promised to do. For example, we recommended that one do one's job. Why? In the first place, doing one's job usually benefits the person, by giving him a salary and meaningful work, so it is good for him. In the second place, because the division of labor is the most efficient way for society to operate, one's job is a necessary cog in the wheel of progress, and doing it will benefit society. Finally, the person promised to do the job and promises should be kept. Honoring the commitment is a third reason for doing one's job.

There are also reasons for not doing things, and they lead to the more common rules of morality. We should not do something that involves cheating, stealing, or lying or something that harms ourselves or others, is unjust or unfair, or breaks promises.

3.1 Questions to Ask to Justify Any Action

To evaluate any proposed course of action, we need to ask one or more basic questions: Does the action benefit me or society? Did I promise to perform the action? Is it fair or just? Does it violate someone's rights? Let's examine each of these questions.

3.1.1 "Is the Action Good for Me?"

Obviously, if one can perform an action which is good for oneself or benefits oneself, that is a good reason for doing such an action. For example, why does one work? A very important reason for working is that it provides one with the wherewithal to live, and in a number of cases it allows one to engage in fulfilling activity. There is a great deal of emphasis nowadays on the importance of meaningful work. But what is meaningful work except work that is beneficial to the person? We have a need to be creative and productive, and meaningful work helps us fulfill that need. Hence, it is good for us.

If, however, an action harms oneself, that is a good reason for not doing it. Too often people equate ethical behavior with actions that are detrimental to oneself and are hesitant to defend actions that are beneficial to oneself. But that is a mistake. A healthy self-interest is a good thing. If you don't concern yourself with your benefit, who will?

However, a caveat is necessary here. What is of benefit to oneself is not necessarily what one wants or desires. Our wants and our desires are a mixed bag. I might want a piece of cake, but it would not be good for me if I were on a diet. We need to clarify what is meant by "good." For our purposes, let us say that which fulfills basic human needs is good, although there might be other things that are good. When we look at human beings, we also see several levels of need corresponding to several dimensions of human nature. There are material needs that fulfill the bodily dimension of human beings: needs for food, shelter, and clothing as well as needs for health, some minimum wealth, and early solid training. Beyond that, human beings have a social dimension. They need to relate to other people, as in friendship. Finally, human beings have an active dimension; that is, they are potential producers, who need projects and goals and actions with a point to them—in short, meaningful activity. What fulfills these dimensions are roughly what human goods are, and an action that provides one or more of these needs is a good action. To fulfill these needs for oneself is a good reason for performing an action, and in some cases, we can justify our belief that an action is good simply by showing it is good for us.

3.1.2 "Is the Action Good or Harmful for Society?"

A second question to ask of any purported action is whether it is going to be good for society. When we are thinking ethically, we don't usually stop after considering the benefit of the action for ourselves; we go further and think of its benefits for everyone affected. After all, not every action performed in the world will affect us. If I supposed that neither I nor anyone else I knew used Tylenol, then whether Johnson & Johnson pulled it from the shelf really wouldn't affect me. So it's neither good nor bad for me. But I can say that it was a good thing to do, because taking it from the shelves probably benefited all those who might have used it. Simply put, if a good reason for doing an action is that it benefits me, then that's true for everyone, so the more people who benefited, the better. Of course, when the action benefits society but does harm to me there is a problem, but we will return to that shortly.

3.1.3 "Is the Action Fair or Just?"

A further question to be asked is "Is the action fair?" When you were a child, your mother probably treated you to a piece of cake numerous times. But imagine a time when your mother was giving you and a brother or sister a piece at the same time. If your mother gave your sibling a noticeably bigger piece, wouldn't you think she was being unfair? In all of us, there is a belief that the same should be treated the same. Thus if there is no relevant difference between you and your sibling, you think you should get roughly the same size piece of cake. However, if it were your sibling's birthday, then you are not the same in all relevant respects; the birthday creates a good reason for the sibling to get a bigger piece.

The principle of justice, which all of us recognize, is that equals should be treated equally. Of course, there is often disagreement about who and what are equal, but unless there is some relevant difference, all persons should be treated equally. The notion of fairness gives rise to another reason raised for or against a course of action, that one is entitled to something. A claim to such entitlement is a claim to having rights. This leads to the next question.

3.1.4 "Does the Action Violate Anyone's Rights?"

All humans have *rights*. This means that they are *entitled* to be treated in a certain way, and the principle of justice means we have a right to be treated equally. We often hear people claiming that they deserve something, are entitled to something, or have a right to something. Rights (entitlements) come in two kinds, negative rights and positive rights. Negative rights are rights to things no one has to provide for us, things we already have that are to be respected and not taken away, such as a right to life, a right to liberty, and, as some would argue, a right to property. We have a right to liberty because if we are the equal of others, by what right would they restrict our liberty? Why would their liberty be more important than ours? A parent can restrict a child's liberty, but their relationship is not one of equality. Such a right is extremely important in business transactions, where deceptive advertising and coercive marketing practices are condemned because they violate the liberty of the customer, and where government regulations are often objected to because they violate the right of the entrepreneur to do business. In fact, the entire free market system sees that right to liberty as essential.

Positive rights are the entitlements to have something provided. For example, a child has a positive right to be educated. It can be argued that for every positive right there is a corresponding obligation, for if there is not someone with the capability and responsibility to provide something, it is futile to claim a right to receive (a right of recipient). Thus, in a society without health care services, it makes no sense to claim a right to adequate health care. But even in a society with adequate health care, we need to specify who has the obligation to provide such rights. In a society with fewer jobs than workers, it makes no sense to claim a right to employment. Who is obligated to provide it? On the other hand, in our society, customers have a right to quality merchandise; they should not be subject to the principle of *caveat emptor*.

At any rate, if an action treats someone unfairly or violates their rights, that is a reason not to do it.

3.1.5 "Have I Made a Commitment, Implied or Explicit?"

Another question to ask is "Do I have a commitment?" This question asks if any promises (explicit or implicit, based on an ongoing relationship) to do a proposed action were made. If there were, those promises ought to be kept. Thus, if the question "Did I promise to do this?" is answered "Yes," then there is yet another good reason for doing it.

Furthermore, there are commitments we agree on that go beyond those that are the result of explicit promises and contracts. If we reflect a bit, we realize that any lasting relationship rests on implied promises and expectations of guaranteed behavior in spite of the contingencies of the future. Customers expect to get the benefits promised in insurance ads, and they do not expect to get cheated because of the small print. The fabric of human society is held together by implied promises or commitments. As a professor, I commit myself to showing up at classes a certain number of times at a certain time for a certain length of time. My commitment penetrates the future and binds me to a course of action, whatever I am feeling. People are promise makers; it is what distinguishes us from the rest of the animal kingdom. Our social structure could not function if that were not true. Thus, a very good reason for doing something is that you have promised or committed yourself. But there is a caveat here. There is the old example of the ethical question "Should I return the gun I borrowed from my neighbor if he asks for it back in order to shoot someone? After all, I had promised to return it when he asked." Clearly in this case, the harm that would come from returning the gun and thereby keeping the promise outweighs the responsibility to keep the promise.

There are other questions we can add to these that would help us evaluate alternatives: "What if everyone did this?" "Does the action preserve my integrity?" "Will it bear up under public scrutiny?" "Is it honest?" And, finally, "Is it legal?"

All of these questions reflect basic underlying reasons, which most of us assume form the basis for ethical evaluation.

3.2 Using the Reasons

Let's see how consideration of these reasons works. If I am thinking of producing some commodity that brings a profit to the company, a commission to me, benefits society, and doesn't in the process treat anyone unfairly or violate some promise or commitment, there are only good reasons for doing it; therefore, it should be done. However, if I am tempted to fraudulently sell off defective pacemakers as the Cordes Corporation (a medical equipment manufacturer) did, and I see that it is not beneficial to the company, its executives, or the general society; that the action would be deceptive and hence unfair; and that it violates the relationship of trust that the Cordes Corporation has with the community, there are nothing but good reasons for *not* performing the action. (The Cordes executives, of course, thought that such fraud would not be detected and that they would benefit from it. Had they known they would get caught, that would have given them another good reason not to do it.)

Thus the questions and the reasons behind them give us a procedure for determining what to do and what not to do. If there are good reasons for performing the action, such as that it benefits me and society and does not violate justice or a commitment, then do it. If, on the other hand, an action does not benefit me or society, is unfair, and requires breaking a commitment, then don't do it. Let's look at two examples: first, getting an education, and second, abusing cocaine.

Presumably getting an education is beneficial to oneself, because it fulfills one in any number of ways. Secondly, it is presumed in this society that the more people who are educated, the better off the society will be. Thus, if you get an education, not only will you benefit, but society will also benefit. If in getting the education you need not violate any commitments and no one is unfairly deprived because you are getting an education—for example, you are not using up someone else's spot, or you are not going to college while your younger sibling is staying home and working to help you through college—then the action does not violate fairness and commitments. In this case, we have a prima facie example of an action that should be done. It benefits the person and society, and it is not unfair or in violation of someone else's rights. Not only should it be done, one would be hard pressed to justify *not* getting an education under those circumstances. What reasons could one give?

Of course, it is easy to imagine circumstances or situations that make getting an education problematic. Let's examine some of those. Suppose you just hate a course you are taking. In that case, you are torn between doing something you don't like that might be good for you, and giving in to your likes and dislikes, which might be bad for you but might also be good for you. As we have already pointed out, we shouldn't confuse what benefits one with what one desires, wants, or likes. Nevertheless, getting what one wants can be beneficial at times, and doing what one hates might be harmful. At times we need to defer pleasure or suffer pain for some long-range benefit, but there are also times we need to pursue pleasure in life.

But let's return to getting an education. Suppose that we could show that a course will not benefit society. Then that is a reason not to do it. Finally, suppose you have other commitments, to family, friends, a significant other, or some such. Taking a course means less time with your beloved, your children, or someone to whom you have responsibilities. In that case, getting an education becomes problematic. So circumstances are important. They can change the appraisal of an action. But by and large, getting an education is what one should do.

Now consider an opposite example—abusing cocaine. Is abusing cocaine good for you? Certainly not. Is it good for society? It costs society in the form of lower productivity, higher medical costs, unreliability, and the like. Is it fair or just? While the action of taking cocaine might not involve unfairness or injustice, it might lead to unfair or unjust actions or practices, such as not fulfilling one's commitments. Note here we talk of abusing cocaine, not simply of using it. In this case, then, we have a proposed action that has no good reasons in support of it. We can see this is a prima facie case of something we should not do.

3.3 Ethical Dilemmas

The questions we have asked inquire into those reasons, which provide the basis for what is often called *ethical theory*. Basically, these ethical theories are simply very general principles that claim to provide the basic foundation for all ethical rules or judgments.

It is important to note that there would be no ethical theory necessary if all our cases were clear-cut. Our examples show there are many situations where what needs to be done is perfectly clear. That's when an action fulfills all of the considerations we just mentioned. It is also important to note that you don't have to take an ethics course to ask those questions—they are questions everyone asks when faced with a decision. So when you had to decide whether to take a course, you asked yourself those questions, perhaps not in those words, but with the purpose of investigating the costs, benefits, and fairness to you and others. We also presume that you answered yes to all of them, for you are taking the course, and don't question your right to do so. But suppose in your decision you had some questions.

Suppose taking the course could mean you can't keep a promise to your children to go on vacation this spring. So it might benefit you, but it might not be fair to your children. In a situation like this, when there are reasons for doing something and reasons for not doing it, we are faced with an ethical dilemma. We can assert then that an ethical dilemma is a problem which arises when one of the reasons for doing an action is offset by a reason not to do it.

Because dilemmas exist, ethicists looking for a way to resolve them appealed to what they considered the most basic ethical principles. These principles became identified as their theory of what the primary ethical principle was. Thus, those who appeal to fairness over harm when they conflicted fell into one camp, and those who appealed to benefits over fairness or rights fell into an opposing camp. For example, drug testing might prevent harm, which is a good reason for doing it, but it might violate a right to privacy, a good reason for not doing it. For those who give precedence to harm considerations, there is reason to do it. For those who give precedence to rights considerations, there is reason not to do it.

Ethical theories arise in order to resolve dilemmas. As we said, ethical theories arise in the presence of conflicts, for rival ethical theories maintain that, when there is a conflict of reasons, there is one reason which takes precedence over the others. If in the case of a conflict you are unsure what to do, follow the ethical theory recommended and you will discover what to do. Let us look at a classic dilemma to see how ethical theories help offer the solution to such dilemmas.

3.3.1 A Classic Moral Dilemma

A classic moral dilemma is that of Jean Valjean in Victor Hugo's *Les Misérables*. Valjean is an ex-prisoner living under an assumed name, in violation of parole for years, who has been hunted relentlessly by a police officer named Javert. Javert, who is passionately committed to upholding the law, is obsessed with tracking Valjean down, and he has reason to suspect that Valjean—who has changed his name, become mayor of a small French town, and is the owner/manager of the factory in the town—is the prisoner he seeks. To entrap Valjean, Javert lets it be known to Valjean that an innocent vagrant is about to be identified as Valjean and sent to prison. Valjean realizes that if he does not reveal his true identity, an innocent man will go to prison in his stead. What should Valjean do? It certainly won't benefit him to go to prison, nor will it benefit the town, which depends on his managerial and governing skills. On the other hand, it is not fair that an innocent vagrant should suffer in place of Valjean.

Here is an example of a classic dilemma, the stuff that makes great drama. It is the kind of dilemma where whatever one does, it is wrong for one reason and right for another—where you are "damned if you do and damned if you don't." We have a dilemma, then, when we have an action for which there are good reasons to do and not to do. In Valjean's case, doing what will benefit society is unfair, and doing what is fair will harm society.

Another example of the same sort of dilemma occurred when President Truman had to decide whether to drop an atomic bomb on Hiroshima and Nagasaki. People who defend the action say, among other things, that the taking of the 80,000 lives was justified by the saving of 3 million lives which would have been lost if Japan had been invaded. Those who condemn the action say that no matter what the consequences, the action was immoral and unjust because it involved the taking of innocent lives. Dilemmas, then, are situations where the goodness of benefiting society is negated by the unfairness, or vice versa.

It is in the context of dilemmas that we can see the point of ethical theory. Competing contemporary ethical theories claim to provide an ultimate principle to use in solving a dilemma. If we appeal to considerations of what is good for all the people affected and allow those considerations to take priority over the fairness issue, we adopt the stance of those theorists called *utilitarians*; for utilitarians, the reason that justifies an action is that the action brings about more good than harm. If on the other hand we appeal to considerations of fairness and let those take priority over the consequences of the action, we adopt the stance of those theorists called *deontologists*; these ethicists think actions themselves are ethical in spite of their consequences. For them, the end does not justify the means. Finally, if we allow considerations of what is good for oneself to take priority over considerations of what is good for others and what is fair, we are adopting the stance of those theorists called *egoists*. Although it might seem somewhat strange to talk of an ethical theory that gives priority to self-interest, there are a few defenders of egoism, so we need to look at it briefly later.

An ethical theory, then, prescribes a principle that is to be given priority as the ultimate justifying reason for pursuing any course of action.

Egoism is the theory that gives priority to the reason "It benefits me." When there is a conflict between something good for me and something good for society, or when there is a conflict between something good for me and its fairness, egoism recommends the self-serving action. Consequently, we can define egoism as the theory that maintains "One should always act in one's own best interest."

Utilitarianism gives priority to the concern for others, and maintains that "those actions should be done which bring about the greatest good for the greatest number of people."

Finally, the theory that gives precedence to the questions of fairness, rights, and commitment and that says the right thing should be done no matter what the consequences to oneself and others is a deontological theory. This theory maintains that "the end does not justify the means."

We have suggested that, many times in deciding what to do, no conflict arises—that what is good for me is also good for society and is not unfair or unjust. In those cases, we have every reason to perform the action, and all three of the competing theories' principles would be fulfilled. But in the cases where there is conflict—those dramatic dilemmas—disagreement arises about which principle to follow. Which reason takes precedence? If we decide always for ourselves, we are probably egoists. If we are moved by considerations of benefits to society, we have a utilitarian bent. If we are moved by questions of fairness or justice, we are following deontological lines. The plausibility of each of these theories rests on the fact that each of them appeals to a very important reason for choosing a course of action.

We all use all of these reasons. Because at times these reasons conflict and we are unsure of what to do, some people conclude that we can't justify ethical beliefs and are skeptical about the possibility of ethical knowledge. But our contention is that it is only in the rare cases of dilemmas that we are not sure. In other cases, a systematic investigation could lead to some resolution of the problem. We would then know what to do.

Let us turn to a brief investigation of each of these positions for an investigation of contemporary ethical theory.

3.4 Egoism

Egoists maintain a general principle of the following sort: "One should always act in one's own interest." I imagine that most of us upon encountering such a principle think it is immoral. It is a principle that appears to promote selfishness, and, in our society, if not in all societies, selfishness is considered wrong. So how can a principle that promotes selfishness be an ethical theory?

The answer is that it can't, and we will explain why presently. Still, before doing that, it is well to examine what insight the egoists are pursuing. Usually they are objecting to those moralists who frown on self-indulgence and pointing out what we have already noted; that pursuing one's self-interest is a good thing. But the egoists go too far, because *always* pursuing one's interest necessarily leads at times to selfishness, and selfishness is immoral.

We can see this more clearly if we define *selfishness* and contrast it with self-interest, which is something quite different. Selfishness is the pursuit of one's self-interest *at the expense of another*. Pursuits in our own interest are not bad, they are good. It is healthy if everyone pursues their interests. Psychologists have pointed out the necessity of self-love and self-esteem as well as the desirability of a robust pursuit of one's projects and dreams. After all, if I don't pursue my interests, who will? That is why an action that benefits you is a good action, and a good reason for doing something is that it will be good for you.

The problem arises when the pursuit of your interests can only be done at the expense of others. If I can only make a sale by persuading a customer who can't afford the product to buy it anyway, that is selfish behavior, and to justify it by saying it will aid me is to justify it egoistically. A principle that says "always do that which is in your own interest" is a principle which necessarily promotes selfishness—that is, immoral behavior—at those times when our interests can only be achieved at the expense of others. Since selfish behavior is probably the most common example of unethical behavior, and egoism mandates selfishness, it is rejected on those grounds as an ethical theory.

There are other objections to egoism, much more formal ones, that we will mention. First, egoism is incompatible with many accepted human activities, such as giving advice and true friendship, and in such business activities as being an agent for another. Simply ask yourself, How can one who is always acting in his own interest give advice? Suppose the advice would hurt the advisor. If as an insurance agent you are to give your client the best advice, there will be times when you talk them out of a policy that would give you a bigger commission. You do not just do this because you are concerned about your long-range self-interest; you do this because it's your responsibility as an agent to look out for your client's best interest.

The incompatibility with friendship is even easier to show. Who would consider someone a true friend if they knew that person was just around for what he could get out of the friendship? We expect friends to put themselves out for us, and we expect to put ourselves out for our friends. The consistent egoist, then, can be seen to be recommending against friendship.

Another difficulty with egoism is that it can't resolve disputes. If everyone is to look out for themselves, what should two people do when both of them need the same thing? To say that both should look out for their own interest doesn't solve a thing; this is not a practical recommendation.

Egoism leads to a further strange anomaly—it can't be promulgated, that is, published, taught, or even spoken out loud. If I as an egoist seriously believe that I ought to act in my interest and expect always to act in my interest, what is the effect of teaching that to others? It will put them on their guard in those situations where my interests conflict with theirs, and that is certainly not in my interest. If you are an egoist, your doctrine recommends that you do not teach your theory, for to teach your theory is not in your own interest.

The standard objection of philosophers to egoism is that it cannot be formulated in any way that is not either illogical or absurd. For example, if I say, "Everyone ought to act in *his* own self-interest," it recommends an impossible situation in those cases where two people need the same thing. If we reformulate it to read, "Everyone ought to act in *my* own interest," to whom does the "my" refer? If it refers to whomever utters it, it is the same as the first formula, but if it refers to a specific person, it becomes absurd. For example, if John utters it and says, "Everyone ought to act in my—that is, John's—interest," isn't that absurd? Why in the world should everyone in the world, billions of whom do not know John, act in John's interest? Why indeed should even those who know John act in his interest? Perhaps it could be reformulated as "I always ought to act in my interest." But if the "I" means everyone uttering it, that is exactly the same as the first formula. If the "I" doesn't mean everyone, then it ceases to be a principle at all, for principles are supposed to be generally applicable.

There is a final objection to egoism. Egoism is based on a distorted egocentric view of the universe. Certainly, I am the most important person in my life. I am inside my own skin, so to speak. I am always with myself, and I see the world from my eyes and from my perspective. From my point of view, I am the center of the universe. But how limited that view is, the moral point of view demands that we expand beyond that view. An objective, detached view recognizes that there are billions of other people in the world, more or less like me, all with a subjective viewpoint. Why then on objective grounds am I so important? The answer is, of course, that I am not. Not even the most influential person whoever lived is that important. He or she was just one among billions. Since egoism is thus limited, we can see that it is inadequate.

If it is inadequate, what is its appeal? The appeal seems to come because our self-interest is so strong. Economists like Adam Smith thought that if a society set up a system that tapped into that strong self-interest and legitimized it, that society would be more productive.

It is even claimed by some philosophers, such as Thomas Hobbes, that if you look deeply into human motivation, all actions are directed by self-interest. "Everybody looks out for number one." Consider the following passage of J.D. Salinger's *The Catcher in the Rye*:

> Even if you did go around saving guys' lives and all, how would you know if you did it because you really wanted to save guys' lives, or whether you did it because what you really

> wanted to do was be a terrific lawyer, with everybody slapping you on the back and congratulating you in a court when the goddam trial was over, the reporters and everybody? How would you know you weren't being a phony? The trouble is, you wouldn't.[11]

Salinger's Holden Caulfield says he doesn't know if we are acting in our own interest all the time, but there are philosophers and economists who think that all human beings, when you look below the surface, already naturally act in their own interest. If everyone always does look out for his or her own interest, recommendations of courses of action need to take that into account. If something is naturally disposed one way, you better make recommendations that conform with that disposition rather than go against it.

Such a belief, that everyone always acts in their own interest, is called *psychological egoism*, because it is a theory about how people behave, and psychology is the study of human behavior. Psychological egoism is distinguished from *ethical egoism*, because psychological egoism is descriptive and tells how one does behave, whereas ethical egoism is prescriptive and tells us how one *ought* to behave.

If psychological egoism is true, then any moral principle that prescribes more than acting in one's own interest would be sheer nonsense, since it would recommend that people do what is psychologically impossible.

Is psychological egoism true? It would seem not, for presumably one can always find counterexamples, such as Mother Teresa, or one's own mother, or the soldier who throws himself on the grenade—examples of people who don't seem to be acting in their own interest all the time. Nevertheless, there is a strong contingent of thinkers who utilize psychological egoism as a model to explain human behavior and make predictions on the basis of that egoism. When economists assume that all humans are selfish, it affects their predictions, for it is foolhardy to expect people to go against their nature, just as it is foolhardy to expect stones to fly. Economists like Adam Smith say, "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 self-interest." But if that is so, then it makes sense to "address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages."[12]

In that way, economists and some philosophers and social scientists assume everyone is self-interested, developing economic and business models on that assumption. The consequence, as Kenneth Lux points out, is that "Economics is fundamentally different from every other discipline in the academic world, including the other social sciences. No other academic field, unless influenced by economics, teaches and promotes self-interest. All other fields essentially teach knowledge and truth."[13] In this way, economics—which looks value neutral, since it assumes everyone always acts in their own interest—attempts to set up systems that will be most productive, systems which, if they are to work, must appeal to the way humans are. For the economist, that is selfish. No wonder, then, if selfishness is the opposite of ethicality and business is an activity in our economic system designed around facilitating selfishness, that it is hard to conceive of business as being ethical. To be ethical, if it means to sacrifice one's self-interest, would be bad business.

What can be said of this psychological egoism? Without getting too philosophically technical, we need only remind ourselves of the sacrifices that humans make for one another. Even if the psychological egoists call that "selfish" behavior, it's the kind of behavior we want. Even the most hardened economist, who recommends that we appeal to the self-interest of everyone, justifies that appeal by predicting that in the long run it will benefit society. Adam Smith's "invisible hand" was the hand that guided the society by ensuring that self-interest would lead to societal benefits. The fact that it doesn't means that we have to be wary of a system that justifies the unchecked pursuit of self-interest and, at times, check self-interest that occurs at the expense of others—the self-interest we call selfishness.

Dropping egoism out of ethical theory leaves us with two competing theories, utilitarianism and deontology. On that basis, let us redefine the conditions for a moral dilemma in the following way: Moral dilemmas occur when there is a conflict between deontological and utilitarian reasons, or because of conflicting duties or the production of mixed consequences. Let us turn to utilitarianism.

3.5 Utilitarianism

The principal maxim of utilitarianism is best expressed by John Stuart Mill in his work by the same name. "Actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness." Mill continues that "the happiness" is "not the agent's own greatest happiness, but the greatest amount of happiness all together."[14] That appeal to the happiness of all is Mill's answer to the egoists.

Utilitarianism has recently been formulated in a slightly different way: "Do that action which will bring about the greatest good for the greatest number of people." It is easy to see that utilitarianism is significantly different from egoism, for the consequences used to judge the action are not simply the consequences for the agent but the consequences for everyone concerned with or affected by the action, including the agent.

We can characterize the differences in the following chart. We have:

an ACTION	*leading to* →→→→	Consequences
a PRACTICE	→→→→	A. for self
an INSTITUTION	→→→→	(a) is egoism
		B. for all concerned
		(b) is utilitarianism

Good consequences make it a good action; bad ones make it a bad action.

Utilitarianism accords with our moral sensibilities much more than egoism, and it reflects what we do quite often when we come up with reasons to justify an action or practice. If I say I did something to make myself happy, that's acceptable, unless in making myself happy I made someone else miserable. But if I simply count myself as one of the people affected, and do something that maximizes happiness for people in addition to myself while leaving precious few people miserable, that seems to be a justifiable action.

Take an example from business. Suppose an owner of a precious metals processing factory decides to dump the toxic wastes. It might be in his interest, but it is certainly not in the interests of the greatest number of people. It is an unethical action because clearly it will harm more people than it will help. According to the utilitarian principle, which makes the owner consider consequences to others besides himself, the action of dumping is morally wrong or unjustified. Most companies are approved of because society sees them as providing services or goods for society, or at least not doing significant harm. Companies that begin to cause more harm than benefit will be condemned by society.

This, then, is a utilitarian's decision procedure for justifying or condemning an action: Take any action. Compute the benefits and harms of the consequences for everyone affected. If the action tends to bring more happiness than unhappiness for more people, it's justified. If it tends to bring more unhappiness for more people, then it is wrong. Utilitarianism is the ethical theory that uses a cost-benefit approach.

However, there are some difficulties in the utilitarian approach. When these difficulties crop up, we have ethical disagreement. Let us address these problems.

The first problem is what we will call the *formulation problem*. We need to decide whether we should do that action which will bring about the greatest good possible—that is, maximize happiness—or whether we should and might ethically settle for making sure there is simply more happiness than misery. If by expending all my efforts I can produce ten units of happiness and eliminate all units of misery, should I do that, or am I merely obliged to make sure I produce six units of happiness while leaving four units of misery? My mother used to recite the verse "Good, better, best / Never let it rest / Till your good is better / And your better, best." Mill seems to be saying that you only need to produce more good than misery, whereas the latter-day formulation requires that we do our best and maximize the good. That becomes an important bone of contention in business. Am I required simply to do minimally what I have agreed to? Or am I obliged to do my best?

A second problem with utilitarian theory is the *distribution problem*. The phrase "the greatest good for the greatest number of people" is ambiguous. Are we obliged to bring about the maximum good, or we obliged to affect the maximum number of people? Suppose I had five units of pleasure to *distribute* to five people. Let's make it five pickles. How, according to the formula, should I give them out? The easiest answer seems to be to give each person a pickle. Then supposedly each would get one unit of pleasure and we would have distributed pleasure to the greatest number of people, five. But suppose two people passionately love pickles and two people don't care one way or another about pickles. Then wouldn't it make sense to give the two people who passionately love pickles two apiece? And the two who don't care none?

(A) thus A = 2 pickles = 2 units of happiness
B = 2 pickles = 2 units of happiness
C = 1 pickle = 1 units of happiness

	D = 0 pickle = 0 unit of happiness
	E = 0 pickle = 0 unit of happiness
Totals 3 recipients	5 units of happiness

(B) In the case where you distribute equally, you get

	A = 1 pickle = 1 unit of happiness
	B = 1 pickle = 1 unit of happiness
	C = 1 pickle = 1 unit of happiness
	D = 1 pickle = 0 unit of happiness
	E = 1 pickle = 0 unit of happiness
Totals 5 recipients	3 units of happiness

Thus, in case B, you distribute to the greatest number of people but don't create the greatest amount of happiness, whereas in A, you create the greatest amount of happiness but don't distribute to the greatest amount of people. This is the problem of distributive justice: a problem of fairness, a problem of how the goods and the burdens of the world are to be distributed. It is a problem that the utilitarian decision procedures do not resolve well, one that seems better handled by deontologists. One sees this utilitarian justification used in defense of capitalism, because the claim is made that the economic system of capitalism produces the highest standard of living in the history of mankind. But the rejoinder is that in maximizing all those goods, some people get much and others get little or nothing.

A third problem for utilitarianism is the *problem of deciding what is the good*. We referred to this problem earlier, when we discussed the dimensions of human fulfillment and contrasted the good—what we need—with what we desire. John Stuart Mill and his mentor Jeremy Bentham were hedonists. They equated the good with happiness, and happiness with pleasure. But there are numerous difficulties with hedonism. Philosophers usually view goods as objects of desire or objects we aim at. Generally, they break them down into two types: intrinsic goods or extrinsic (instrumental) goods. An intrinsic good is something desired or desirable for its own sake, whereas an extrinsic or instrumental good is good because it will lead to or is instrumental in obtaining another good. Money is an example of an extrinsic good.

Happiness is clearly an intrinsic good. We show this by pointing out that when someone asks why you want money, you can answer, "Because it will make me happy." But if they ask why you want to be happy, there is no further answer.

Mill recognizes pleasure as the only intrinsic good. Others recognize other things, such as freedom or knowledge, as intrinsic goods. Some claim there is a plurality of intrinsic goods. Thus we can have a disagreement among utilitarians about what is good: *pluralists* think there are a number of intrinsic goods; *eudaimonists* think happiness as well-being is the only intrinsic good; and, finally, *hedonists* think happiness is the same as pleasure. Mill was a hedonistic utilitarian. But the fact that there is disagreement about what counts as good should point out an area where we can expect disagreement in ethical matters. For example, capitalism is often defended because it brought about the highest standard of living in the history of the world. But others criticize it because they think that a high standard of living is not necessarily a good thing. So we can agree about what an action will lead to, but disagree whether that goal is good or not. Anyone who does cost-benefit analysis will recognize that determining what will count as a cost and what will count as a benefit is a difficult matter.

A further problem with utilitarianism is the *problem of predicting the future*. To decide whether an action is right by looking at the consequences means you have to look into the future and try to predict. Sitting looking out the window at a dismal day when the weatherman predicted it would be sunny reminds us how tenuous and risky predictions are. The unreliability of predictions creates several problems. Should utilitarians do what they *think* will bring about good or should they do what actually will bring about good—and how are they to know? Very often what we think will be good turns out to be bad, or has unforeseen consequences. Economists speak of *externalities*—undesirable, unpredicted side effects of some activity.

If nothing else, these problems for utilitarians show us some of the areas where we might expect disagreement about what is right or wrong. Even though we can use benefit to society as a good reason to support an action or practice, we might have disagreements about what counts as a benefit, how much benefit is required, how the benefits should be distributed, and whether the benefit will come at all.

Beyond these difficulties, there is one that opponents of utilitarianism think is the most serious. We call it the *problem of illicit means*. Utilitarians are accused of allowing the ends to justify the means; even if the means are immoral. That is, utilitarians give precedence to results over fairness and commitment.

History is replete with examples of actions and practices that are considered immoral being performed for the sake of bringing about some desirable end. Suppose I could save 100 people by killing three innocent children? Utilitarians should recommend the killing if the happiness of the one hundred saved would seem to outweigh the pain of the loss of three dead children. But our ordinary moral sentiments are outraged at such a suggestion, for they tell us that taking the lives of these innocent children is immoral. Suppose I could achieve law and order by convicting a despicable character who happened to be innocent of the crime? Suppose I could benefit my company by cheating on an exam? Suppose Lockheed could keep employees working by bribing Japanese government officials? Suppose I could keep my plant open and a hundred people employed by lying to a government inspector? Suppose I can keep a healthy economy in the south by maintaining slavery? Suppose I can dampen inflation by keeping unemployment artificially high? These actions (means) are ordinarily viewed as immoral in spite of the good consequences (ends) they bring about. Utilitarians who justify an action by citing its good consequences are accused of missing an important part of ethics: the fact that some actions are wrong in principle, no matter what the consequences.

3.6 Deontology

There are ethical theorists for whom the end does not justify the means who maintain the actions themselves are to be judged in spite of the consequences. These ethicists are called *deontologists*. This name comes from the Greek word *deontos*, which means "what must be done," sometimes translated into "obligation" or "duty." The foremost deontologist was the eighteenth-century philosopher Immanuel Kant.

Kant preceded Bentham and Mill, so he is reacting to theories that pre-date theirs. Still, if we apply his principles to utilitarianism, he would say it is misguided as a theory because it fails to take into account what is characteristic of moral actions, a moral motive. He calls the motive "duty." We can call it "a sense of moral obligation" and contrast it to "inclination" or "desire." For Kant, if you are acting merely from inclination or desire, you are not acting morally at all; rather, you are behaving pretty much the same as nonhuman animals. For Kant, it is the ability of humans to act on a *moral* level, to transcend animal instincts and inclinations, that makes human beings special, that makes them moral and gives them dignity and rights.

How does Kant establish this? Let's contrast and compare a human being's way of acting with a spider and a beaver. A spider spins webs. Why? Because of an "instinct" or "inclination." Nature makes spiders that way, and if they don't spin webs, they won't live. Beavers chew trees and build dams. Why? Because nature makes them that way. Notice it would be ridiculous to imagine a spider refusing to spin a web, or a beaver not chewing a tree. They have no *choice*. They are not free. They are inclined by nature to do those things and consequently will do them.

According to Kant, human beings, too, have inclinations. They are inclined to pursue things that they "want." They have psychological propensities for things and inclinations to pursue goals. But they have two capabilities other animals don't have. The first is to be able to choose between alternate means or ways of achieving the goals they are inclined to, and the second is the freedom to set aside those goals or inclinations and act out of a higher motive. The first, being able to choose alternative means to a goal, makes humans somewhat but not significantly different from other animals. A beaver has an inclination for food and shelter, yet is equipped by nature with only its instinct to chew bark and build dams to fulfill that inclination. A human, even though he has the same inclination for food and shelter, can choose different means of achieving that. Human beings can build lean-tos, dig caves, build houses, fish, plant, and so on. Humans have choices about how to fulfill their inclinations.

The second difference between humans and the rest of the animals, the one Kant thinks is particularly significant, is that humans can act against their inclinations for the sake of duty.

Human beings, because of their practical reason, ask the question "What should I do?" This question can take two forms. If we are interested in fulfilling our inclinations, the question is qualified: "What should I do, if I want to fulfill my inclinations?" But at times, the question is whether we should follow our inclinations or do our duty. Here the question is unqualified: "What should I do, no if, ands, or buts?" The answers come out as rules. Kant calls these rules *imperatives*. For him all practical judgments—that is, judgments about what one ought to do—are imperatives. But, as we said, there are qualified oughts, determined by some prior inclination, and unqualified oughts. The qualified oughts Kant calls *hypothetical* imperatives, and the unqualified oughts he calls *categorical* imperatives.

When we make decisions based on qualified oughts, what determines the goodness or badness is whether the decisions accomplish the goal. For example, if I'm in a third floor office, and I want to get to the cafeteria in the next building, what should I do? I could jump out the window, but then I'd probably break a leg, if not more, and not get to the cafeteria. Such a course of action would be "imprudent" for Kant. The "prudent" thing to do would be to take an elevator down or walk down the steps. Notice that some people talk about the advantages of being ethical in business. If we say we should be ethical because it accomplishes what we want, then we are saying it is prudent to be ethical.

Human beings, unlike animals, can be prudent or imprudent because they can choose effective or ineffective means to fulfill their inclinations. But by and large, aside from the fact that they have their brain to offer them options (whereas other animals have only instincts), there is not much difference between humans and animals on that score. Humans can be prudent, but that only gives them a hypothetical imperative, which for Kant is not an ethical imperative. Hence, if we are being ethical because it's good business, we don't have the proper ethical concern. Note that Mill and the utilitarians only come up with hypothetical imperatives—for example, if you want the greatest good for the greatest number of people, do X. But Mill cannot answer two questions. Why should anyone *want* the good of others over his own good? And what difference does it make what motives anyone has for his action? But clearly it makes a difference. If someone gives to charity for a tax write-off, that isn't as fine a motive as giving because almsgiving is a duty.

So according to Kant, if you're doing something simply to fulfill a desire, you're not acting out of a moral motive. To act morally, you do something simply because it's the moral thing to do—your duty. These oughts of your duty are expressed in a *categorical* imperative. The categorical imperative simply says, "Do X." No ifs, ands, or buts. If you ask, "Why do X?" the answer is because it's your duty. But notice that this is not a very informative answer, because a duty is what you're supposed to do. This leads us to ask what one's duty is. Kant gives several formulations to help decide what one's duty consists of; we will look at two.

3.6.1 The First Formulation of the Categorical Imperative

The first formulation for the categorical imperative is "Act so that you can will the *maxim* of your action to become a universal law." This needs explaining. A *maxim* is your reason for acting. Suppose you borrowed some money from a friend. When it came time to repay it, you didn't have the money. You then decided not to repay it even though he needed it because you didn't want to bother borrowing it from a bank, and you knew your friend would not press you on it. Your reason for not paying it is that it's inconvenient to repay it. So the maxim of your action becomes "Don't repay debts (keep promises) if it's inconvenient to do so."

Now let's will that maxim to be a *universal law*. Let's universalize our rule. What would happen if everybody broke promises because it was inconvenient? First, such a universal practice would lead to chaos. Promises are made to guarantee that they be kept when things are tough, when we are not inclined to keep them. People would end up not trusting people, and society would be chaotic. But notice that this is judging a universal practice by the consequences and assuming chaos is not beneficial. Isn't that just a more complex utilitarianism, where we judge the universal practice rather than the particular action? Of course it is. Kant needs to go further, and does. He would realize that the consequence of not paying debts or keeping promises would be people not wanting to loan money or accept promises, but whether that consequence is unfavorable is not the determining factor.

The categorical imperative stresses that you must "will" the maxim to be a universal law. For Kant, the will is practical reason, and you cannot will promises not be kept, not because of unfavorable consequences, but because to will it is to involve yourself in a will contradiction. A will contradiction is when you want to eat your cake and still have it. In the case of promise breaking, you are willing to break a promise. But if you universalize promise breaking, no one would trust anyone, so no one could make a promise to another, since a precondition of promise making is trust. So to will promise breaking, you must will promise making. That's the contradiction, and that's what goes wrong. The same sort of contradiction holds for stealing, lying, cheating, adultery, and any number of other activities we take to be immoral. The only way the action would work would be if others didn't all behave like you did. But that's a double standard. The implications for business are obvious. There must be an atmosphere of trust to allow business to function. But to will to break promises is to will other people not to break them, for if they did promise making would be impossible. But to will others not to follow your rule is to make an exception of yourself. When we universalize, we get out of our egocentric view. We see that we are the same as others, and this is the basis for the rule of justice: "Equals should be treated equally."

3.6.2 The Second Formulation of the Categorical Imperative

Kant does not stop with just the first formulation of the categorical imperative. He moves on to another. Unlike the other animals that are under the design of nature's inclinations, human beings can transcend these limitations and be free. Humans can set projects by themselves; they are free or autonomous. Because of that, Kant calls humans *ends in themselves*. They are the ones who determine their moral life—they are autonomous, self-regulating. Consequently they are special, and all alike in that they make values and ends. Since they are so special, Kant thinks there is another formulation that applies: "Act so as never to treat another rational being merely as a means."

With this view, everyone is morally equal and ought to be treated with respect and dignity. Their rights ought to be respected and no one ought to be used merely as a means or instrument to bring about consequences that benefit the user. This is the deontological answer to the utilitarian's problem of illicit means. It is not justifiable to use someone or exploit someone to make society better. Hence Jean Valjean should not use the vagrant. Employers should not use employees. We call that "exploitation." Deceiving customers is a way to use them to make a sale and benefit ourselves. That's false advertising. Breaking promises is using people. That's breaking contracts. This formulation of the imperative shows what's wrong with slavery or sexism. It dehumanizes by turning a fellow human being into a thing or an instrument to be used by the person exploiting. Arguments for employees', customers', and other stakeholders' rights rest upon this kind of consideration. Businesses have no right to use stakeholders in the name of profit. They must respect the right and autonomy of customers, employees, and others to whom they relate. The ethical reasons that rest on concerns for justice, fairness, dignity, and rights are quite often deontological in inspiration.

Still, as you might expect, there are some shortcomings in deontological thinking. The first is the criticism of the utilitarians. They want to know why one should do one's duty if it isn't going to lead to happiness. Why be moral just to be moral? They suspect that under Kant's deontological positions, there is a belief that one ought to be moral because virtue will be rewarded. But that would be an egoistic or at least utilitarian reason. The utilitarian might ask, "If the end doesn't justify the means, what does?"

Beyond that there is a problem of what to do when there is a conflict of duties. W.D. Ross, a twentieth-century deontologist, thought that we have certain duties which are *prima facie*—we should fulfill them unless they conflict. They include duties to keep promises, to show gratitude, to do good, and to not do harm. Ross suggests that, when they conflict, we determine an actual duty. But what criterion of adjudication do we employ? Well, suppose you promised your friend that the next time he was in town, you would have a long delayed heart-to-heart talk. Suppose also you promised your child you would take him to the ball game on Wednesday. Your friend calls Tuesday night and says he will be in town for a brief time tomorrow, and the time conflicts with the time of the ball game. Of course, you could probably get out of that particular conflict of obligations. But suppose there were really strong reasons for keeping both promises and you can't do both. How would you decide? Ironically, if you weigh the consequences and keep the promise that causes the least harm, you are back to a utilitarian reason. Often the demand for justice for one person conflicts with the demands of liberty for another. It is simply not enough to say that we ought to provide liberty and justice for all. Utilitarians will insist that, in such a conflict of rights, the only course of action is to consider the consequences of the action. So they insist that, sooner or later, deontologists have to give priority to considerations of consequences.

One last objection is sometimes raised against Kant's second formulation. What is meant by "merely" as a means? But this objection is easily disposed of. Very often we use people. You use me as a teacher. We use someone who is buying something from us, if only to help us make some money. Some relationships are defined in terms of use. But is someone being "merely" used if they give their permission to be used? Can an employee be exploited if he signs a contract specifying that he will perform certain services? In order for someone to be used, there must be a lack of informed consent.

That, in a nutshell, is a presentation of egoism and the two ethical theories that serve as counters to egoism. But since there are difficulties with both, what are we to think? Is it that neither will do? Do we need to be skeptical about ethics? Is there an alternative approach that works? We will turn to these questions now.

3.7 Is Ethical Knowledge Possible?

Egoists, utilitarians, and deontologists agree on one thing: there is a way to know or determine what one should do. It might be difficult, and there might be mistakes, but sometimes we know. In effect, there are objectively valid reasons that can be given to justify certain actions.

However, there are those who maintain it is all a matter of opinion. Ethics is not something that gives us knowledge; it is all personal preference. “It’s all relative,” to quote a favorite cliché. If it is—if right and wrong is all relative—this has important ramifications for business ethics; if it’s all relative, ethics in business is just what business decides it will live with.

“Don’t be judgmental.” “To each his own.” “What’s true for you is not true for me.” “Everyone’s opinion is right for them.” “It’s all a matter of personal preference.” “That’s just the way I feel about it.” “One man’s meat is another man’s poison.” “It’s all relative.” “Ethics is all subjective.” You have probably heard one or another of these statements over the years, and you might even have used one or another yourself. They exhibit a frame of mind that seems typical for individuals who live in a democratic, pluralistic, largely tolerant society. They contrast with a different frame of mind, one that is absolutistic. One occasionally runs into a person who asks, “What ever happened to the old absolutes?” or says, “Right is right, and wrong is wrong.” But those who maintain that there is a fixed, absolute code of ethics seem to be a decided minority in this society.

As we discover more about the world and how other people live, we become less provincial—thinking our way is the only right way—and more tolerant, realizing there is more than one way to do something. The media explosion of this century, which led to exposure to other cultures and other ways of doing things, has made us less certain that our way is the right way to do things. We develop positions that are somewhat skeptical about the possibility of being able to make objective, ethical judgments. This is of course not the first time this has happened. In the fourth century B.C. in Greece, there was a group of philosophers called sophists, who were skeptical about objective moral knowledge. One of them, Protagoras, is famous for his statement “Man is the measure of all things,” which is a classic formulation of relativism.

But what exactly are relativism, subjectivism, emotivism, and skepticism? They are all more or less related, being theories that are skeptical about the possibility of achieving objectively legitimate (true) knowledge of right or wrong. Skepticism, which claims objective ethical knowledge is impossible, is the underlying doctrine, with three varieties: intellectual subjectivism, emotivism, and relativism.

3.7.1 Intellectual Subjectivism

We have all heard the phrase “true for me.” A person who uses such a phrase must think that judgments, since they occur in individuals’ minds, are self-validating. You think what you think and I’ll think what I think—who’s to say who’s right? What this amounts to is that any judgment is true, if a person thinks it’s true. If I think abortion is okay for me, then abortion is okay. In a sense, thinking makes it so. But if you think abortion is wrong, then it’s wrong for you.

Now we need to sort this out. We have several phrases here, and it is not quite clear what the claim of the subjectivist is. “Abortion is okay for me” might mean “I think abortion is okay." That is no problem if that is simply a report on what I think about abortion. But it becomes a problem if what I mean is that "I think abortion is okay, and because I think it, I am right." Here we are claiming that thinking something makes it so. Does thinking make it so? Obviously not in some areas. In the Middle Ages, people thought the earth was flat and that if you took a boat far enough, you would fall off the edge. Obviously, they were wrong. So, although they could say, "It is true for me that the earth is flat," if they meant by it, "It is true that the earth is flat," they would be wrong, because it is not true that the earth is flat and never was. They should have said, "I think the earth is flat," not, "It is true for me that the earth is flat," for truth has a standard that is independent of what people think it is. The standard determines whether what one thinks is true, not what one thinks that determines what is true. You might insist what we have said applies to factual statements, like "The earth is round," but ethics doesn't deal with facts; it deals with values. Values are preferences, and preferences are feelings. So saying something is right or wrong is different than saying something is flat or round. Thus when I say this is right for me, I am saying I prefer it over something else. Here of course "right for me" refers to my preference. Hence we move from an intellectual opinion to an emotional preference—a kind of subjectivism, which we will call *emotivism*.

3.7.2 Emotivism

Emotivism is an ingenious doctrine because it answers the logical incoherence of intellectual subjectivism. Notice that, if I believe the earth is flat, and you believe the earth is not flat, then only one of the statements can be true because they are contradictory. Thus, logically, either you or I is wrong, and it doesn't matter what we think. Now suppose we take a moral judgment, "The Holocaust was immoral," and its opposite, "The Holocaust was not immoral." Now, if *wrong* is any kind of objective state, one or the other person is incorrect by the logical law that nothing can be and not be at the same time in the same respect. But suppose *wrongness* is not an objective state or property of things, but merely a word expressing a preference or favorable emotion—then look what happens. "The Holocaust is immoral" means "I disapprove of the Holocaust," whereas "The Holocaust is not immoral" means "I do not disapprove of the Holocaust." But whereas I cannot hold those contradicting preferences simultaneously, you and I can individually. So the Holocaust is immoral for you because you disapprove of the Holocaust, and the Holocaust is not immoral for me because I do not disapprove of the Holocaust. In this case, "true for me" has meaning—it means "I approve."

This was the move a group of philosophers called *emotivists* made. To say "X is good" does not mean X has some value property; it is not to talk about X at all. Rather, to say "X is good" is to talk about my psychological state, my feelings about X. It is a subjective judgment in the sense that I am reporting a subjective state, emotion, or attitude that I have toward the action. Since nothing prohibits you from having an exactly opposite attitude, then you can say "X is not good"; it doesn't contradict my "X is good" because you are simply reporting your feelings and I am reporting mine, and they can be quite different.

Emotivism can be quite attractive as an account of what goes on in ethics, because it is certainly true that to value something is to prefer it, have a positive attitude toward it, or feel good about it. It would seem silly to have values without some conscious being who does the valuing. What emotivism captures is that truth. Still, there are difficulties with emotivism. Let us see the consequences of holding to it.

If you maintain that for anyone to say "X is good" simply means that person approves of X, you cannot question whether that approval itself is justified, and if approvals or feelings cannot be critiqued, some disturbing conclusions follow. Hitler obviously approved of the Holocaust. Thus, for Hitler, the Holocaust was good. So "The Holocaust is good" is true for Hitler. We might say that is what he thought or felt, but do we really think Hitler's position was acceptable? Of course we don't, but if we accept emotivism, we logically must hold Hitler's position as acceptable.

Emotivism has appeal because we ordinarily but incorrectly think of our emotions as ours, private and hence beyond critique; that is, we would like to say, "It's my feeling and no one can tell me what to feel." We often think of our emotions and feelings as defining our very selves and that we need to be genuine and express them, but these beliefs run counter to common experience. If I feel frustrated, lose my temper, and vent my anger, you might correct me because it is inappropriate in certain times or places. A great deal of the educational process involves learning to put a check on our feelings. We don't let children throw tantrums simply because they want to. Values clarification is not enough to educate one morally. Insofar as values express preferences, we often have to teach value control. If I want to indulge in crack cocaine, I certainly ought to control that desire. It is a self-destructive preference. These examples show that emotions cannot be the final arbiter or legitimator of what is right and wrong. It cannot be my own intellectual opinion, and it cannot be my feelings. Emotivism, like subjectivism, does not work.

3.7.3 Relativism

But then, if I am not the final determiner of what is right or wrong, who is? The popular answer is society. Culture and society tell us what is right and wrong. This is the doctrine of *relativism*, which we must examine next.

As we said, relativism was held by the sophists as far back as the fourth century B.C., but it has shown a recent upsurge because of the rise of cultural anthropology in the late nineteenth century. When we observe different cultures, one of the striking facts is that they have different moral rules. Scientists, filled with respect for other cultures' ways, developed tolerance for those ways and began to insist that we not judge others' practices, but, rather, simply observe them. To judge others by our standards would constitute ethnocentrism. Ethnocentrism is tantamount to asserting that our culture is the best and has a lock on the truth. As a result of this, a theory evolved to the effect that values are culturally relative. Each culture has its own way of doing things, and while one culture might think a practice is right, another might think it wrong. Some cultures approve of polygamy, others do not. Some cultures approve of bribery, others do not. In short, each culture has its own set of beliefs about what is acceptable and is not acceptable.

If that was all there was to it, there would be no problem, for relativism would simply be asserting a well-known fact, that different cultures have different rules, which any informed, fairly perceptive individual knows. But there are those who go further. They claim that not only that it is it the case that different cultures have different rules, but also that the fact that a culture has a rule makes it correct for that society. In other words, societies make their own rules, and there are no transcultural principles that allow us to judge one society's set of rules as better or worse than another's. This is reflected in the popular adage, "When in Rome, do as the Romans do." Right and wrong are *determined* by what a society thinks is right or wrong, and each society's set of rules are self-legitimating.

But is that okay? Not really. Let us go back to our Holocaust example. Nazi Germany, a society, approved of the extermination of Jews. Does that make it right? Hardly. Some societies seem to have some bad practices. If so, relativism seems untenable. But before concluding that, let us look at some further difficulties.

If we say, "Each society has its own set of rules," we should ask what constitutes a society. Is it all the people? Who gets included? What if a minority disagrees? Is a society geographically based? These questions are important because if each society determines for its members what is right or wrong, then we have to know who is included in a society. Is a society a nation, a cultural group, a family? If it is a nation, then does the nation decide what is right or wrong? What if a minority disagrees with the majority? Are majorities always right? Suppose I belong to a church and my church disagrees with my state? Aren't the members of a church members of a society defined by that church's creed? Suppose a church says abortion is wrong and the state says abortion is right? Who is to say? Suppose you have societies like the North and the South. Does slavery before 1850 become all right as soon as I cross the Mason-Dixon line? Why can't a family constitute a society? Is it too small? If not, then who is right when my family disagrees with my neighborhood or city, or country, or state, or nation? What if we had a world society? But if we can go all the way from a society to a nation to a city to a family, what happens if I disagree with my family and am the only one in the family to disagree? Do I, in this case, have a society of one? If I can have a society of one, then all the problems of subjectivism rise again. Indeed, we can now see that relativism is really subjectivism writ large, and there is not much difference whether Hitler wishes to eliminate the Jews or the German high culture that adopted a notion of Aryan supremacy wishes to eliminate the Jews. They were wrong—Hitler was wrong, the German society (that part that approved of the Holocaust) was wrong, and, if you were in Germany, it was not okay to apply the old cliché "When in Rome, do as the Romans do." In the Germany of the 1930s and early 1940s, you should not have done as the Germans did.

We have seen that these various latent skepticisms—subjectivism, emotivism, and relativism—do not work, since they think ultimately objective reasons brought to bear on ethical questions are inadequate. But why do they have such appeal? Probably because there is so much moral disagreement. We have seen in this reading that each theory seems to have flaws. But let's address that: there are shortcomings to every answer where there is a real dilemma, where there are good reasons for and against what one is about to do. However, a very different picture emerges in some unproblematic situations as we saw in the example of someone furthering their education. If it is what one wants to do, it will not adversely affect someone else, and we can look into the future and see this very education resulting in benefits to society. It is clear what one should do in such a situation. The answer, of course, is to pursue one's education, for that fulfills the egoists' criterion of doing what is in one's best interest; the deontological criteria, because it fulfills one's duties to oneself and does not violate anyone else's rights; and the utilitarian criterion of being the action that will bring about the greatest good for the greatest number. What's more, there is absolutely no reason *not* to pursue one's education in that case. Our example shows that, at times, in unproblematic cases, we do know some things in ethics.

What we will see, however, is that the issues that are problematic are those where basic principles conflict—where there are dilemmas, where two sets of rights conflict (such as privacy versus security) or where two sets of goods conflict (such as profit and more jobs versus environmental pollution). In these cases, lots of thinking, analyzing, and sophisticated use of reason is called for—that is what business ethics is all about.

4. VIRTUE ETHICS

Before we conclude, we need to turn our attention to one more approach to ethics. Recently there has been a great deal of interest in what has been called the ethics of virtue or character. Rather than addressing the question of what one should do, it addresses the question of what one should be. What sort of person should I be? What sort of character or type of virtues should I seek to develop? In business ethics, the virtue approach asks how a good businessman can also be a good person. Are these the same or compatible?

The word *virtue* comes from the Latin *virtus*, meaning power or capacity. The Latin word *virtus* was used to translate the Greek word *arete*, which means excellence. For the Greeks, especially Aristotle, the good life, the life of well-being, was a life where one did things in accord with one's excellent capacities, and those capacities had been developed into good habits. The good habits were the excellences, and hence one lived well when one engaged in activity in accord with virtue.

Which capacities were the excellent ones? Those that led, obviously, to well-being. Aristotle and his mentor Plato introduced a model for us to follow. A thing should fulfill its potential—it should be, so to speak, all that it could be. That potential was potential to a determinate end, goal, or purpose. Just as a knife has a purpose to cut and is a good knife if it cuts well, so humans have purposes, goals, and ends and are good if they accomplish them or fulfill them.

A businessman has the goal to make a profit and will be an excellent businessman if he accomplishes that goal. But since he is more than a businessman, he has other goals, which require some of the same virtues, some different ones, and perhaps some conflicting ones as well. Which of these he is called upon to develop or utilize becomes an important question. For example, compassion is often viewed as a virtue, but is it compatible with hard-nosed firing policies? Can these conflicting virtues be reconciled? Is honesty a virtue compatible with being an excellent businessman?

5. CONCLUSION

What we have briefly presented here are some ethical theoretical considerations, which hopefully you will be able to apply to basic issues. These considerations give you a set of ethical rules and decision procedures that the businessman should take seriously.

NOTES

* "What is Ethics?" is a revised version of Chapter Three, "Ethical Behavior in Insurance Organizations," which appeared in *Organizational Behavior in Insurance*, Published by The Insurance Institute of America, 1992.

1 *Time*, May 25, 1987.

2 *Merriam-Webster's Collegiate Dictionary*, 10th ed., s.v. "ethic."

3 Thomas G. Labreque, "Good Ethics is Good Business," *USA Today Magazine*, May 1990, p. 21. Copyright 1990 by the Society for the Advancement of Education.

4 Archie Carroll, "In Search of the Moral Manager," *Business Horizons*, March/April 1987, p. 8.

5 David Vogel, "Let's Ditch That Ethics-Means-Profits Canard," *Los Angeles Times*.

6 Kenneth Lux, quoted in *Business Ethics*, May/June 1991, p. 30.

7 Milton Friedman, "The Social Responsibility of Business Is to Increase Its Profit," *New York Times Magazine*, September 13, 1970.

8 Adam Smith, *The Wealth of Nations*, 1776. I.ii.2. Ed. by R.H. Campbell and A.S. Skinner, Oxford University Press, 1976.

9 Ibid.

10 Rena A. Gorlin (ed.), "Code of Professional Ethics for CPCUs," *Codes of Professional Responsibility*, 3rd ed., Bureau of National Affairs, Washington, D.C., 1994, pp. 139–155.

11 J.D. Salinger, *Catcher in the Rye*. Little, Brown and Co., Inc., 1951.

12 Smith, *Wealth of Nations*.

13 Lux, *Business Ethics*.

14 John Stuart Mill, *Utilitarianism*.

CHAPTER 2

THE WHY'S OF BUSINESS REVISITED*[1]

ABSTRACT

One can determine the nature of something by asking what it is for. For example, one understands what a chair is when one understands it is for sitting on. This involves understanding its purpose. One type of corporation is the for-profit-corporation. This seems to indicate that this type of corporation, the business corporation, has as its purpose to make a profit. Is that as obvious as it first appears? The favorite way for philosophers to arrive at the "purpose" of anything is to ask the question "Why?" But there are at least two answers to the question "Why?" when addressed to a social practice such as business. One might be asking for a psychological account (explanation) of "Why" a person does business, and this is primarily answered by discovering the motives behind business activity; or one might be asking for a justificatory reason (justification) for the practice—what purpose legitimates business as a human activity. These two answers are often conflated and thus the purpose of business is often considered to be answered by giving the psychological account of the self-interested profit-making motive. This paper will attempt to highlight the importance of making the distinction between motive and purpose clearly, show what confusions arise when the distinction is ignored, and hint at some of the structural philosophical reasons why the distinction got blurred in the first place.

KEYWORDS

Adam Smith, business, ethics, motive, Milton Friedman, profit maximization, purpose.

" 'The limits of my language are the limits of my world.' [Ludwig Wittgenstein] By this he meant that the language we speak constrains and delimits the world of thoughts and possibilities that is open to us … . To paraphrase Heidegger, we do not have our language so much as it has us."[2]

"The business of business is business." (Popular saying)

"That's just business." (Another popular saying)

"What's happening … is that people are coming to grips with *the fact that* the point of business is to make a profit."[3]

There is dispute about the purpose of a for-profit corporation. The most common belief about the purpose of business, articulated or not, seems to be that the primary purpose of business is to maximize profit. Think what is implied when one says, "The business of business is business"; "That's just business"; or "The bottom line is … ." Don't these ways of speaking indicate that the point of business is to make a profit? Don't they indicate acquiescence to the belief that that's just the way things are? People are in business to make a profit, so whatever needs to be done, no matter what, it is "just business." Business activities are justified by the pursuit of black ink on the bottom line.

There are, of course, those who believe that the primary purpose of business is to provide goods and services. But this belief does not seem to be very commonly held, and it is not embodied in any pithy sayings or popular maxims. The first position seems obvious and is readily defended against the second by appealing to the fact that, in our corporate world, when people invest money, they don't usually ask what goods or services the companies they invest in produce or deliver, but, rather, inquire as to what return on their investment the company pays. Those who defend the position that the primary purpose of business is the production of goods and services cannot point to any readily observable trait of human beings that would incentivize people to invest for the sake of society. The most that we hear is: "Being socially responsible is good for business,"; "Good ethics is good business,"[4] or "Emphasizing customer service is the best way to improve the bottom line." All of these of course return us to the increasing of profits as the ultimate end or primary purpose of business.

But why is what people take to be the purpose of business an important consideration? It is important because what we conceive as the purpose of something will determine when that something is acting appropriately. The purpose determines the way the thing should operate, and, hence, in a manner of speaking, the responsibilities of the thing. The purpose furnishes us with a criterion of evaluation. For example, a knife has an end or purpose. What makes a knife a good knife is how well it "fulfills its purpose," that is, cuts. Similarly, a business is designed for some purpose and what makes it a good business is determined by how well it fulfills its purpose. If its main purpose is to maximize profits, then, a business with a good bottom line which maximizes profits is a good business. The responsibility of those running the business is to make it a good business, or, in other words, do what is necessary to maximize profits. If, on the other hand, we view the main purpose as providing goods and services, then we will view the primary responsibility to be the production of quality goods and, the better the quality of those goods and services, the better the business. We can see the hold the profit maximizing view has on us if we reflect on how often we justify the most harmful behavior such as layoffs or business closings, by appealing to the maximization purpose in saying, "That's just business." The profit of the bottom line justifies whatever behavior is necessary to improve the bottom line.

Given the logic of the language of "purpose," if Heidegger and Wittgenstein are right, and we do not have our language so much as it has us, we should expect to be held captive by our ordinary way of conversing about business, which entails the profit maximizing view. And we are. We are held captive to such an extent that even those who critique the dominant view fall under its spell. To take some examples, note how Laura Nash, who would otherwise be a proponent of the production of goods and services as the point of business, talks about the purpose of business in an unguarded moment. "The good corporation is expected to avoid perpetrating irretrievable social injury while focusing on its purpose as a profit-making organization."[5] Or note how Tom Donaldson, in a discussion format, talks of the purpose of business: "The fundamental purpose of a business is to make a profit for its owners, but I would say that's not its only purpose."[6]

This dominant view, though, is not neutral. No view of purpose is. Such a view legitimates the institutional practices of business, and in this case does so to such an extent that even if we are opposed to the practices we do not have the language to critique them. So we are faced with an anomaly: even those who would claim that the purpose of business is to provide goods and services slip into talk about business which legitimizes some of the behavior they would not approve of in theory.

How widespread is this maximization of profits view? The fact that it shows up in our ordinary discourse is clear enough. But it also shows up in our learned discourse. Notice how, in a standard financial management text chosen at random, the goal of the firm is taken for granted:

> We believe that the preferable goal of the firm should be the maximization of shareholder wealth, by which we mean maximization of the price of the existing common stock.[7]

Here the goal or purpose of the firm is maximizing shareholder wealth as contrasted with maximizing profits, a popular distinction in business school discussions. The authors take some to task who hold that the purpose of business is profit maximization.

In microeconomics courses, profit maximization is frequently given as the goal of the firm. Profit maximization stresses the efficient use of capital resources, but it is not specific with respect to the time frame over which profits are to be measured … . In microeconomics, profit maximization functions largely as a theoretical goal, with economists using it to prove how firms behave rationally to increase profit. Unfortunately, it ignores many real-world complexities.

Here the authors stress the new in-vogue concept of maximizing shareholder value over profit maximization. Yet this difference need not deter us. Whether we call the goal "the maximization of shareholder wealth" or "maximization of profits," it is structurally the same for our purposes. The primary goal of business is not the production of a product but the accumulation of wealth brought about by means of the production of products.

We see, then, that the view that the primary purpose of business is to maximize value is the dominant view—so much so that what "Chainsaw" Dunlap has said, "people are coming to grips with *the fact that* the point of business is to make a profit," is perilously close to the truth. The only amendment we would make to Dunlap's point is that people are not so much coming to grips with the fact that the point of business is to make a profit as they are acquiescing in the acceptance of the belief. To the extent that this belief is unreflectively accepted, however it becomes as intractable as a fact. That is disturbing, for to believe something is a fact means thinking there is nothing that can be done about it, and that kills the will to change it, because what is, is. Hence, the sigh of resignation in the statements: "That's just business, that's the way things are, and there's nothing that can be done about it."

I want to argue that the maximization view, be it the maximization of profit or shareholder wealth, is wrongheaded and that it gains its credibility only by confusing and/or conflating two quite different things: motives (or subjective reasons) for actions with (objective) purposes for the action. I also want to show that, if we make a distinction between motives (which explain) and purposes (which justify), we are logically impelled to reject the view that the purpose of business is the pursuit of profit. (That's the way the tool is working, but that's not what it was invented for.)

In offering this way of seeing the issue, I am simply retracing the steps of my own thinking process. I am convinced the view is wrongheaded and that it gains its power from the failure to distinguish between motives and objective purposes, because it was a view I once held. At the time, trying to show that employees owed no loyalty to a corporation, I claimed the following:

> A business or corporation does two things in the free enterprise system. It produces a good or service and makes a profit. The making of a profit, however, is the primary function of a business as a business, for if the production of the good or service were not profitable the business would go out of business … . The cold hard truth is that the goal of profit is what gives birth to a company and forms that particular group.[8]

Those claims about the purpose of business seemed obvious to me. What I came to realize is that, while they expressed the popular belief about the purpose of business and relied on assumptions commonly made, on reflection, they are not obviously true. The mistake I made was not being clear about the differences between purposes, and motives.

The concepts of purposes and motives and their relationships and differences are well discussed in philosophy. In most of the philosophical psychology literature numerous telling distinctions among the notions of goals, purposes, ends, intentions, motives, causes, or reasons are made, while in most of the business ethics and corporate responsibility literature with which I am familiar, there seems to be an uncritical use of a whole host of those related terms. However, I think it would be wise if we leave aside the concepts of goals, intentions, causes, and reasons, and narrow our focus on the differences between purposes and motives, because purposes and motives, while they both provide answers to the question "Why?" function in quite different ways.

There are two different answers to the question "Why?" when addressed to human actions: the justificatory and the explanatory. To cite a purpose for doing something is to attempt to justify it and give a legitimating reason. To cite a motive for doing something is to give a psychological explanation. Hence, the question, "Why did you give the money to the poor?" can be answered by the justifying purpose, "To alleviate his hunger," or by the psychological motive explanation, "Because I needed to or wanted to."

In making our distinction, let's specify a bit more clearly what we mean by a purpose and a motive. Suppose we conceive of the purpose of something as the "what for" of that thing. Such a "what for" is crucial for defining the nature of the thing or activity, because we do not fully understand what some things or activities are unless we understand what they are for. For example, a hollowed out ebony cylinder one inch long and one and a half inches in diameter is indeed a piece of hollowed out wood, but with all that empirical data we don't understand what it *is* until we know what *it's for*. We understand what it is, what the "nature" of this artifact is when we understand what it's for, in this case, holding napkins. (To be sure, artifacts are conventions, and hence it might appear a little strange talking of their "natures," but then corporations and the business system are conventions and we don't seem to think it strange to talk about the nature of corporations.) At any rate the example shows how the purpose of something is the "what a thing is for," and how a full understanding of something requires knowing what its purpose is.[9]

Motives, however, are quite different from purposes. Motives are individual psychological forces that "move" (hence, "emotive") individuals to behave in certain ways. Even though both a purpose (the what for) and a motive can be given as an answer to the question "Why?" with respect to an action being done, the purposes for acting are not the same as the motives for acting. To confuse the purpose with the motive would be like confusing the purpose of a train, to get people from place to place, with what drives the train, the engine. The engine is analogous to the motive, since it moves the train.

There are other examples that can be given of the difference. The purpose of the practice of almsgiving is to aid the poor. Yet Kant among others has shown that there can be any number of *motives* for helping the poor, such as getting public acclaim or getting a tax write off.[10]

Scholastic philosophers employed the difference between purpose and motive with respect to the institution of marriage. The primary purpose of marriage as an institution according to the scholastics was held to be the procreation and education of children. When the purpose of procreation got tied to a prohibition of premarital sex, it led many to believe that the purpose of marriage was to legitimate sexual activity. But one does not need to get married to have sex, only, on some accounts, to make it morally permissible. So the desire for sexual fulfillment cannot be the primary purpose of marriage. But if one thought that sex outside of marriage was sinful and could lead to eternal damnation, the desire for legitimate sex became a powerful *motive* to get married, but nonetheless not the reason for getting married.[11]

A final example is education. The purpose of education would seem to be the development of the person's mind or some such. All too often today, though, we turn the purpose of education into something like getting a job. But that is not the purpose of education; rather, it is a desirable side effect. Education like anything else can have multiple effects. But the effects don't determine the purpose. Education primarily is for human fulfillment and secondarily it can help one make a living. (Plato, by the way, in dividing goods into three kinds—those good as means only, those good in themselves, and those good in themselves and as means—maintains that the last kind, those good as both means and ends, are the best.) The fact that any number of students have turned their education into a means of getting a job shows what happens when we neglect to make the distinction between purposes and motives.

A typical conversation with business students might go like this: "Why are you studying accounting?"

"So I can get a good job."

"But why accounting?"

"It pays well."

"But other fields pay well."

There are all sorts of ways to make money, and wanting to make money is certainly acceptable as a *motive*, but the purpose of the practice of accounting is not to make money, any more than the purpose of the practice of medicine is to make money. Medicine's purpose is to minister to the sick. These examples should help to make it clear that our motives for doing something might or might not accord with the purpose of the activity. Further, we should see that by turning motives into purposes we get involved in turning means into ends, the converse of using the end to justify the means. In that way the production of goods and services serves as the means used for the sake of making money. But even if that is so, and it is unacceptable, how does that show that the "what for" of business is the production of goods and services? For that we need a separate argument.

To begin that argument we need to note that social practices have their own purposes independent of the motives of the persons engaged in the practices. Turning to business as a practice, we see that it is a conventional practice, that is, one designed by human beings not something natural. As a practice it is a "form of life," to use Wittgenstein's phrase, and has a set of rules and expected ways of behaving, which have developed with some end or purpose in mind. ("Whose mind?" is a problem for a different paper.) But is that purpose the making of a profit or the providing of goods and services?

If a purpose is a "what for," the "what for" must be the what for of some conscious being or beings. Business is a societal practice, a developed conventional form of life. To begin, no society or group would create a social institution unless that institution was seen as promoting some good for the society or group. For example, our society does not sanction the creation of groups to manufacture and distribute heroin, or create pornographic films which exploit children, because they do not see these activities as having any redeeming social value. Hence, it stands to reason that the purpose of any societally constructed system or institution has to do with an end that is compatible with some social good, (good of the whole through its parts), which might or might not be compatible with any specific individual's interest. If this is so, society instituted business and its practices and rules, by which we mean the competitive profit-motivated free-enterprise system, to help itself (society) develop and survive. Hence business is instituted to be beneficial to society. The claim is made, from Adam Smith on down, that a competitive, profit-motivated, free-enterprise system is a very efficient *means* of bringing about a laudable goal—benefit to society. If business were seen as harmful, society would close it down.

While our system of business as it has developed is not the only way to produce goods and services, it is argued that it is the most efficient. The somewhat regulated capitalist economic system which our society permits, is permitted because it is seen as a very productive, if not the most productive, economic system. However, this capitalist system ingeniously centers around rules governing the distribution of profits. Profits are distributed in such a way as to incentivize or motivate the entrepreneur. But profits are merely the means for achieving the purpose of business, and, as the means, they should not usurp the ultimate goal of business any more than sexual fulfillment should override the procreation of children as the goal of marriage. Thus, if we keep our distinction in mind, it is clear that profit is not the purpose of business, but is only the motive for doing business.

But how did such an obvious fact get forgotten? A full answer to such a question is beyond the scope of this paper.[12] Still one can speculate that whatever caused the rise of the theory, it was aided by the ambiguous use of the word "intention" in Adam Smith's famous passage about the invisible hand. Let's examine the passage.

> As every individual, therefore, endeavors as much as he can both to employ his capital in the support of domestic industry, and so to direct that industry that its produce may be of the greatest value, every individual necessarily labors to render the annual revenue of the society as great as he can. He generally indeed, neither intends to promote the public interest, nor knows how much he is promoting it … and by directing that 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*. [emphasis added]. Nor is it always the worse for society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really *intends* to promote it. I have never known much good done by those who affected to trade for the public good. It is an affectation, indeed, not very common among merchants, and very few words need be employed in dissuading them from it.[13]

This passage by Smith contains two elements. First it gives a psychological account of why an individual would be motivated to work. Second, he *justifies* such motivation by predicting that it will lead to "an end (read 'purpose') that is no part of his intention (read 'motive')." "He generally indeed, neither intends to promote the public interest, nor knows how much he is promoting it … [He] intends only his own gain, and he is in this lead by an invisible hand to promote an end which was no part of his intention." If for "intention" we read "motivated by," then what Smith says is that even though the business person is not motivated to promote the public interest, in being motivated by his own interest he succeeds in bringing it about anyway. But the purpose of all this is clearly to advantage the public interest, and, as Smith says, consumer oriented and limited by justice.[14] The fact that the public interest is served by self-interested motivation is serendipitous, a boon that Plato thought was the best good, a means that is also good in itself, self-satisfaction bringing about a good end, the public good.

But the word "intention" as Smith uses it has a subjective sense, which can also refer to a "what for" as in, "What is your intention or reason for doing this?" Hence, while Smith uses "intention" in a subjective sense and as a motive, later readings of "intention" turn it into an objective societal purpose.[15] It is not Smith so much as his economic followers such as Friedman who deny that the purpose of the baker is to bake bread and insist that the "what for" of his action is his own interest. But, if we keep in mind our earlier distinction between subjective and objective, the baker's action has an objective intention, to produce bread (the purpose), and a subjective intention to make money spurred by the desire for money (the motivation).[16]

The problem of course is that turning the means, self-interested motivation, into a purpose, opens a Pandoras box. Legitimizing such a means unleashes what the theologians call "greed." The "rational maximizer" can become the greedy, grasping, acquisitive, profit-motivated, bottom-line oriented entrepreneur, who feels no responsibility to the public welfare, because whatever he does leads to the public welfare. The benefits of utilizing the profit motive are obvious, but so are the undesirable externalities.

Contemporary defenders of the classical theory of corporate social responsibility such as Milton Friedman and other current defenders of the "invisible hand" utilize the conflation to make their point that the primary responsibility or function of business is to make a profit. But to make the theory tenable, we depend on an individualistic, reductivistic view of human nature and purposes and a naïve belief in the "invisible hand."

The rest of the story is fairly obvious. Aside from appeals to liberty and autonomy, this type of appeal to an "invisible hand" is the most popular defense of the institution of business as we know it. It provides a formula which in essence states that the business person should keep in mind as a goal, the single minded, self-interested pursuit of profit. From that formula, theoreticians such as Milton Friedman argue functionally that since business is a system set up to make a profit, a good business person will be one who performs the profit making function well. Further, according to the principle of the division of labor, since business has as its function to perform in society as a whole, and government and labor have their different functions, if each part fulfills its respective functions, society as a whole will be better off. Hence, as Smith and his supporters like Friedman maintain, the "end" of "public interest" need not be a part of the business person' intention.

Even here, the ambiguity should be unpacked, for, as is well known, Smith and Friedman legitimate the self-interested motives by a consequentialist justification.[17] Smith's contention provides Friedman and others with a reason to say that the "primary and only responsibility of business is to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception and fraud."[18]

The utilitarian structure of the argument is simple enough to see. The activity or practice of self-interested pursuits is justified because of the good that will accrue to society if such a profit-oriented system is adopted. In short, the greatest good for the greatest number will be served if the market, driven by self-interest, is allowed to operate. Hence, we get a utilitarian justification of an egoistic stance. Look out for your own concerns and society as a whole will be better off.

That might be true, most of the time. In fact that seems to be what such thinkers such as Gauthier are trying to show.[19] But the sticking point is those times when the pursuit of self-interest does not lead to the good of the whole, but is at the expense of others. At that time what is the proper thing to do? Pursue profits or concern oneself with lessening the cost to others? If one would argue that because societal benefit is the purpose of business, one is obliged to concern oneself with others, how would one motivate such behavior? After all, looking out for others is hard to do. Why? In the sense of what motivation exists to look out for others? But that is the same as the problem of "What self-interested motives are there for being moral?" Depending on the definitions of moral and self-interested here, the answer might be "no motives." But that, too, is the topic of another paper, which would address the difficulties of psychological and ethical egoism.[20]

Counter to those who adopt a Friedmanian stance, if we say that the purpose of business is to provide goods and services, while the motive is make a profit, then the responsibility of the manager or agent of the business is not simply to pursue profits, but to pursue them regulated by the demands of the public interest. Of course to determine what those demands are is another area beyond the scope of this paper.

We have tried to indicate that, if we confuse purpose with motives for doing, and reduce the former to the latter, we make it impossible to give a theoretical ground for legitimate restraints on business, other than those required by a Kantian formalism. However, business, construed as an artifact created for the sake of society, specifically for the production of goods and services, is construed in such a way that the values are implied. A good business will be one which fulfills its purposes, which aim at the betterment of society, in this case through production of goods and services.

There is of course, an obvious objection to all of this. What if the "good" or "service" a business produces is not so good. Here I think we have some difficult issues, but also some solvable ones. Why do we prohibit in the United States the manufacture and distribution of cocaine? There is certainly a market for it and the producers make a good profit. In one sense, if the only constraint on business were profit maximization, and if business were to be judged on the basis of its efficiency, what better case study of an efficient operation than cocaine production and distribution could be found, since it continues to be profitable in spite of the fact that entire governments attempt to impede its production and distribution. Society in the United States has determined that, although cocaine appears as a good to some (a subjective good) it is not good for society and its production has been banned. Defenders of the maximization view have a hard time dealing with those interferences, which might be why Friedman is a proponent, at least of legalizing marijuana. Still the question who's to say what is a good or not will be raised. But that is another issue. Suffice it to say, the direction one must go in addressing it is the direction a number of people concerned with the social responsibility of business go, and that is to evaluate businesses, not simply on their efficiency and market value, but on how well they fulfill their purpose, that is, provide good goods and services.

In conclusion, to the extent that "maximizing profits" becomes a legitimation of greedy practices, we have an erosion of the ethical climate of the business environment. To the extent that we allow phrases such as "that's business" to legitimate cut-throat competition, we have an unethical climate. One of the most insidious mistakes made in discussing business ethics is that made in viewing the only responsibility of business to be maximizing profits.

That is a mistake because business is a social institution, that is, an invention of society. The first humans did not have an institution called business. In order for such an institution to come into existence, human beings had to invent a whole set of categories for identifying the goods and burdens of the world such as property, cost, profits etc., as well as an entire set of rules governing the "fair" distribution of them. But the only way society would legitimate those business operations would be if those operations were seen as benefiting society by providing goods and services. A society that put up with practices that did not help but harmed it would be irrational. No sane society would permit a system that did it more harm than good. The appeal to profit was a means to motivate more production, but it was not the purpose of the production. As we said, to confuse the motive, literally the moving force, with the purpose of something is like confusing the engine of a train with the purpose of a train. The purpose of business is to provide goods and services, the motivating force is the reward of profit for individuals. But the means of motivation in some way became confused with the purpose of business. But to make maximizing profits of paramount concern rather than putting the horse before the cart, turns the horse into the cart.

NOTES

* "The Why's of Business Revisited: On Confusing the Purposes of and Motives for Doing Business," *The Journal of Business Ethics*, Volume 16, 1401–1409, 1997.

1 I need to thank Norman Bowie and Nicholas Rongione, who read various versions of this paper for their helpful comments.

2 Terrence Ball, "What's Wrong With Values," *The New Oxford Review*, May 1996, pp. 6 and 7.

3 Albert Dunlap in his first remark in a discussion at the Occidental Grill, a restaurant in Washington, D.C. "Forum," *Harper's Magazine*, May 1996.

4 Aristotle says "Every art or inquiry aims at some good." Nichomachean Ethics. Whether a business is good then, is determined by what good business activity aims at. If what business aims at is increasing profit, then the good business will be the one which increases profit. But Aristotle distinguishes between what has the aspect of good, or appears good (profit certainly can be viewed as a good or having good aspects) and what true good is, that which brings real happiness. This is the good we *should* aim at. The trick is to use our practical reason to sort out which apparent goods are really good.

5 Laura Nash, "Ethics Without the Sermon," *Harvard Business Review*, November-December, 1981, p. 89. Professor Nash is not alone. I have heard other colleagues slip into that kind of talk.

6 Tom Donaldson, "Transcript of a Discussion by the Panel of Judges, American Business Ethics Awards," November 16, 1993. Published in *Chapter Handbook for Ethical Guidance & Professional Standards Committee*. American Society of CLU and ChFC.1996. One might object that we should not be held as strictly accountable for what we say in the context of a discussion as for what we put in print. To begin, I am not holding either Nash or Donaldson accountable. I think however, that what we say in informal settings indicates our general unreflective viewpoint, and that is precisely the point I am trying to make. This way of thinking is part of our culture and language. It is the way we talk, and hence it reflects our underlying outlooks.

7 Arthur J. Keown, David F. Scott Jr., John D. Martin and J. William Petty, *Basic Financial Management*, Seventh Edition, Prentice Hall, 1996, pp. 2–3.

8 "Whistleblowing and Employee Loyalty," in Desjardin & McCall. *Contemporary Issues in Business Ethics*. pp. 297–298.

9 Those familiar with Aristotle of course will see this as an account of the four causes: the material, formal, efficient and final. For Aristotle, the final cause was the purpose, or the "what for," and one's knowledge of anything was incomplete unless it was knowledge of all of the causes. Hence the question "What is business?" from Aristotle's point of view cannot be answered without an account of its purpose, and a correct account cannot be given if we have the purpose wrong. Note also that this introduction of purposes or teleology, makes knowledge of things more than a purely empirical enterprise, and necessarily an enterprise with a value dimension.

10 Note that when we start investigating individual motives and confuse them with the purposes, we almost always end up with some sort of egoistic self-interested account of the purpose. That might be because we keep looking for a psychological answer to the question "Why be moral?" when there is no answer.

11 One should note here, that the scholastics ingeniously, for their purposes, turned motives into secondary purposes. There would be no procreation without desire. But the child needs protection. Hence the purpose of the drive was a species purpose. A secondary purpose of marriage then was to give an outlet for sexual desire.

12 I would venture, if pressed, to explain it by two factors: (1) an attempt to rationalize the acceptability of acquisitiveness; and (2) an attempt to make being virtuous less difficult. CP. the contemporary counterpart, Gauthier's *Morals By Agreement*.

13 Adam Smith, *The Wealth of Nations*, ed. Edwin Canan (N.Y., Random House, 1937), p. 14.

14 Cf. P. Werhane, Adam Smith and His Legacy for Modern Capitalism, esp. Ch. 3, Oxford, 1991.

15 Intentions are often associated with subjective purposes, as in: "my intention (or purpose) in doing that"; "my reason for doing that"; "my motive for doing that." But subjective intentions are closer to what I have called motives than objective intentions of acts. It is not only possible but necessary to distinguish between the objective intention of an act and the subjective intention. Similarly we could talk about a subjective purpose and an objective purpose. But we don't seem to. We talk of whys: The subjective why, which is a motive and the objective why which is a purpose. If we simply think of a subjective intention as the individual's subjective motive for doing something, the personal psychological cause, then we can distinguish it from a possible objective intention, an intention which looks very much like what we will call a purpose, a non-subjective reason for doing something. At any rate, individualism and subjectivism, to an extent, cause us to conflate motives and purposes. So an individual can talk of "my purpose in doing this," or "my intention in doing this" or "what motivated me to do this." But this conflation is a mistake which leads to all sorts of intellectual and ethical mischief.

16 The conflation of these two meanings of intention, coupled with the rise of individualism, a social contract view of society, and an egoistic reductivism, that is, a social science requirement to explain all human actions in terms of measurable individual units of self-interest, allowed the ambiguity not only to remain undetected but to seemingly disappear. The confusion is rampant, and my hunch is that this conflation of purposes and motives is the result of an egoistic reductivist tendency found especially in the literature of economics and in the concept of the rational self-interested maximizer. After all, the reductivist society cannot be anything other than a collection of individuals with their own individual intentions or motives, and what are individual intentions and motives except self-interested concerns? But that is a topic for another paper. Whatever the cause of the confusion, that there is confusion seems obvious enough.

17 While the Smith quote contains the core of a consequentialist defense of the self-interested pursuit of profit found in the competitive free market, it would probably be anachronistic to refer to it as a "Utilitarian" defense of capitalism.

18 Friedman, "The Social Responsibility of Business Is to Increase Its Profits," *New York Times Magazine*, September 13, 1970.

19 Cp. Morals By Agreement, David Gauthier, Oxford, 1986.

20 For the time being James Rachel's marvelous essay on egoism will have to suffice. Cf. James Rachel's "Egoism and Moral Skepticism" from *A New Introduction to Philosophy*, edited by Steven M. Cahn. Harper & Row, 1971.

CHAPTER 3

BUSINESS ETHICS: OXYMORON OR GOOD BUSINESS?*[1]

> "To live happily is the desire of all men … . First therefore, we must seek what it is that we are aiming at; then we must look about for the road by which we can reach it most quickly." Seneca, *Moral Essays*.
>
> The good is that at which all things aim." Aristotle, *Nichomachean Ethics*.
>
> Capitalists have been living on their (ethical) inheritance and it is running out … . Free enterprise has degenerated into greed and rapacious capitalism … . But the current view is the result of refusing to recognize that economic systems of whatever type are like engines: They provide motive power but do not determine the direction of travel."[2]

"Business ethics! That's an oxymoron." More often than not, that is the reaction when I tell people I teach business ethics. "There is no such thing," they bark. The responses are so uniform they make one think that the only purpose of business ethics is to give currency to the word "oxymoron."

My usual answer to such a dismissal of business ethics has been to point out that without ethics, business could not function, since it requires a great deal of trust and integrity. Or I have pointed out that even though there is unethical business behavior, that is the exception. On the whole, most people in business act ethically most of the time.

Recently, though, I listened as a former CEO reflected on why he left business. He recounted the incredible pressures on him to get return on equity and meet fourth-quarter earnings goals, tasks he viewed as his overriding responsibility. He related his struggle to avoid doing something unethical to meet the demands of his shareholders.

His story made me wonder whether those who think there is no such thing as business ethics might not have a point. Is there some truth to what they say? It occurred to me that some of us in the field ought to ask some hard questions. What if business ethics is a contradiction in terms? What if those of us concerned about its legitimacy were like the cuckold—the last to know? Were those of us touting the possibility of business ethics so blind that, like the emperor and his sycophants, we didn't listen to the children saying we had no clothes? Have we become mere apologists for a corrupt system? Have we become co-opted by the institutions we are responsible for examining?

In the face of such doubts, it certainly wouldn't hurt to be a bit critical about our enterprise, and recognize, as Aristotle pointed out, there is usually at least partial truth in commonly held beliefs. In fact, Aristotle began most inquiries by examining commonly held opinions, what in Greek were called *endoxa*, to see what truth could be gleaned from them. Given that so many people think business ethics is oxymoronic, it might be prudent to investigate why and to determine what, if any, truth or partial truth they see in that statement.

Thus, as a heuristic device, I propose to seriously examine the claim that business ethics is a contradiction in terms, and see what follows if business ethics is oxymoronic.

1. BUSINESS ETHICS AS OXYMORON

If one looks at the purpose of ethics/morality[3] and the common conception of the purpose of business one can make a fairly good case that business ethics is an oxymoron. The argument would run along the following lines. To the extent that business and the market in which it flourishes is driven by an unconstrained pursuit of self-interest, an attitude consistent with egoism,[4] and since egoism is manifestly unethical, business must inevitably run afoul of ethics, which furnishes rules of justice constraining self-interested behavior to avoid the egoism.

Business pushes one way, ethics the other. If achieving ever-increasing profit is the basic purpose and principle of business, and economic profitability is the primary and overriding factor in strategic business decisions, ethical behavior and business behavior eventually must conflict. Of course, to make such an argument persuasive we must first show that the nature of business is as we construed it and then specify what we take as the nature of ethics or morality, showing its incompatibility with business.

2. BUSINESS AS PURSUIT OF SELF-INTEREST: THE BOTTOM-LINE PERSPECTIVE

Morality or ethics is incompatible with business if following the rules of business practice *inevitably* leads to a pursuit of self-interest that is at the expense of another—that is, a pursuit of self-interest that is selfish. We define selfishness as the pursuit of self-interest at the expense of another. Hence, when practices become *selfish* they necessarily violate the demands of justice. As we shall see, business is a social construct, so it can be what society determines it to be and prevailing opinion will be a major factor in determining what it is—that is, the received descriptions will turn into prescriptions. Hence the justification, "That's just business."

My impression is that while most business ethicists would not agree with this, the general consensus, *endoxa*, is that there is no responsibility for business other than the self-interested pursuit of profit. I arrive at that conclusion from my experience in a number of areas. It is apparent in the words of corporate apologists, when they claim, "Business must do whatever it takes to survive." There is no shortage of defenders of this view, from Albert Carr[5] to Milton Friedman,[6] who states without qualification, "There is *one and only one* social responsibility of business … to use resources designed to increase its profits."[7]

If business is such that its one and only responsibility is to increase profits, it is quite sensible to claim there is no such thing as business ethics. Given the competitive pressures of the marketplace, any business will reach a situation where the only way to increase its profits will be at the expense of another. Be it by downsizing or firing or just producing, with its attendant externalities, the well-being of a company will demand that action that might be harmful to some person or persons be taken. Such an attitude has become ingrained in today's leading practitioners and analysts of business. Consider the following examples.

> A (recent) award of $120.5 million to Teresa Goodrich, who lost her husband because Aetna Health Care delayed approving an experimental treatment that might have saved his life, provoked Aetna's chief executive to declare that the jury had been swayed by a "skillful ambulance-chasing lawyer, a politically motivated judge and a weeping widow." (He later apologized to the widow.)[8]

What would lead a CEO, assuming he is a decent person, to be so concerned about his fiduciary obligations to defend the interests of his company that he abandon all sympathy for the widow and make such a comment? Such callous behavior only can be explained if the CEO believes he is doing right by fulfilling his responsibility to enhance company profits, and if that view has become ingrained in his outlook.

How did the CEO develop such an attitude? The answer is that continual concern over one's responsibility to the bottom line builds up a habitual single-minded view that has no room for justice when it conflicts with strategic profit making. One could call it bottom-line myopia. It is the mark of the rift between ethics and business and the imbeddedness of the belief that business is first and foremost about increasing profit.

The behavior of the Aetna CEO is reminiscent of a story allegedly told by Phil Jackson, the former coach of the Chicago Bulls. It was a story about a frog and a tarantula. The tarantula could not get across a stream and the frog in a friendly gesture suggested that he could give the tarantula a ride on his back. But fearing the tarantula's deadly sting, the frog elicited a promise from the tarantula not to bite him. Having agreed, the tarantula hopped on the frog's back and they began to cross the stream. All was going well until half way across when the tarantula bit the frog. Knowing the worst, the frog (in true utilitarian fashion) said, "Why did you do that? Now we'll both die." To which the tarantula replied, "I know, but that's what I do." Business makes profits. That's what it does. If people get hurt in the process, that's too bad.

As a final piece of evidence that the bottom-line perspective is not only the common opinion, but the driving opinion about business, consider this account of the career of Jack Welch.

> More than 300,000 people have lost their jobs in Jack Welch's 17-year tenure as CEO at GE, earning him the nickname "Neutron Jack"—for the bomb that destroys people but leaves buildings intact.

> For most business people, such moves have made Welch America's premier corporate changemaster, the wunderkind of Big Business. His methods are extolled in business schools, praised by the media and copied by others.[9]

Given the pressures of the marketplace and the stock market, and the notion, supported by law, that executives have a fiduciary responsibility to increase profits, is it any wonder that business leaders seem almost exclusively bottom-line oriented, so there appears to be no room for justice or ethics, *when and if* it interferes with increased profit?

3. COUNTERING THE FRIEDMAN APPROACH TO ETHICAL BUSINESS

Still, society is not about to accept a practice that is patently harmful and unjust. Adam Smith, the eighteenth-century ethicist/economist who inspired Friedman, reminds us that the self-interested pursuit of profit needs to be constrained at times.

> Every man, as long *as he does not violate the laws of justice* [emphasis added], is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men.[10]

Harmful practices need justification. Hence, defenders of Friedman will not agree that business ethics is oxymoronic. Rather they will point out that tough-minded profit making leaves society better off as a whole—the modern adaptation of Adam Smith's invisible hand argument—and a utilitarian justification of its practices. They will claim that business' self-interested pursuit of profit has led to better things and a better world.

The argument is, however more *a priori* than empirical. In theory, allowing owners to get maximum profit will enhance investment and entrepeneurship by rewarding it. In that way the entire society will be better off, because a rising tide will lift all boats. Justification of business' pursuit of self-interest leads to the greatest good for the greatest number of people. This is an extremely important point, for, if it is true, the frustration of self-interested pursuits in the name of justice might cause more harm than help in the long run by dampening productivity. However, since the argument is a utilitarian justification of self-interested pursuits, it faces two difficulties found in any utilitarian approach: the problem of identifying appropriate ends as well as the problem of fair distribution.

Unless one specifies what the consequences of capitalism are, and judges these as good, the position that capitalism leads to the greatest good for the greatest number of people cannot be defended empirically. It is unquestionable that this capitalist free market system that promotes the self-interested pursuit of profit has produced a higher material standard of living (meaning more material goods) than any other system in history.[11] But it is questionable whether the increase in overall wealth is an adequate goal for a flourishing life. At most it is an instrumental goal. Wealth for what? Goods for what? To encourage the goal of increased material goods at the expense of all other goals is to engage in debilitating materialism.

Hence it can be claimed that business, viewed as primarily a profit-making enterprise, is incompatible with ethics because it promotes a good that is ethically inappropriate as a final goal. For business to be ethical it needs to subordinate its profit-making goal to other more appropriate goals, a necessity that Friedman recognizes by appealing to the utilitarian invisible hand argument. But then, that newer goal, be it more productivity or more wealth, must be judged by an adequate view of what counts as a worthy goal. Those ethicists who criticize business because of the tawdry products it supplies utilize this approach. Those who criticize it for creating a fetish for goods use this approach. Those who critique it for its concern with having rather than being use this approach. It is an approach that says not all economic goods are ethical goods.

It would be refreshing to see a serious discussion of what counts as goods for human beings. Those goods and services need to be, *pace* Mill and Bentham, not merely pleasures, but real quality-of-life goods, and they cannot be instrumental goals functioning as final goals. What appropriate goals are is partially determined by what human beings and their societies are, as well as by which of their potentials are worthy of pursuit. But such goods need to be discovered by analysis, investigation and experimentation.

A second problem arises from the utilitarian approach of Friedman. Even if one concedes that business promotes good, there is the distribution problem. How are the goods to be distributed fairly? Did capitalist society achieve this material wealth by unfair distribution of goods or exploitation of some segments of society? To promote the maximization of goods at times requires inequitable distribution. It also requires as much freedom to pursue self-interest as possible. The appropriate ends of activities that affect a society *must*, to be fully ethical, be distributed according to some rules of *fair distribution*—rules utilitarianism does not provide. Any system that appeals to self-interest to maximize goods needs to adopt constraints against selfishness—determinations of who gets how much. For example, if we ask who should get the profits, the notion that the owners get all the profits seems unfair to those who think work should also be one of the chief determinants of how much property one deserves to get. Thus, ethics has to address both the appropriateness of the goods produced and fair distribution of those goods—aspects not adequately covered in the utilitarian justifications. Thus, the invisible hand defense of business ethics is inadequate.

However, there are two other attempts to establish ethics in business, even business that is wholly profit oriented. The first shows that business needs ethics as a prerequisite for social stability.[12] The second shows that business needs ethics as a strategic advantage—the view that maintains that good ethics is good business.

4. ETHICS AS A PREREQUISITE FOR SOCIAL STABILITY

As already mentioned, a facile response to "business ethics is an oxymoron" is to show that businesses could not operate without a requisite amount of honesty, trust, and respect for others' freedom (lack of coercion). Being ethical, then, gets equated with being honest and trustworthy.[13] It is rightly claimed that business would be nearly impossible if most people did not practice some ethical constraints—keeping promises and not deceiving. It is also shown that coercion is incompatible with ideal market transactions that require free choice. Further, it is agreed that, when honesty, trust, and lack of coercion are employed in business transactions, monitoring costs are lowered, business is generally more efficient and ideal conditions for market interchange are established.

However, the need for trust, honesty and some respect for freedom is true of any well-run organization, even a recognizably immoral one. There must be honor even among thieves. To take two common examples, organized crime and the Nazis, it is clear that even in those and similar organizations there has to be a modicum of honesty and trust among their members, and their leaders have to be given enough latitude to do their jobs. So, if ethics is reduced to showing that organizations need trust, honesty, and the encouragement of creative individual initiatives, then all well-run organizations are ethical. But that is just false. The ultimate goals of the leaders of organized crime, the Nazis and similar groups are immoral and misguided, not their dedication, leadership ability, loyalty, and trustworthiness. Hence, it is not enough to keep promises and tell the truth to be ethical. As we have seen before in the difficulty with a utilitarian justification, to have adequate ethics, a company's goals must be appropriate.

5. ETHICS AS A STRATEGY FOR GOOD (i.e., PROFITABLE) BUSINESS

A second approach among defenders of ethics in business is the approach of those who want to claim that good ethics is good business, usually called the strategy approach to business ethics. Most of the time, being ethical (where that means being trustworthy and not deceiving) does lead to good business, in the sense of greater productivity and profit. For example, it is argued that being honest with customers and looking out for their interests will establish long-term relationships that create customer satisfaction, and lead to more sales in the long run. Or treating one's employees fairly or generously will improve employee morale, thereby enhancing productivity. So if being ethical in business means treating customers with care and employees kindly, then that kind of approach is ethical business.

But there is a serious difficulty with this approach. It warrants ethical behavior because it produces good bottom-line results. It subordinates all of the ethical goals into instruments for the final goal, profit maximization. Hence it suffers the very bottom-line myopia or fixation it attempts to overcome. Strategic reasoning appreciates the claims of stakeholders other than stockholders, but not as legitimate claims in themselves, attended to by the corporation because it owes those stakeholders something, as an ethical perspective would, but only as instruments for fulfilling fiduciary obligations to stockholders.

Strategic reasoning looks at ethics as an instrument for serving the bottom line—which, by the way, is the chief way to market any ethics program. (We would do well to consider the impact that the sentencing guidelines have had on the popularity of ethics training sessions.) There are those who claim that one can look at a proposed action from both strategic and ethical points of view, and find a win/win solution to an issue. But not all issues have win/win solutions. In win/lose cases, to view business from other than a bottom-line, strategic point of view puts one at odds with the view of the responsible business person presented by such luminaries as Albert Carr, Milton Friedman, Andrew Stark,[14] and any number of the "Good Ethics is Good Business" people, including the new strategic-oriented stakeholder theorists.[15]

The overall problem of such an approach is that, if and when good ethics is not good business, so much the worse for good ethics. Make no mistake about it. Sometimes good ethics will be bad business, if good business is defined as bottom-line success. At times, to act ethically will be hard and will cost. After all, as Aristotle pointed out almost 2,500 years ago, if being virtuous were always easy, we wouldn't praise it.

Thus, there needs to be more to ethics than the trust and honesty that are requisites of any well-run organization and the ethical strategies such as care for customers, clients, employees, and others that pay off in increased profit. What is it? We propose to look at the purpose of ethics and morality to see what is missing in the views examined thus far.

6. THE PURPOSE OF ETHICS

Morality has been aptly described as a social system of rules created to allow human beings (1) to adjudicate disputes rationally, without resorting to physical force, so that (2) the relationships affected by the dispute can endure and allow the individuals in those relationships to flourish.[16] Since most ethical disputes arise over who is entitled to certain goods, two questions are crucial in ethics: What goods help humans to flourish, and how are they to be distributed fairly?

Morality's goal of adjudicating disputes to allow relationships to flourish requires a *rational* adjudication. We can adjudicate disputes by force, but in that case we abandon ethics and might makes right. Rational adjudication of ethics must put fairness in the forefront. The rationality of the principle of fairness can be elucidated simply. Fair treatment requires that "the same should be treated the same," and difference in treatment is only justified when there are relevant differences that justify the different treatment. Determining what counts as relevant is at the heart of ethical inquiry.

To demonstrate the irrationality of unfairness consider what occurs if we were to treat two identical things differently. If there were two identical paintings, and we thought one had superb composition, it would be illogical to think that the other painting did not also have superb composition. Similarly, if two people are identical in all *relevant* ways, it is irrational to think that one can be entitled to something while the other is not. At an early age, children recognize quite clearly the basic principle of fairness, "The same should be treated the same." They know it is unfair if one of their siblings, who they see as essentially the same, is given a bigger piece of cake. Of course if it is the sibling's birthday, the sibling is entitled to more cake, for having a birthday constitutes a relevant difference for cake distribution. So justice and fairness demand that if we believe most human beings are alike in most morally relevant respects, they should be treated the same in those respects.[17]

Reflecting on the principle of fairness helps us see the unethical nature of selfishness. The defense of selfish behavior rests on the false belief that we are not the same as others, but somehow more deserving. It is important to note that selfishness is not the same as self-interest. The pursuit of self-interest is a perfectly natural and acceptable activity. However, if one puts one's own interest first, in a situation where pursuing that interest is unfair to another, one is being selfish. Selfishness occurs when the pursuit of self-interest is *at the expense of another*.

The phrase "at the expense of another" is ambiguous. It can mean a situation where the other is hurt or harmed, or it can mean a situation where the other is harmed by being denied a good to which one is entitled. The selfish approach ignores the entitlement claim. Because I want cake, after eating the piece my mother saved for me (a self-interested action), I also eat the piece she saved for my brother (a selfish action). That's selfish, not simply because I hurt my brother by depriving him of a good, but because I deprived him of a good to which he was entitled. My brother is deprived of the cake to which he was entitled, which is quite different from simply being deprived of the cake, as might happen if the rule for distribution was "first-come, first-served." It is impossible in this situation to have one person's self-interest satisfied without it being at another's expense. Thus, selfishness cannot be understood simply as pursuit of one's interest when it hurts another. The hurt must occur over the deprivation of a good to which the other was entitled.

The additional notion of the entitlement claim to selfishness is crucial, particularly in laying out claims of stakeholders, because not all harming is selfish. For example, one might be forced to close down a plant, for the survival of the company, thereby hurting the people in the community. Is that selfish behavior on the part of the company or just self-interested survival behavior? In such a case one could argue the latter. But that is quite different from a case where a plant was closed, obviously hurting people, but where there was some entitlement—because of implied promises or such—to support from the company. One of the main tasks of ethics is to spell out the basis for entitlements and examine situations to see if the grounds of entitlement exist.[18]

Because of situations of scarcity of goods society lays down rules of what in a society will count as fair distribution. The distribution rules become part of that society's operative rules of morality. They spell out what is considered fair and/or just in that society. The demand for justice and enhanced quality of life results in a set of rules for appropriate behavior found in any society—the ethical rules of that society. Ideally these rules would be established by a process of trial and error, and through assigning responsibilities, all who aim for social stability, which allows the needs of the individuals of the society to be fulfilled.

Capitalism's fairness rules governing how property gets distributed are a basis for the charge that business is unethical. Ask most everyone in our society, "Who is entitled to the profits of a company?" and they will say, "The shareholders." That principle of distribution is so ingrained, so second nature, we don't even think about it. If we ask why (which we rarely do), the answer will be that the owner took the risks or had the idea.

As we have seen, what makes capitalism successful in increasing wealth and productivity is that the rules for distribution tie entitlement to the pursuit of self-interest. If the pursuit of self-interest (survival or profit making) leads a company to act in its own behalf while harming others (workers, community, future generations) it is entitled to act in ways that are harmful by a system that legitimizes that harmful behavior. When we justify harmful behavior with the phrase, "That's just business," we are avoiding the charge of injustice since we appeal to the self-interest within the rules. Hence the primary principle that the owner or shareholder is entitled to the profits and that profits are to be maximized in any way possible short of deceit, fraud or coercion leaves no room for other stakeholders to claim entitlement.

But is this system (form of life) ethical? Is it just?

7. TWO NOTIONS OF JUSTICE

Cicero points out that justice can have two meanings.[19] The first is giving everyone his or her due. The second has to do with not inflicting harm on others and shielding them from harm. With respect to the first meaning of justice, where everyone gets his or her due, we have seen that through rules that generally favor business, our society determines who is due what and on what basis. Since we determine what is due by utilizing the current morality, we need an outside set of evaluations with respect of the fairness of the system. Thus we have questions of fairness within the system, where the rule is that the owner is entitled to the profits, and fairness of the system, where one can ask whether the distribution that follows from those internal rules is fair.

In referring to the second notion of justice, which we can use to evaluate the fairness of the system, Cicero claims that an injustice is done, "[o]n the part of those who inflict wrong, and on the part of those who, when they can, do not shield from wrong those upon whom it is being inflicted." This second notion of shielding from wrong seems to fit a number of classic cases in the business ethics literature—the Ford Pinto case, the Nestle's infant formula controversy, and any number of plant closings. Thus, when getting one's due (the profits) is at the expense of not shielding employees or clients from harm, the claim of the justice within the system conflicts with the justice of the system. Of course, the wrongs done in the pursuit of profit typically are euphemized as externalities or simply seen as unavoidable and the price of the overall benefits of the system. They are not seen as unjust.

But what would constitute a wrong? A wrong would occur when one has more than enough goods to meet his needs and keeps them away from those who need them. Here we return to a pre-capitalist notion of justice, found in the work of John Locke, that rests on the principle put forth by Thomas Aquinas, the thirteenth-century philosopher/theologian. Recognizing scarcity, Aquinas constrains property acquisition in the following consideration: "Therefore the division and appropriation of property, which proceeds from human law, must not hinder the satisfaction of man's necessity for such goods. Whatever is held is superabundance is owed, by natural right, to those in need."[20] To the extent that business' notion of what's due to the owners keeps necessary goods out of the hands of others, it is unethical in Cicero's second sense of justice.

Free-market capitalist society has determined that business is a bottom-line profit machine. Like the tarantula, that's what it does. That's its *telos*, or purpose. However, since the *telos* of a specific social institution is not predetermined by nature, but is determined by society, it can change its direction. If it is to get in concert with ethics, it must reexamine its goals and the fairness of its mode of distribution. So, in common opinion, business is viewed as unethical, because it commits avoidable harm in the name of its distribution rules, and in the name of giving freedom of choice to purchasers of goods: "We're only giving the customers what they want." Business at times creates harmful products in the name of profit and overlooks people in need in the name of allowing others to acquire more than they need. These are the common beliefs about business that conflict with the common beliefs about ethics.

8. A MORAL SCHIZOPHRENIA

When ethics has one goal and business has a different, incompatible goal, we can expect a number of consequences. One is the development of a moral schizophrenia within individuals arising from the conflict between bottom-line myopia and ethical concerns for justice as meeting people's needs. This bottom-line myopia results from a misguided sense of fiduciary responsibility, the responsibility arising from playing one's business role. The schizophrenia develops because of the tension between corporate responsibility and personal morality that occurs when business goals conflict with ethical ones and are not subsumed under the ethical, but ranged along side them. They do not coalesce but conflict.

This is what Albert Carr in his much maligned but perceptive and realistic article sees. For Carr one must choose between the two spheres, business and ethics, and cannot expect to develop the integrity necessary for being a whole person. Unless it was a crass public relations strategy, the fact that the CEO of AETNA apologized for his remark about the "weeping widow" shows that he recognized his view as seriously flawed from an ethical perspective. Assuming he is a decent person, he is torn between his personal ethical viewpoint and his feeling that he has a fiduciary obligation to defend the interests of the company, no matter what the implications for the widow.

If the system is instrumentally valuable, and we have freely chosen our role in the system, then we have an obligation because of our commitment to carry out that role. In a well-functioning corporation that division of labor serves the ends of the corporation. If those ends of the corporation are morally acceptable, then my role gains legitimacy from its instrumentality. If those ends are not morally acceptable, then though the requirements of my role are set, the immorality of the enterprise makes my fulfilling that role morally questionable. Thus the Nuremburg rule. A soldier's duty is clear as a soldier, but he has a higher duty to morality, if he is engaged in fighting for an unjust cause. Similarly a doctor's need to care for his patient is clear, but not if the care involves what some consider life-terminating activities, such as abortion or assisted suicide.

Thus, role morality is insufficient if the role is instrumental in contributing to an unjust system. On a more mundane level, if one is encouraged by one's superiors to cheat one's customers to maximize bottom-line productivity, one is forced to abandon the obligations consequent upon the role.

But the schizophrenia of the individual is also seen in a conflict between what is good for the corporation and what is good for society. The Invisible hand is supposed to guarantee that what's good for business is good for society. But it doesn't always. In the meantime, though, the belief that it does and the consequent adoption of profit maximization as the only purpose of the corporation leads to what I call the soulless corporation.

9. THE SOULLESS CORPORATION

The modern corporation has lost its soul.[21] The soulless corporation is one that has lost its purpose and survives simply for the sake of survival. But surviving is an instrumental good. Survival for what? Purposes give reason for existence. A well-founded purpose legitimates an institution. If the primary goal of corporations is profit and survival, there will be a bad fit between the needs of the public (consumers and others) and corporate goals. A purpose such as maximizing profit, which is merely instrumental, cannot sustain itself as an identifiable enterprise. It perverts or loses its meaning.

Modern corporations, with their emphasis on profitability, necessarily lose their focus. Consider GE as an example:

> The layoffs were part of Welch's transformation of a once-great research and manufacturing company, which he through gut-wrenching upheaval turned into a financial services firm. He closed or sold 98 plants in the U.S., 43 percent of the 228 it operated in 1980. Rather than reinvesting heavily to exploit the company's historic skills, he chose to quit business after business because the money to be made lending money or producing television shows was greater than the Edisonian mission of *making things*. In the process a great research institution was diminished. The company Thomas Edison began today generates more revenue from selling insurance, lending money, servicing residential mortgages, managing credit cards, and other financial activities than it does from its five largest manufacturing businesses *combined*. Financial services, 8 percent of corporate earnings in 1980, generates about 40 percent today.[22]

As long as the main purpose of a corporation is maximizing profit in the competitive marketplace, it is impossible to subordinate profit making to providing quality goods and services—which is the reason society let business develop in the first place. Looked upon simply as investment opportunities, corporations have been turned into things to be bought and/or sold, not centers of production. Given the ethical maxim, *nemo dat quod non habet* (no one gives what he does not have), it is impossible to expect corporations of that sort to think about ethics, except as instrumental strategy.[23]

10. ON REFURBISHING BUSINESS ETHICS

From an economic point of view, one can only afford to be ethical as long as one remains competitive and that is only as long as there are inefficiencies in competitors' operations, or as long as doing the ethical thing leads to efficiencies. After that one will lose the competitive game. To guarantee ethical behavior, then, one must recognize what it consists in, and promote legislation or regulation that makes it economically desirable. The law must serve the ethical point of view.

Beyond legislation and regulation, for any substantial change to occur in business ethics, for it to be even possible, a new view of the purpose of the corporation—one that breaks the spell of the view that its purpose is maximizing profits—is required, as well as a strong identification of ethics with just distribution and appropriate goals.

From society's point of view, the function and purpose of a corporation is not maximization of profits for individuals, but the creation of goods and services to make society's members more fulfilled, and not at the expense of those in need. Society invented business to serve its needs, to help its members to flourish. From a societal perspective, business was not invented to allow some individuals to prosper at the expense of others. As I have argued elsewhere, the maximization of profits cannot be the primary purpose of business. Identifying profit maximization with business' purpose confuses purposes and motives. That is like confusing the purpose of the train (to get me to London), with what gets me there (the engine). Profits are the engines. The goods and services are the purpose and direction.[24]

Of course, such a call for re-envisioning the purpose of business seems quaint in the high-powered world of mergers and acquisitions, but it also seems the only way for businesses to recapture their souls, to remember what they should be about.

11. IS BUSINESS ETHICS IMPOSSIBLE?

Let's return to our original problem. Business ethics seems to be a contradiction in terms if we see the sole purpose of business as the pursuit of profit and believe that ethics, which is concerned with appropriate ends and distributive justice, eschews those exclusively self-interested pursuits. To establish ethics in business, we need to refocus on the purpose of business. It can't be about being a tarantula. But aside from more regulation, reflecting the public's will on how business activity should be constrained, what can be done? The pessimist in me says, "Not much." But the optimistic fool, rushing in where angels fear to tread, lets me offer a suggestion for a change of mind.

What I propose, partially as a lark, but partially in a serious mode, is a conversion of the statement, "Good ethics is good business," into the statement, "Good business is ethical." This conversion subsumes good business behavior into the class of good ethical behavior.

Our society has determined that the production of cocaine is not good business. It is a business that does harm. For a time society determined that gambling was not a good business for it likewise did harm. There is talk of tobacco production and sales being a bad business, because it does harm. Society itself declares that some products (goods in the economic sense, for which there is a market) are not good (in an ethical sense). Violence in entertainment is the latest product to be targeted for control. For better or worse, society—or, rather, its members—make decisions about what is good or not, and put constraints on its production. Thus, while the production and distribution of cocaine is successful for its owners from an economic point of view, it is bad business from an ethical point of view. The current debates on gun manufacture, pollution, sustainability, and other topics all show that ethics is attempting to constrain business, because it is not productive of acceptable and appropriate goods.

Not every one of our goals or ends and those of our society is laudable. The goal of accumulating wealth—if it becomes a final goal and does not remain a merely instrumental goal—will be deficient. So will the goal of pleasure. A person fixated with pleasure seeking, or a person fixated with the mere accumulation of wealth are to morally healthy humans what a shriveled tomato is to a red, juicy, robust, vine-ripened tomato one picks in the middle of August. To understand what appropriate goods are, we need to turn to something like Aristotle's notion of the good life, which he equated with activity in accord with virtues, especially the virtues of prudence, justice, temperance, and fortitude.

In conclusion we would point out that business cannot serve only itself. It is thoroughly intertwined in almost every aspect of contemporary life. It operates within an economic system that takes over huge portions of our time, interests and lives. It has become a form of life, with fairness rules that govern the distribution of assets and liabilities, rules that have become second nature to most of us and that we rarely question. It can be viewed as a game that has its rewards, and the successful business person knows how to play the game well. But such playing without concern for the wrong it does allows ethics to be subsumed under business. We must reverse that.

The thrust of a business ethic, which would be possible and not oxymoronic, would begin with a vision of the good life, individually and institutionally. It would be aspirational. Johnson and Johnson's credo is an example of what they take a virtuous company to be. Portraits of ethical business leaders and statements of business leaders who aspire to be ethical such as James Autry's read this way.

> I take seriously the role of business and its impact on society. I shudder when I hear some businessperson say, "It's just business," because that usually means something is being done in the name of business that would not be done if that person were doing it in the name of himself or herself. Always remember this: If we can commit an injustice in the name of business, we can commit an injustice in the name of anything.[25]

To the challenge that the statement "Good Business is Good Ethics" when construed this way is tautological, one can only reply, "Of course." It cannot be empirically true if by good business we mean good bottom line, and by good ethics we mean the right thing. Sometimes doing the right thing will negatively affect the bottom line. To the claim that it is idealistic, one can only reply once more, "Of course." Paradoxically, what moves people are aspirations and views of the possible. The thrust of business ethics must be to hold out a model of the most desirable that is possible, an aspiration to bring the system of business into accord with the aspirations of justice, a justice defined in terms of quality of life. That is why recent books such as Solomon's *Ethics and Excellence*, Hartman's *Organizational Ethics and the Good Life*, Freeman's *Strategic Management*, and the work of Laura Nash and Lynn Sharp Paine (such as "Managing with Organizational Integrity") are on the mark. Stories and hagiography will be the business ethics of the new millennium. Ideals will have an impact on the law and the culture, to make it easier for individuals and organizations to achieve integrity.

NOTES

* "Business Ethics: Oxymoron or Good Business?," *Business Ethics Quarterly*, Tenth Anniversary Issue, Volume 10, No. 1, January, 2000.

1 I would like to thank Anne Clifford of The American College, Tim O'Hara of Rosemont College and Patricia Werhane of the University of Virginia for their helpful comments on earlier drafts of this paper with respect to content, style and grammar.

2 David C. Stolinsky, "Capitalism is Squandering its Inheritance," *The New Oxford Review*, April 1999, p. 43.

3 I propose to use the words interchangeably in this paper, since I see no significant difference between them.

4 I take egoism to be the normative theory that maintains "One ought *always* to pursue one's own self-interest." Anything short of demanding the *always* adopts an overriding principle that is not egoistic in some cases. For example, a theory that everyone ought to pursue their own interest unless it hurts someone else qualifies the egoism, and utilizes some other ethical theoretical principle as a basis for its decision making.

5 Albert Carr, "Is Business Bluffing Ethical?," *The Harvard Business Review*, January/February 1968.

6 Milton Friedman, "The Social Responsibility of Business is to Increase Its Profits," *New York Times Magazine*, September 13, 1970.

7 Even if Friedman did not mean the strong phrase "one and only one" (which is a highly dubious assumption since he quotes it in an infamous article from his earlier book *Capitalism and Freedom*), most defenders of this neo-classical view of corporate responsibility seem to agree with the "one and only" qualification.

8 The Editors, *The Journal of Commerce*, April 22, 1999, p. 10A.

9 Thomas F. O'Boyle, "Profit at Any Cost," *Business Ethics*, March/April 1999, p. 14.

10 *The Wealth of Nations*, IV, ix, 51.

11 How much the invisible hand depends on the social stability of an ethics-driven society remains a largely unexplored question, but analysis of the introduction of free-market economics in Russia seems to show that it does not work well absent some basic ethical cohesion of the society.

12 There are similarities here to Kant's ethics, which rests on the necessity of consistent behavior. Compare his use of the first Categorical Imperative that shows that if dishonesty were universalized, trust would disappear. Cf. Bowie, Duska, *Business Ethics*, 2nd edition, Prentice Hall, 1990, pp. 45ff.

13 Note the recent spate of articles on integrity, honesty and trust in the literature.

14 Andrew Stark, "What's the Matter with Business Ethics?," *Harvard Business Review*, April 1993.

15 See the April 1999 edition of *The Academy of Management Review*.

16 Stanley Cavell, *The Claims of Reason*, Oxford University Press, 1980, p. 245.

17 Such a notion of fairness and rational thinking is what underlies a principle like the Golden Rule, "Do unto others as you would have others do unto you," or Kant's principle of respect for persons, "Act so as never to treat another rational being merely as a means." These principles reinforce the notion that others are the same as you or I in most relevant respects.

[18] This is the area where the type of concerns of John Rawls in *Theory of Justice* become crucial. I have critiqued the limitations of Rawls' position in my article, "The Religious Roots of Business Ethics."

[19] Cicero, *DE officiis*, Bk. I, sec. 7, "Justice," The Loeb translation, Harvard University Press: Cambridge, MA, 1930.

[20] Thomas Aquinas, *Summa Theologica*, II-II, Q. 66, art. 7.

[21] When I say "soul," I mean a notion equivalent to form, in an Aristotelian sense, where the formal cause, the "what" the thing is, is determined by the final cause, its "for what" (raison d'être). The purpose of anything (its final cause) defines what it is (its form), as well as the rules that tell us whether it is good or not.

[22] O'Boyle, ibid.

[23] Sadly, this even applies to nonprofits, which use the same bottom-line techniques. They just have larger margins for expenses. For example, in the competition for students, colleges have catered to students' wants instead of to the primary purpose of colleges—the pursuit and transmission of truth. Birthrights are sold for a mess of porridge.

[24] See my "The Why's of Business Revisited," *Journal of Business Ethics*, 16: 1401–1409, 1997.

[25] James A. Autry, *Life and Work: A Manager's Search for Meaning*, Avon Books: New York, NY, 1995.

CHAPTER 4

ARISTOTLE: A PRE-MODERN POST-MODERN? IMPLICATIONS FOR BUSINESS ETHICS*[1]

> Aristotelianism is philosophically the most powerful of pre-modern modes of moral thought. If a pre-modern view of morals and politics is to be vindicated against modernity, it will be on something like Aristotelian grounds or not at all. …
>
> [The] deontological character of moral judgments is the ghost of conceptions of divine law which are quite alien to the metaphysics of modernity and … the teleological character is similarly the ghost of conceptions of human nature and activity which are equally not at home in the modern world.[2]

Because of its title, this paper might seem a bit puckish if not downright perverse and/or anachronistic. I intend the puckishness, if for no other reason than to gain forbearance from Postmoderns and Aristotelians alike. I certainly don't want to claim that Aristotle is a postmodern. That is anachronistic and absurd. But there is a significant agreement between present day Aristotelians and Postmoderns. Both find modern ethical theory inadequate. Besides MacIntyre, who is quoted in the prologue, Aristotelians of all stripes, from Anscombe[3] to Veatch[4] to Finnis[5], repudiate the Kantian/utilitarian project of ethical theory on some of the same grounds as postmoderns.

We will attempt to defend the following points:

1. Postmodernism's repudiation of modern philosophy focuses on modern philosophy's desire for certain knowledge based on unshakable foundations. Postmodernism holds such foundations are impossible to achieve. Similarly, Aristotelians have critiqued modern philosophy on the grounds that such certitude was impossible. This should not be surprising, since modern philosophy's quest for certitude, initiated by Descartes, was directed against the Aristotelian philosophy found in medieval scholasticism.
2. The modern Cartesian-inspired search for certitude required that a primacy be put on subjectivity and autonomy, two notions that became the capstone notions of modern philosophy. According to Aristotelians and postmoderns alike, putting a primacy on subjectivity necessarily leads to substituting personal autonomy (self-law) for an objective natural or divine law, and subjective preference for teleology, making the achievement of objective ethical

knowledge impossible. The attempts of deontologists and utilitarians to ground ethics in their respective principles are seen as the last ditch efforts of modern philosophers to save the objectivity of ethical theory within the parameters of the modernist position. According to Aristotelians and postmoderns alike, those ethical theories, at worst, fail, and, at best, provide an empty set of formal requirements necessary for any society to exist.

3. Aristotelian and postmodern approaches to ethical matters are structurally similar, for Aristotle in his ethics reacts to Plato's contempt for ordinary opinion, just as postmodernism reacts to the Cartesian contempt for ordinary opinion. Just as Plato in his allegory of the cave rejects common experience in favor of the elite views of those whose consciousness has been raised when they escape the cave, so Descartes rejects lived experience by adopting his radical doubt which assumes we might all be living under the spell of an evil demon who deceives us. Both Aristotle and postmoderns reject those elitist starting points and insist on the fruitfulness of starting investigations with common experience.
4. However, while Aristotelianism and postmodernism are similar in repudiating certain aspects of modern philosophy, there are significant differences between them. While Aristotle defends a probabilistic ethics, postmodernism rejects ethics. While Aristotelianism is foundationalist, grounding its ethics in a teleological conception of human nature and human society, postmodernism is an anti-foundationalist relativism. Most postmoderns seem to eschew the moderate realism of Aristotle,[6] and cling to a transcendental approach, which arguably leads them to relativism.[7]

If the claims just made are correct, there are several implications for business ethics. A perusal of most applied and business ethics texts shows they usually present egoist, utilitarian and deontological ethical theories, and then apply those principles to particular practices or specific cases. However, these applications seem unsatisfactory.[8] As often as not, the cases don't seem amenable to solution by an application of the theories. Either the theories do not fit the various issues, or they do not resolve the issues. Deontological solutions disagree with utilitarian solutions, or utilitarians disagree among themselves and deontologists do likewise. Postmodernism analysis of the shortcomings of ethical theory can be directed at utilitarian and deontological theories, to show why these theories and their application are inadequate.

Ethical theorists expect to provide definitive principles from which one can deduce practical solutions of ethical problems in the same way that scientists theories provide theories from which solutions to engineering problems can be deduced.

Postmodernists and Aristotelians hold such expectations to be unrealistic and suggest that a much more fruitful approach would be to settle for the amount of clarity complex practical situations allow. For them, an ethicist's time is better spent in trying to understand the underlying reasons for disagreements over ethical matters as well as attempting to find areas of agreement which can be used as a basis for resolving disputes. Definitive resolution of ethical disagreements does not happen, nor need it happen for business ethics to be a useful and viable enterprise. Understanding differences and adjudicating differences by finding common ground on which to build persuasive arguments is a fruitful moral endeavor.

The rest of the paper will attempt to flesh out these rather dogmatically asserted claims. In some cases, given the limitations of space and the complexity of the issues, we will have to rely on arguments generated elsewhere or promissory notes for arguments still to come. With that caveat in mind we will proceed in several stages. First we will try to show that postmodernism is a reaction to modernity. Modernity arises from Descartes' methodic doubt, a doubt spurred by a demand for a foundational certitude. We will suggest that such certitude can only be achieved by grounding knowledge in the self, a move which in turn necessitates the invention or positing of an autonomous self. But, as postmodernists and Aristotelians alike show, such an autonomous self cannot guarantee objective ethical knowledge. Next, we will try to show that while postmodernism's rejection of Descartes' foundationalism is correct, postmodernism fails to develop a new criteria for ethical knowledge. This failure leads to a radical relativism which also undercuts the possibility of objective truth in ethics.

Finally, we will show how an Aristotelian approach to the possibility of ethical knowledge while critical of modernity can overcome the failure of postmodernism and account for the existence of some truth in ethical judgments. Throughout the paper we will try to show how an Aristotelian approach informed by a postmodern sensibility can help illuminate business ethics issues in ways that standard applied ethics approaches cannot.

1. POSTMODERNISM

What is Postmodernism? Although, the first designation of the word "post-modern" was in reference to architecture and works of art,[9] we will concentrate on the use of the term in philosophy. Modern philosophy is generally taken to be that period in philosophy beginning with Descartes in the seventeenth century and lasting into the late nineteenth or early twentieth century. More pointedly, "postmodernism" refers to a reaction to and critique of the program of modern philosophy.

While there was a reaction and critique of modern philosophy from its inception carried on by marginalized philosophers such as common sense realists, Thomists and others; a dissatisfaction that anticipated postmodernism arose in mainstream philosophy in the 1950s with the publication of Wittgenstein's *Philosophical Investigations*,[10] most of Heidegger's work but especially his work on *Nietzsche*,[11] and John Austin's *Sense and Sensibilia*.[12] These critiques, which share a disenchantment with the modern project, lead to an attack on the supposed hegemony of modern philosophy and gave rise to the postmodern movement.

One of the chief articulators of that postmodern disenchantment is Jean-François Lyotard. In his book, *The Postmodern Condition*, Lyotard refers to modern philosophy as "a discourse of legitimation" and takes the term

> "modern" to designate any science that legitimates itself with reference to a metadiscourse … making an explicit appeal to some grand narrative, such as the dialectics of

> Spirit, the hermeneutics of meaning, the emancipation of the rational or working subject, or the creation of wealth.[13]

The postmodern attitude, for Lyotard, involves "incredulity toward meta-narratives,"[14] that is, incredulity toward the modern desire to be able to provide a foundation of certitude for all knowledge. Of course his account is not the only account of what postmodernism is. When one looks at the literature there are so many designations for the term "postmodern," it seems that "postmodern" might refer to everything and hence to nothing. Still, Lyotard seems to have captured a definite mood in philosophy, a mood described by Habermas as a "legitimation crisis," that is, the beginning of doubts about the entire project of science and rationality as it has unfolded over the last 300 years, and called it the "Postmodern Condition." Those doubtful attitudes and moods are shared by a number philosophers as different as Derrida, Foucault, Lyotard, Austin, Wittgenstein, Rorty, and others, some of whom have been characterized as "postmodern," some of whom have not.

In this volume, Ron Green finds two characteristic marks of postmodernism, One is a rejection of what Lyotard has called the "grand narratives" of historical and conceptual justification … . It regards these unitary or "totalizing" explanations of reality as both invalid and repressive.

The second key feature of postmodernism is a "de-centering" of perspective and a discovery of "otherness," "difference," and marginality as valid modes of approach to experience.[15]

This second feature of postmodernism, the decentering of perspective and the discovery of otherness and difference and marginality is characterized by Deborah Cook as the "decentering or death of the subject."[16] As we indicated, such a centering on the subject can be traced back to Descartes' starting point, which is the ego or the self: the thinking subject. The modern concentration on the subject leads to a radical individualism, and a downplaying of the social aspect of human subjects. Hence a decentering or death of the subject occurs, according to Lyotard and others, because, contrary to what modern philosophers think, a human being is not determined by the individual herself, but is socially constructed by the group that teaches the individual her language and gives her cultures. The individual then, is what the language and culture makes one, so that as Lyotard says, "Each of us lives at the intersection of many of these … . There are many different language games—a heterogeneity of elements."[17]

We can use an account by Ben Agger to sum up the postmodern project. Postmodernism rejects the view that science can be spoken in a singular universal voice (e.g., Lyotard's (1984) critique of the grand meta-narratives of western reason). Although this risks losing the global perspective of the Enlightenment (including Marxism), it enables readers to deconstruct the universal reason of the Enlightenment as the pluralistic posture of Eurocentric rationality, which contains class, race, and gender biases. Postmodernism makes it possible to read universal reason as secret partisanship just as it suggests ways of detotalizing the voices of science more accurately to reflect the variety of so-called subject positions from which ordinary people can speak knowledgeably about the world.[18]

Roy Boyne points out what lies behind postmodernism's rejections of grand narratives. "The postmodern critique of metanarratives asserts that there is no standpoint outside the system from which to judge it."[19] Such a critique is a rejection of the modern quest initiated by Descartes, a search for an Archimedean point, a view from nowhere, a non-relative perspective. Recall that Descartes, in setting up his view of scientific method, referred to Archimedes.

Archimedes, in order that he might draw the terrestrial globe out of its place and transport it elsewhere, demanded only that one point should be fixed and immoveable; in the same way I shall have the right to conceive high hopes if I am happy enough to discover one thing only which is certain and indubitable.[20]

Such a starting point required two rules for Descartes: we should be concerned only with those objects regarding which our minds seem capable of obtaining certain and indubitable knowledge.

Concerning the subjects proposed for investigation, we should seek to determine, not what others have thought, nor what we ourselves conjecture, but what we can clearly and evidently intuit, or deduce with certainty; for in no other way is knowledge obtained.[21]

This is exactly what postmodernism repudiates. Postmodernism maintains that there is no privileged point of view from which to view the world to arrive at "objective" truth about reality. Every view is colored by the biases and prejudices that are part of every individual's perspective and that are part of the "form of life" or the "language game" into which the individual has been socialized.

Not only are there no unbiased views, every view and perspective reflects a system of values. Each group or at least the "decision makers" of those groups, according to Lyotard, takes those values as canonical and legitimates them, turning them into the social forms that govern the lives of the individuals the group controls.

The decision makers … allocate our lives for the growth of power. In matters of social justice and of scientific truth alike, the legitimation of that power is based on its optimizing the system's performance-efficiency. This application of this criterion to all of our (language) games necessarily entails a certain level of terror, whether soft or hard; be operational (that is, commensurable [measure up?]) or disappear.[22]

On the postmodern account, even the scientific point of view, rather than being an unbiased objective standpoint from which we can derive a "true" account of the real world, is simply a practical perspective, judged "true" because of its simplicity and practicality.[23] It works in the sense that knowledge is power, and the scientific perspective helps those initiated into it to achieve dominion over nature, a domination their will to power seeks.

Even more than the scientific perspective, the ethical perspective can be viewed, from a postmodern perspective, as being nothing more than the expression of rules, based on values developed by the group, expressed in the language games of the form of life of the group. On the basis of its pragmatic goals, the group develops the mores or ethical rules necessary to promote the individual's or group's interests while giving the pursuit of those interests the appearance of universal legitimacy.

Postmodernism unmasks the weaknesses of such legitimacy claims. Thus, for Lyotard, postmodern critique, rather than being a tool of the authorities, refines our sensitivity to differences and reinforces our ability to tolerate the "incommensurable" (read, "those who don't measure up").

We need to make some distinctions within the ethical-theoretical perspective. There are various areas in ethical studies at the moment-ethical theory and applied ethics, social ethics, and individual ethics. Ethical theory, viewed as a modern enterprise, involves attempts to promote fundamental ethical principles, such as the deontological principle, "each person is an end in herself", or a utilitarian principle to the effect that "one ought to act so as to effect the greatest good for the greatest number of people," as canonical principles. Applied ethics is the attempt to apply those canonical principles.

That application is threefold: to particular actions, to general practices, or to overarching social systems. Thus, one either: (1) evaluates an individual action, such as selling defective pacemakers, on the basis of deontological or utilitarian principles; (2) evaluates a practice such as firing at will, on the basis of those principles; or (3) evaluates an entire system, such as capitalism or socialism, on the basis of those principles. Lyotard and the postmoderns tend to concentrate almost entirely on the area of systems, and concern themselves with the issue of legitimating social systems. For the time being we will concentrate on Lyotard's analysis of modern attempts to legitimate social systems.

According to Lyotard, modern philosophies attempt to legitimate a system by showing how that system will result in the emancipation of humanity. There are a number of conflicting modern social-scientific theories, each claiming to give a social anthropology, which explains why what happens. Beyond that explanatory dimension, each theory has a normative dimension since each theory values the emancipation (autonomy) of the subject, and in the name of that emancipation legitimates its system's way of doing things. In this way, each theory constructs its own "narrative" and acts as a grand narrative by claiming to be the true account of reality.

It is instructive to look at Lyotard's list of the various metanarratives of emancipation. He mentions as the grand narratives of modernity those "such as the dialectics of Spirit, the hermeneutics of meaning, the emancipation of the rational or working subject, or the creation of wealth."[24]

Take the last example, the metanarrative of the creation of wealth: in the name of emancipating human beings, a narrative is developed of how wealth is created. Such creation of wealth is deemed necessary for the emancipation of humankind, and viewed as a "desirable efficiency," to use Lyotard's words. Adam Smith's account can and has been adopted as a metanarrative that legitimates various behaviors and practices of doing business as we know it. Smith's account allows us to justify capitalism on the grounds that it will create the greatest good for the greatest number, the utilitarian scheme for the emancipation of humankind, or on the grounds that capitalism will, more than any other system, respect the freedom of choice of each individual, the Deontological justification of capitalism. However, in contradistinction, Marxism, the metanarrative of the emancipation of the working subject, also uses deontological grounds to justify its way of emancipation, by claiming workers are exploited by capitalists, and uses utilitarian grounds, to justify socialism by claiming that the elimination of private property will lead to a Utopia where all members of society are emancipated.

For Lyotard, each of those legitimating metanarratives foils, and it is characteristic of the postmodern temperament to recognize that failure. According to Lyotard,

> No matter which genre it makes hegemonic, the very basis of each of the great narratives of emancipation has, so to speak, been invalidated over the last fifty years. All that is real is rational, all that is rational is real: "Auschwitz" refutes speculative doctrine. At least that crime, which was real, was not rational. All that is proletarian is communist, all that is communist is proletarian: "Berlin 1953, Budapest 1956, Czechoslovakia 1968, Poland 1980" (to mention only the obvious examples) refute the doctrine of historical materialism: the workers rise up against the Party. All that is democratic exists through and for the people, and vice versa: "May 1968" refutes the doctrine of parliamentary liberalism. If left to themselves, the laws of supply and demand will result in universal prosperity, and vice versa. "the crises of 1911 and 1929" refute the doctrine of economic liberalism. And "the 1974–79 crisis" refutes the post-Keynesian adjustments that have been made to that doctrine.[25]

By citing examples that invalidate the chief unitary ethico-socio-politico-economic schemes of the past 200 years, Lyotard attempts to confirm the main theme of postmodernism that there is no one unitary account of reality.

Postmodernists would point out that these supposed "objective" "scientific" unitary accounts are merely limited perspectives, ways of "seeing as," to borrow a Wittgensteinian expression. Hegelians *see* the world *as* the unfolding of the rational through history. Marxists *see* the world *as* the historical emancipation of the proletariat through control of the economic forces of production and the necessary collapse of capitalism. Liberal democrats *see* the world as a Utopia about to happen when participatory democracy is put into place. Finally free-market capitalists *see* the world *as* rich and full when the forces of the market, such as supply and demand, are allowed to work themselves out uninhibited by government intervention.

In fact, the postmodernists hasten to point out, each of those views fails spectacularly in the light of Auschwitz, the Depressions, and third world misery. The views have not emancipated human beings. On the contrary, it can be claimed that those unitary views, those ways of seeing the world, because they were not seen for what they are, limited perspectives, but were taken as unitary canonical metanarratives, lead to fascism and communism, chaos and dependency capitalism, with the result that more people were killed in the twentieth century than in any previous era. This is hardly the emancipation of humankind. As Lyotard says, "We have paid a high enough price for the nostalgia of the whole and the one."[26]

The claims made by proponents of any of the unitary accounts that they are "the real" or "true" accounts of reality represent an attempt to legitimate the practice approved by those accounts and to refute any accounts that contradict them. For example, a capitalist would claim that if market forces lead to the greatest productivity for the most people, then opponents of Capitalism are misguided. Counter to these unitary accounts, postmoderns view laws such as the law of supply and demand, not as a description of reality, which as a description could be true or false, but as a useful theoretical construct that legitimates the practices of those in power so that they stay in power.

While most postmoderns apply their critique to systems, Edith Wyschogrod, a postmodernist, applies it to ethical theory itself. She claims that:

> Moral theory is an unsatisfactory way of addressing matters that require action in contemporary life. As Heidegger argues, the notion of theory in modern philosophy is derived from the ontology of modern science and, as such, assumes that truth is to be exhibited in propositions that assert causal relations, that these linguistic chains of argument directly or indirectly mirror the world, and that they explain phenomena … . [T]he nomological character of moral theory is to be avoided.[27]

For Wyschogrod, following Heidegger, theory does not work. It does not give us objectively true knowledge claims, but only reflects our biases. Hence, we should avoid the nomological character of moral theory. If "nomological" here means rule-giving, Wyschogrod is saying we should avoid an ethic of rules, for there is no foundation for those rules except the power of those who are the decision makers of the group.

Thus postmodernists such as Wyschogrod would reject the ethical theories of both utilitarians and deontologists, Mill and Kant, to the extent that those theories claim to offer unitary principles that can definitively resolve ethical disputes.

On the one hand, Mill cannot resolve the tension between the desired and the desirable, according to postmodernist critique, because there is no one canonical view of what the good is, and consequently any appeal to the greatest good or the greatest happiness or the greatest pleasure, is simply an appeal to a preference. Utilitarians reduce ethical theory to emotion or desire, and simply leave a formally structured decision principle, "Do that which maximizes preferences for the most people."

On the other hand, Kant and the deontologists cannot justify any project of any autonomous subject except by insisting that reason demands (If this is a hypothetical reason, isn't this demand heteronomous?) that any proposed rule of any autonomous subject be universalized, that is, turned into a law. The Kantian conditions of law furnish us with a formal decision principle, "Make sure your projects can be consistently universalized," for laws must be universal, but leaves deontologists with only one answer to the question, "Why obey the law?" To the response, "Rational consistency demands it," the further question arises, "Why should one be consistent if it is not in one's interest?" Moral law on Kant's scheme is only generated if there is a willingness to concern oneself with being lawful. But why legislate for oneself? As Anscombe points out, legislating for oneself is as absurd as calling a self-reflective decision, a vote by a majority of one. "The concept of legislating requires superior power in the legislator."[28] Or as MacIntyre pointed out, in the prologue to this paper, "The demands of Rationality simply replace the demands of the Judeo-Christian God." But a God makes it in a person's interest to obey a law. Rationality provides only a toothless sanction, if that.

That rationality, according to postmodernism, following the lead of Nietzsche, is simply the accepted life form of descendants of the enlightenment. While Ron Green is correct in saying that "[e]fforts to construct morality on the foundation of a rationally justifiable principle or set of principles, in the spirit of Kant or Mill, are out of fashion,"[29] the postmoderns and Aristotelians would claim that Green does not go far enough. It is not just that they are out of fashion, they are out of fashion because aside from laying down formal decision procedures, that is, telling us to consider what would happen if everyone engaged in a practice, or telling us to maximize utility preferences (whatever they are), such ethical theories don't resolve ethical issues. To put it bluntly, they are out of fashion because they don't work. Rationality without content, be it universalizability or utility, doesn't allow us to resolve particular issues.

What the postmodernists tell us is that disagreement among ethical theorists over issues is not a scandal, but something to be expected, the necessary outcome of plurality and diversity. According to postmoderns, there are no right views, just a number of perspectives. Deontological and utilitarian approaches are simply different overarching perspectives to be applied to other differing value perspectives.

Take an example of the closing of General Motors plants in Flint, Michigan, as portrayed by Michael Martin in the film *Roger And Me*. From the perspective of the CEO, Roger Smith, the reason for closing is the accepted principle of profit maximization. Profit maximization can be legitimated by an utilitarian appeal to the social benefit of the capitalist system or by a deontological defense of private property and liberty. By these moves, the system can be legitimated and the CEO's behavior is ethical because he has an obligation to the stockholders. However, from the perspective of the workers who are losing their jobs, the reasons for not closing are principles such as "Those in need should be helped by those capable," or the principle, "The company owes loyalty and gratitude to its workers who contributed in the past to the company's success," seemingly a requirement of compensatory justice, a requirement of any long term relation where one party benefited because of the activity of another. We have then two perspectives, not to mention two cultures, for the sympathy for the worker is part of a religious caring culture, labeled "bleeding heart" by the more pragmatic, business culture, which defends itself by insisting that only in making hard decisions will productivity, which will benefit more, be increased. No application of a deontological or utilitarian principle gives us a resolution of this issue.

But is there no resolution? Let me suggest that the answer to a question like "Did the C.E.O. (Roger Smith) do the right thing in closing (General Motors) plants, and moving jobs to Mexico?" is both yes and no, depending on which perspective is adopted. If one adopts the view that business should maximize profit and accepts market transactions as legitimate, then Roger Smith did the right thing. If one adopts the view that loyalty and obligations of gratitude for past services or harm ought to be prevented when possible, put limits on profit maximization, then Smith did the wrong thing. Finally, though, from the perspective of the Mexican workers who got jobs with General Motors at the new plants made possible by the closing of the old plants, Smith did the right thing.

To use an old cliché, it depends whose Ox is getting gored, whether the action is right or wrong. Postmodernism through its insistence that the viewpoint of the marginalized needs to be considered, and its pointing out how unitary frameworks empower the defenders of those frameworks, helps us understand why we have such difficulties in resolving such an issue, and why traditional deontological and utilitarian approaches, cannot deliver definitive decisions about what to do. The most standard ethical theories can offer are frameworks for analysis from various perspectives.

What is fairly obvious is that from a stockholder's and Mexican worker's point of view closing G.M. plants in North America is a good thing, whereas from the United Auto Workers point of view it was not good. How are we to decide which viewpoint takes priority? Postmodernists point out that any decision on the basis of a principle, say workers' rights, or employers' rights, or even the rights of the poor in the third world, reflect the bias of the defender of the principle who uses the principle to legitimate her side, so that she can be empowered.

But if postmodernism is correct and modern philosophy's claims to objectivity simply marks hidden biases and moral agendas, how is it to escape the same fate? If there are only multiplicities of perspectives, and no foundation, are we not faced with a hopeless relativism, which itself invites the use and abuse of power? Habermas critiques postmodernism on these grounds and in his reaction to postmodernism seeks legitimation in a communal consensus. Lyotard rejects that. But we would suggest that there is a pre-modern approach that relies on a communal consensus, plus a pre-modern notion of truth, which holds hope of resolving at least some of the legitimation crisis, an Aristotelian approach. We concur with MacIntyre's claim, "If a pre-modern view of morals and politics is to be vindicated against modernity, it will be on something like Aristotelian grounds or not at all." We want to show how Aristotle's pre-modern approach concurs with postmodernism's critique of modernism, while going beyond postmodernism in giving some grounds for an objective ethics.

2. THE ARISTOTELIAN SOLUTION

Aristotle's is a limited approach to ethical disputes that does not require definitive, certain resolution, thus avoiding the modern demand for certitude. His approach is laid out in the very first book of the *Nichomachean Ethics*, when he discusses the limitations of ethical and political inquiries.

Our discussion will be adequate if it achieves clarity within the limits of the subject matter. For precision cannot be expected in the treatment of all subjects alike, any more than it can be expected in all manufactured articles. Problems of what is noble and just, which politics examines, present so much variety and irregularity that some people believe they exist only by convention and not by nature. The problem of the good, too, presents a similar kind of irregularity, because in many cases good things bring harmful results. Therefore, in a discussion of such subjects, which has to start from a basis of this kind, we must be satisfied to indicate the truth with a rough and general sketch: when the subject and the basis of a discussion consist of matters that hold good only as a general rule, but not always, the conclusions reached must be of the same order. The various points that are made must be received in the same spirit. For a well-schooled man is one who searches for that degree of precision in each kind of study that the nature of the subject at hand admits: it is obviously just as foolish to accept arguments of probability from a mathematician as to demand strict demonstrations from an orator.[30]

The approach Aristotle recommends is clearly at odds with Descartes' modern quest for clarity and certitude. First, not only does Aristotle assert, "Precision cannot be expected in all subjects alike," but he claims it is "foolish" to search for more precision than the nature of the subject admits. Aristotle, does not expect certitude or even clarity in deciding what to do in practical matters.

Second, even though Aristotle distinguishes between ethics and politics, he sees them in continuity with one another. Ethics, for him, deals with the question of the good for individual human beings. Yet the accomplishment of these individual goods, happiness, is dependent on the existence of a just society. Aristotle's consideration of justice, takes place in his book *The Politics*. The questions contemporary ethical theory deals with involve what Aristotle would call "politics" or what some today call "social ethics."

Third, the problems of justice that politics examines "present so much variety and irregularity that some people believe that they exist only by convention and not by nature." Aristotle's recognition of variety in these issues anticipates the postmodern's concern for difference and marginality. But questions of justice are not merely the result of conventions about what is fair. Systems that spell out what is owed and deserved, such as capitalism, are conventions for they involve are a set of rules invented by human beings, rules for who is entitled to what and why. For Aristotle, however, the natural and conventional are not strictly dichotomous. So his question would be, "Is the system (e.g., capitalism) merely a convention, or is it a convention developed not in opposition to the natural, but by building on the natural?" For example, are capitalisms' rules governing the distribution of property, developed in accord with natural human drives? So, where the justification of a system like capitalism is simply one legitimating discourse among others for Lyotard, for Aristotle the justification of capitalism would come by evaluating how it as an artifact will enhance human good.

This brings us to the fourth point. Aristotle recognizes that "in many cases good things bring harmful results." The most we can say about some actions or systems is that they bring mixed results. Since it might be a "good thing that brings harmful results," capitalism is not a justifying meta-narrative so much as it is a system that has good and bad effects. This is quite important, for it shows that we can have knowledge without having a definitive answer to a problem. For example, it would be silly for anyone to deny that closing plants in Flint Michigan was harmful. The truth is that people suffered, and suffering is not good. On the other hand, some good came from shutting down the plants, because Mexicans got jobs. Here we *know* a lot. But we don't *know definitively* whether closing the plants and moving to Mexico was justifiable. Furthermore, we are not likely to resolve that question. It is simply a fact that in life there are situations where either there is no one right thing to do, or if there is we genuinely do not know what it is. In the former cases (where there is no one right action) we are faced with a dilemma, where one is damned if she does and damned if she doesn't. In the latter cases (where one doesn't *know* the right action) we are faced with either (1) ignorance or (2) a true dilemma. In a true dilemma there are good reasons for doing something and good reasons for not, but no overriding reason. Thus by definition a dilemma is unsolvable. But skepticism about difficult situations is compatible with holding there is some knowledge in other less difficult situations.

Next Aristotle warns that, when faced with the kind of complexity we encounter in practical matters, we must be satisfied to indicate the truth with a rough and general sketch. If we view him in the light of contemporary ethical theory, Aristotle would probably be content with talking about the general acceptability of practices but not the absolute acceptability of practices. In the General Motors shutdown, though we can't come up with a definitive solution, we know there are three sets of conflicting needs that need to be adjudicated—those of the present GM workers, those of the future GM workers, and those of the GM stockholders not to mention the justice of the procedures that Capitalism legitimates. In such a situation, Aristotle would appeal to "rules of thumb" that can be abandoned in individual cases when circumstances make the general rule not applicable. Not to abandon those rules when circumstances dictate would be to commit the fallacy of accident, that is, the fallacy of applying a general rule wrongly to a specific case, a fallacy that Aristotle recognized.

Finally, the last sentence of the passage cited above gives a clue to how Aristotle proposes we reason in ethical matters. I would suggest we take seriously his distinguishing between "the demonstration expected from a mathematician and the demonstration demanded from an orator." Just what sort of demonstrations do orators give and what are the purposes of oratorical demonstrations? To find the answers to these questions, we need to turn not to the *Nichomachean Ethics* but to the *Rhetoric*, because Rhetoric has its own method, the method appropriate for the orator.

For Aristotle, rhetoric is the art that combines

> [T]he science of logic and of the ethical branch of politics; and it is partly like dialectic, partly like sophistical reasoning. But the more we try to make either dialectic or rhetoric not, what they really are, practical faculties, but sciences, the more we shall inadvertently be destroying their true nature.[31]

What is this true nature of rhetoric? Persuasion. " [O]ratory urges us either to do or not to do something."[32] The orator is engaged in a political process of attempting to persuade people to do what's right and avoid what's wrong. Since for Aristotle, the methods of persuasion are different from the methods of science, it follows that, rhetorical method is different than scientific method. To confuse the methods is to "destroy their true nature."

If one looks at twentieth-century business ethicists, or ethical theorists who are trying to apply their theories, and asks what the point of their activity is, the answer seems to be that they are trying to persuade people to do what's right. If applied ethics is not about trying to persuade people to do what is right, what is its point? Hence twentieth-century applied ethicists are engaged in the same sort of activity as Aristotle's orator.

Coincidentally, according to Aristotle, there are two types of orators who seem to anticipate utilitarians and deontologists: political orators and forensic orators.

> The political orator is concerned with the future: it is about things to be done hereafter that he advises for or against. The political orator aims at establishing the expediency or the harmfulness of a proposed course of action: if he urges its acceptance, he does so on the ground that it will do good; if he urges its rejection, he does so on the ground that it will do harm; [Utilitarian?] and all other points, such as whether the proposal is just or unjust, honorable or dishonorable, he brings in as subsidiary and relative to this main consideration.
>
> Forensic orators consider justice, [Deontological?] and … aim at establishing the justice or injustice of some action, and they too bring in all other points as subsidiary and relative to this one.[33]

But if the ethicist and orator are the same, just what sort of logical methods do the orator and ethicist use to persuade? According to Aristotle, the orator uses one of two forms of argument, either induction or syllogism, but an induction and syllogism of a particular kind. For the orator, "Example" is the induction and "Enthymeme" is the syllogism.[34] Thus he says:

> With regard to the persuasion achieved by proof or apparent proof: just as in dialectic there is induction of the one hand and syllogism or apparent syllogism on the other, so it is in rhetoric. The example is an induction, the Enthymeme is a syllogism.[35]

Arguing by example would be the use of stories, fables, analogies, paradigms or pictures of good and bad persons. One sets up examples of heroes or cads to make a point. For example, the movies *Wall Street* and *Other People's Money*, give pictures of decent human beings and unscrupulous wheeler dealers, like Gordon Gecco. Or, as another example, condemnatory talk about hostile takeovers, depends for its condemnation on words like "shark repellent" or "white knights" or "greenmail." Since sharks need to be repelled, depicting a person who is attempting a takeover as a shark is making an argument by analogy. The savior of the damsel business of course will be the "white knight."[36] In argument by example we encounter arguments by analogies, indicating that the situation one is now facing is like some other situation one can speculate about, or arguments by paradigms of virtue or vice, or argument by story with a moral.

The contemporary insistence on narratives and paradigms recommended by Lyotard, Richard Rorty, Alisdair MacIntyre and by Edith Wyschogrod in her book *Saints and Postmodernism* resembles Aristotle's persuasive use of oratorical examples. The fact that more of my students are persuaded by the evils of takeovers depicted in motion pictures or novels than in any class presentation shows the power of that rhetorical form of argument. The second type of oratorical argument is the Enthymeme, which Aristotle calls "the substance of rhetorical persuasion."[37]

Persuasion is clearly a sort of demonstration. The orator's demonstration is an Enthymeme, and this is, in general, the most effective of the modes of persuasion.[38]

But what is an enthymeme? According to Aristotle:

> The Enthymeme is a syllogism. We have noted the differences between it and the syllogism of dialectic. Thus we must not carry its reasoning too far back, or the length of our argument will cause obscurity: nor must we put in all the steps that lead to our conclusion, or we shall waste words in saying what is manifest. It is this simplicity that makes the

> uneducated more effective than the educated when addressing popular audiences—makes them, as the poets tell us "charm the crowd's ears more finely." Educated men lay down broad general principles; uneducated men argue from common knowledge and draw obvious conclusions.[39]

For those of us schooled in formal logic, who remember the enthymeme as simply a truncated form of argument where one premise is not stated, it is important to note that for Aristotle the premise is missing because it is taken for granted as a premise all would agree on and what is more, a premise assumed true. Hence, the use of the enthymeme is not just a formal use. In Aristotle's scheme, the implied premise is a truth of "common knowledge" all agree on, and is the starting point from which "obvious conclusions" are drawn.

This common knowledge is what is "manifest," a *doxa*, that is true or approximately true. As Aristotle says:

> The true and the approximately true are apprehended by the same faculty; it may also be noted that men have a sufficient natural instinct for what is true, and usually do arrive at the truth.[40]

Clearly, Aristotle believes we can arrive at some true knowledge about what to do. But his notion of the "approximately true," indicates he does not expect to achieve definitive knowledge. Of course we need to ask to what extent these claims of Aristotle are defensible, and how much legitimation his "truth" gives. But before that, we need to make a digression.

In line with postmodernism, Aristotle's move to the enthymeme can be seen to anticipate both the Kantian rejection of representation in the *Critique of Judgment*, where Kant claims the beautiful is that which pleases universally without a concept, and Wittgenstein's insistence on common agreement when he notes in the *Philosophical Investigations* that "ethics is like aesthetics" and "what we agree on are forms of life." "What has to be accepted, the given is—so one could say—forms of life."[41]

In the *Groundwork for the Metaphysics of Morals*, Kant divided the epistemological world into the world of what is, what ought to be, and the beautiful, and attempted to ground his ethics in an unshakable principle, the categorical imperative, which could be used as a rule all actions must submit to in order to be legitimated. This was an attempt to establish objective knowledge in ethics. Kant is trying to give ethics a scientific respectability. Ethics involves, for Kant determinant judgments, which means judgments where concepts, which are construed as rules, are applied to phenomena. But in the *Critique of Judgment*, where Kant is musing about the possibility of gaining agreement about the evaluation of an art work, he appeals to a reflexive judgment, a judgment without a set of criteria to be applied to the object. Here representation for Kant, rather than being a mirror image of the world, is turned into a re-presentation, an inventive way of viewing the object. Later Wittgenstein reads this as "seeing as." For example, the duck-rabbit, can be seen as (re-presented as) either a duck or a rabbit. There is no one canonical view of it. Art works can be viewed in a variety of ways, interpreted in a number of ways. Each different view is a different presentation. But the aesthetic concern is not with whether the way of seeing accurately reflects the world, but with whether its parts can be seen to cohere. This way of seeing the object, will lead to the judgment that the object is beautiful, a judgment that will be shared by all who view the object this way, because they share a "sensus communis." In this way judgments of beauty are "objective" for Kant. How is this possible? Simply by beginning in an area of agreement and then, so to speak, instructing the person you are persuading to look at the object as (seeing as) you do, you elicit agreement. For the critic to evaluate a work is not so much to say it is either beautiful or not, but it is to teach others how to look at it and to see it as the critic sees it.

Hence, if ethics is like aesthetics, the function of the ethicist in critiquing activities is not simply to evaluate them and judge them good or bad in the light of canonical rules, but to persuade others to view them as good or bad by getting them to see the activity as the ethicist sees it. Hence, the apologists for General Motors, attempt to get people to see that they are simply maximizing stockholder value, that is, fulfilling their fiduciary trust, while the auto workers are trying to get people to see the hardship that accrues from plant closings. The assumption is that people will approve or disapprove when they see things in a certain way. So on that view teaching ethics is not to teach others a rule to be applied to this situation, but rather, to start where there is agreement, and have them look at the issue from the point of view that the evaluator uses to judge the object or action good or bad, right or wrong.

In this vein, it is important to note that for Aristotle, or at least for his medieval and seventeenth-century commentators, the concept is not a picture, nor is it the primary object of knowledge. It is an instrument, a sign, *by which* we know the external object. It is necessarily a limited perspective, not the exact representation of what we know. Hence, Aristotle in appealing to the Enthymeme can be seen to anticipate the rejection of representation, which is taken to be a significant part of postmodernism. He would not view the task of the ethicist as Kant does in the Groundwork, to be to apply rules. Rather, Aristotle seems to view the task of the ethicist to be much like Kant views the task of the art critic in his third critique, a view enunciated by Wittgenstein in his post-modern work, the *Philosophical Investigations*, where languages are pragmatic ways of seeing, so meaning is use and not simply sense and reference.

But doesn't this emphasis on "agreements in forms of life" simply lead to a sociology of knowledge, a relativism, which maintains that there are a multiplicity of ways of seeing each of which is valid for each persons perspective? The answer, is that while that might be the case for postmoderns creating what Habermas calls the legitimation crisis, for Aristotle that is not the case. There might be a multitude of perspectives, but reality, which is accessible to common experience is always a check on the validity of the perspectives, for the perspectives are not what we know, they are the means by which we know the reality. Some views are partially correct, some nearly correct, but none are complete. There are always more views, for there are always other ways of seeing the world. At any rate, one does not have to have the whole truth to have the truth. For as we have seen, Aristotle says,

> The true and the approximately true are apprehended by the same faculty; it may also be noted that men have a sufficient natural instinct for what is true, and usually do arrive at the truth.[42]

It is only when we begin to doubt common sense, without a good reason to doubt it, in the manner of Descartes and other eristic skeptics, that relativism becomes an enigma.[43]

One of the truths, or approximate truths, which is manifest to the uneducated as well as the wise, the truth that is common knowledge, is the recognition of what is good for human beings, the recognition of what sorts of goods count as the things that lead to living well, that is, happiness. For Aristotle, the implied premises in ethical enthymemes, which are usually true are agreed on, resulting in a virtual unanimity. He says, "The various points that are made must be received in the same spirit." According to Aristotle, agreement extends to agreement about what is good, and one finds out about the good by listening to what "everyone says," a technique adopted in the latter half of the twentieth century by ordinary language philosophers who were reacting to modernity.

But what are these goods of nature are and how can we know them? According to James Finnis, Aristotle spends the whole of the *Nichomachean Ethics* arguing to reach a conclusion about what these human goods are, these goods that will make humans flourish. As Finnis says:

> The whole argument of the Ethics concludes to a proposition about what is natural to man, in the sense of truly appropriate to and fulfilling for human beings; but that is the conclusion, or a way of expressing the conclusion, and the arguments for it are found elsewhere. Where?[44]

The premises of the argument are found when Aristotle appeals to the common experiences that human beings have, experiences revealed in claims which begin with phrases such as "everyone would say" or "no one would say" or "everyone would choose."

In trying to identify the requirements for a fulfilled human life, Aristotle appeals to claims such as the following;

No one would choose to live with the intellect of a child throughout his life, however much he were to be pleased at the things that children are pleased at …

No one chooses to possess the whole world if he has first to become someone else … ; he wishes for this only on condition of being whatever he is …

No one would choose the whole world on condition of being alone …

No one chooses eudaimonia for the sake of honor, pleasure, etc., nor as a means to anything whatever other than itself …

And so on.

In each case, as Finnis notes, the "no one would … " is a reminder of common human experience, including the experience (actual or vicarious) of Aristotle's own reader, you or me. It is a reminder, too, of a pre-philosophic understanding of that experience, including notably the reader's own previous understanding.[45]

To know what human good is, Aristotle would say that we begin with commonly accepted beliefs, one's that "everyone knows" and go from there. For example, it is true that no one would choose the whole world on condition of being alone, or at least no one who is not a god or a beast. That means that a fulfilled life will be a social or political life. Hence Aristotle can conclude that human beings are *bios politikos*, political animals so that a fulfilled life will require social interaction. Furthermore in our ethical reasoning, where we are trying to persuade ourselves or others what to do, we need to take that into account. Activities that prevent us from fulfilling that need are not good.

Appeals to agreements about common experience do not definitively establish what is good for human beings, they just give the first word about what is good for man. Nevertheless, according to Aristotle, We ought to attend to the undemonstrated sayings and opinions of experienced and older people not less than to demonstrations; for because experience has given them an eye they see alright.[46]

Since practical reasoning is an attempt to persuade, we start with commonly accepted beliefs, ones that "everyone knows," or everyone agrees on and go from there. We might not reach certitude, but there are areas we can agree on, even cross-culturally, which will provide the basis for at least some arguments and lead to some truth. But it would be disastrous and foolish to think we can definitively solve issues where there are mixed goods. The insistence that we have definitively resolved an issue would lead to the tyranny of the unitary canons that the postmodernists object to so much.

What we can learn from Aristotle is this. We are all postmodernists trying not to be. Time after time we see that applying ethical theories to particular situations or practices doesn't result in any answer. But we need not conclude from the lack of answers that we ought to adopt the nihilism of Nietzsche or even the relativism of most postmoderns. We think there is truth but it is approximate truth, not definitive truth. There is always disagreement possible. As a matter of fact, we would not have to teach ethics at all, or try to persuade others, if everyone agreed with us or there were no conflicts. Given disagreement and conflict there is a need for persuasion and resolution. Since all people have some grasp of the truth, it seems prudent to start at common ground, the common experiences gained by individuals and societies from sheer living and observing of what works and what doesn't.

Even though one need not continue to agree with what "everyone" says, when there are good reasons for thinking otherwise, it would be imprudent to assume the views of the uneducated are generally morally inadequate, as does Plato, who assumes most people are in an intellectual cave, or as does Descartes, who assumes we might all be deceived by a conspiratorial demon. Aristotle assumed, contrary to Plato, and would assume, contrary to Descartes, that the uneducated share the same general principles as the learned. What they lack are simply, some of the facts or some understanding of how underlying structures work.

For example, the uneducated might not understand why dumping milk to keep prices up when people are starving makes sense. But they do understand that dumping milk is wasteful. To understand why wasting milk might be justified when people are starving requires understanding a view of how markets work, and why the farmers themselves would suffer if they didn't dump the surplus milk. Of course, achieving that understanding does not necessarily justify the action of dumping milk against the claims of the needy upon superabundant goods, but it does illustrate how harm can come to the farmers if they are generous and don't dump their surplus.

Similarly, in the example we already considered the uneducated might not understand why it is beneficial to close plants and harm the employees of those plants, for they are not in the habit of adopting the perspectives of others. The encouraging of that habit is one of the tasks of the moral philosopher. In the movie *Roger and Me*, Roger Smith and Michael Martin each have a point of view about whether General Motors' plants in Flint Michigan should be shut down. Smith's lobbyist in the film can argue from the perspective of the committed Adam Smith capitalist, or from the perspective of the third world, the necessity of providing jobs for Mexicans or from the perspective of the General Motor stockholders, while Michael Moore throughout the film adopts the viewpoint of the Flint auto workers.

Almost every one of my students, when asked "Who should the profits of a business belong to?" answer, "The owner." Such notions of justice, notions of who deserves what, and the notion of profits, which involves concepts of cost and market price, and property, are part of the assumed premises of most political arguments in western culture. In this case our culture like other cultures are unanimities, in the literal sense of like minded, or as Aristotle says, in the same spirit. But that capitalist set of beliefs about entitlements is the perspective of those whom our society entitles to goods and one could claim that my students are the group our society, with its legitimated agreed on rules, entitles. It is not the perspective of the dispossessed. The story of the dispossessed is different.

The philosopher's responsibility, in all of these cases, is to look at as many perspectives as possible to get as close to the truth as possible. There are reasons why an owner is entitled. Hence there are reasons that justify the view. But there are also reasons why the owner might not be entitled to everything. So the view is only partially true or partially justified. There are other partially true views. Education can show us other's perspectives on the truth. Yet we must realize that like our own perspective, others' perspectives will also be tainted with self-interest. In this light, the abiding contribution of Mill and Kant will not be seen as providing us with a definitive ethical theory, or even an adequate view of what is right or good. They accomplish neither. Their abiding contribution will be seen in their insisting on universalizing, which is their way of insisting on the formal principle of justice we all agree on, "Equals should be treated equally," or their insistence that we ought to consider any action from the perspective of all affected by the action.

3. CONCLUSION

In conclusion, Aristotle can be seen as concurring with the postmodern project in the following ways:

First, he does not expect certitude in practical matters, and hence in practical matters he would deny the possibility of developing unitary rules from which scientifically deduced certainties follow.

Second, he notes that there are a variety of perspectives and views.

Third, his good is relative to human beings, for it concerns the good for human beings, not Good in itself. Human beings might not be the measure of all things for all things, but human beings are the object relative to which the good of ethics and politics is gauged. Human happiness or fulfillment is the object of ethics, and that takes on a multiplicity of forms.

Fourth, since his view is teleological, it would be incompatible with Kantian autonomy, by which I mean self-rule or self-determination with respect to what is good for human beings. We don't choose what our needs are. They are determined by our nature. We don't choose the conditions under which humans can flourish. Rather, our choice involves whether we will do what will help us flourish or not. In short, nature is the author of what fulfills human beings, not human beings' wills.

Fifth, Aristotle's ethics appeals to general rules only as rules of thumb, rules necessary for achieving the individual or the common good. Aristotle also recognizes that activities are sometimes good for some while being bad for others.

Finally, we must note clearly that Aristotle would not be a thoroughgoing postmodernist if postmodernism requires a radical relativism, for Aristotle does believe in the accessibility of truth or the approximate truth.

What we have tried to do is show that the positive insights of postmodernism can be found in Aristotle. Aristotelians and postmoderns alike agree that contemporary ethical theories don't work, because, coming out of a Cartesian perspective, they seek a privileged view, which will yield certitude. Aristotle settles for limited knowledge, based not on a pure Archimedean starting point, but on the common experience of human beings.

What an Aristotelian with postmodern insight can offer to business ethics is the following strategy:

1. Drop the deductive model.
2. Settle for less than certain and definitive answers.
3. Adopt where helpful the use of narratives or paradigms.
4. Rehabilitate rhetoric through understanding the uses and limits of enthymemes.
5. Recognize that solving ethical issues is more like an art than a science.
6. Recognize that all views are within a context, a form of life, or a culture, but some distance can be gained from that culture and the views can be evaluated in the light of whether they lead to human flourishing.
7. Recognize that in persuasion we must start with unanimities, agreements.
8. Trust the insight of the common person. They know from experience, and common experience provides the starting point for truth in practical matters.
9. Critique the perceptions of the common person, when they cause disequilibrium or when there is conflict, but do not question them, as did Descartes, when there is no good reason to question them.

The business ethicist in a postmodern world cannot be simply an applier of principles, but must be one who first seeks out and then seeks to understand the perspectives of all, the marginalized as well as those in the mainstream. After we have understood those various perspectives we can judiciously evaluate them in terms of how they contribute to human well-being.

NOTES

* "Aristotle: A Pre-modern Post-Modern? Implications for Business Ethics," *Business Ethics Quarterly*, 3 (1993) pp. 227–250.

[1] I would like to thank Norman Bowie, Patricia Werhane, Michael Thompson, Jacqueline Murphy, Timothy O'Hara and, Al Gini for help and encouragement in the preparation of this doctrine. They should in no way be held responsible for its shortcomings, but they all greatly added to whatever worth it has.

[2] Alisdair MacIntyre, *After Virtue*, second edition, University of Notre Dame Press, Notre Dame Indiana, p. 118, p. 111.

[3] G. E. M. Anscombe, "Modern Moral Philosophy," *Philosophy*, 33, 1958.

[4] Henry Veatch, *For an Ontology of Morals*, Northwestern University Press, Evanston, Illinois, 1968. As well as in numerous other works.

[5] John Finnis, *Fundamentals of Ethics*, Georgetown University Press, Washington, D. C., 1983.

[6] By a realism I mean a philosophy that views the concept as an instrument that leads us to an understanding of extra-mental reality. Thus concepts are not the object of our knowledge nor are points of view the object of philosophy. Such a belief is involved in phenomenology, and is an outgrowth of Descartes' beginning with the object of knowledge being the content of his ideas, Locke's insistence that we know our ideas and Kant's insistence that what is present to consciousness is phenomenal appearance and that we are ignorant of the noumenal. This transcendentalism is seen in Michael Dummet, when he insists that "Only with Frege was the proper object of philosophy finally established: namely, first that the goal of philosophy is the analysis of the structure of thought." For a realist the concept or thought is not the object of philosophy but the organon, the instrument that discloses reality to us, that by which we know the subject. So the concept not what we know but that by which we know. Cf. Richard Bernstein, *Beyond Objectivism and Relativism*, University of Pennsylvania Press, Philadelphia, PA., 1983, p. 5.

[7] As Bernstein says: "Relativism is the basic conviction that when we turn to the examination of those concepts that philosophers have taken to be the most fundamental … . We are forced to recognize that in the final analysis all such concepts must be understood as relative to a specific conceptual scheme, theoretical framework, paradigm, form of life, society, or culture. Since the relativist believes that there is or can be a nonreducible plurality of such conceptual schemes, he or she challenges the claim that these concepts can have a determinate and univocal significance. For the relativist, there is no substantive overarching framework or single metalanguage by which we can rationally adjudicate or univocally evaluate competing claims of alternative paradigms." (Bernstein, p. 8.)

[8] Robin Derry and Ronald Green, "Ethical Theory in Business Ethics: A Critical Assessment," *Business Ethics Quarterly*, Vol. 1, No. 4, 1991.

[9] Cf. Charles Jencks, *What is Post-Modernism*? London:St Martins Press,1986.

[10] Ludwig Wittgenstein, *Philosophical Investigations*, translated by G. E. M. Anscombe, second edition, Macmillan Co., New York, 1958.

Postmoderns follow the lead of Nietzsche and Heidegger, but their path in repudiating modern philosophy is quite similar to the path followed by the later Wittgenstein, John Austin, and a number of their philosophical disciples in the ordinary language tradition. The difference is that whereas the disciples of Wittgenstein and Austin, at least those engaged in ethical theory, such as Anscombe and Foot, turned toward a contemporary revitalization of Aristotelian insights, a sizeable number of their postmodern counterparts who followed Heidegger and Nietzsche in rejecting modern philosophy, with notable exceptions such as Gadamer, adopted a radical relativism.

[11] Martin Heidegger, *Nietzsche*, Volume 4, translated by David Farrell Krell, Harper Row, New York, 1974.

[12] J. L. Austin, *Sense and Sensibilia*, Oxford University Press, New York, 1964. It might seem strange including Austin, but his opening gambits in Sense and Sensibilia are targeted against a Cartesian move.

[13] Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, University of Minnesota Press, Minneapolis, 1984, p. xxiii.

[14] Lyotard, p. xxiv.

[15] Ronald Green, "Business Ethics as A Postmodern Phenomenon," A paper delivered to the Society for Business Ethics meetings, summer, 1991, pp. 2–3.

[16] Deborah Cook, "Remapping Modernity," *British Journal of Aesthetics*, Vol. 30, No. 1, January 1990, p. 36.

[17] Lyotard, p. xxiv.

[18] Ben Agger, "Critical Theory, Poststructuralism, Postmodernism: Their Sociological Relevance," *Annual Review of Sociology*, Vol. 17, 1991, p. 121.

[19] Roy Boyne, *Foucault and Derrida: The Other Side of Reason*, Unwin Hyman, London, 1990, p. 151.

[20] Rene Descartes, *Meditations*, vol. 1 of Philosophical Works of Descartes, translated by Elizabeth S. Haldane and G. R. T. Ross, Cambridge University Press, Cambridge, 1969, p. 144. Bernard Williams in a postmodern spirit in *Ethics and the Limits of Philosophy*, iterates the theme that neither ethics nor science is free of a value perspective. For science's value is the pursuit of truth or power and ethics' unexamined value is that the unexamined life is not worth living. Thus human valuings underlie all. So again the ground of truth is human will. From this Williams deduces his own brand of skepticism.

[21] Rene Descartes, *Rules for the Direction of the Mind*, translated by Laurence J. Lafleur, Bobbs-Merrill, Indianapolis, 1961, pp. 5 and 8.

[22] Lyotard, p. xxiv.

[23] Compare this to Richard Rorty, *Philosophy and the Mirror of Nature*, Princeton University Press, Princeton, 1979, and Thomas Kuhn, *The Structure of Scientific Revolution*, second edition, University of Chicago Press, Chicago, 1970.

[24] Lyotard, p. xxiii.

[25] Lyotard, "Universal History and Cultural Differences," in *The Lyotard Reader*, Edited By Andrew Benjamin, Basis Blackwell, Oxford, 1989, p. 318.

[26] Lyotard, UHCD, p. 320.

[27] Edith Wyschogrod, *Saints and Postmodernism: Revisioning Moral Philosophy*, The University of Chicago Press, Chicago, 1990, p. xxii.

[28] Anscombe, p. 27.

[29] Green, BEPP, p. 4.

[30] Aristotle, *Nichomachean Ethics*, translated by Martin Oswald, Bobbs-Merrill, New York, 1962, 1094b12–27.

[31] Aristotle, *Rhetoric*, in The Basic Works of Aristotle, translated by W. Rhys Roberts, edited by Richard McKeon, Random House, New York, 1941, 1359b9ff.

[32] Rhetoric, 1358b8–9.

[33] Rhetoric, 1358bl3ff.

[34] Rhetoric, Book 1, Ch. 2.

[35] Rhetoric, 1356bl–4.

[36] Craig Lehman, "Takeovers and Takeover Defenses: Some Utilities of the Free Market," in Lisa Newton and Maureen Ford, *Taking Sides: Controversial Issues in Business Ethics*, Dushkin Publishing Company, Guilford Connecticut, 1992, pp. 234–5.

[37] Rhetoric, 1354a14–15.

[38] Rhetoric, 1355a7–10.

[39] Rhetoric, 1395b20ff.

[40] Rhetoric, 1355a12.

[41] Wittgenstein, PI, p. 226.

[42] Rhetoric, 1355al2.

[43] To see how radical this shift from accepting what others have thought to Descartes' doubting "what others have thought" we can look at what the medieval Thomas Aquinas says about Aristotle's concern for what others have thought.

In accepting or rejecting opinions, a man should not be affected by love or hate of those introducing the opinion, but rather by the certitude of truth, he (Aristotle) says that we should love both those whose opinion we follow and those whose opinion we reject. For both were looking for truth and *helped us*, in so doing. Nevertheless we should follow the opinion of him who has more certainly arrived at truth. *In XII Metaphysica*, lect. 9, #2566.

In the Aristotelian and scholastic tradition, at least where ethics is concerned, there is no search for absolute certitude of the Cartesian type, for human knowledge was always limited. The search for knowledge is always a communal affair, so there is no disdain for other thinkers' opinions. On the contrary, the opinions of others are sources of help to us in achieving the truth. For Aristotle, then, human experience is the methodological starting point, and rather than neglecting any of its aspects, he tries to put hierarchy into its components rather than mutilate it.

[44] Finnis, p. 17.

[45] Finnis, pp. 17–19. This again, should put the reader in mind of the kind of appeal that Wittgenstein makes to agreement in forms of life, which become agreements in the way we see things. (Seeing as). This move was employed by Kant in the Critique of Judgment, where he appeals to a sensus communis for the sake of explaining how an aesthetic judgment, involving a re-presentation of an object, through a reflexive concept, a way of getting others to see what we see rather than simply asserting that an object is beautiful according to the rule of some determinant concept, can be objective. Our claim, according to Kant, would be that we expect anyone who sees the object in the way we see it to agree that it is beautiful, not because it meets any predetermined criteria or rules for being beautiful. Getting others to see as we see is the narrative enterprise. Wittgenstein in suggesting that ethical judgments are akin to aesthetic judgments, seems to repudiate the deductive model of ethical theorists such as Kant, and suggest that appealing to perspectives we share, agreeing about the way we see things is the way to resolve ethical disputes. Hence Aristotle's approach through rhetoric rather than dialectic, and through induction, his anticipation of narrative, would seem to be the solution that Wittgensteinians and postmoderns alike were looking for.

[46] Rhetoric, 1355a13.

CHAPTER 5

THE RELIGIOUS ROOTS OF BUSINESS ETHICS*

If postmodern thought has reminded us of anything it is that we are social beings who are products of our history. We inherit grand narratives that inform our lives to their ethical core. What I want to maintain is that Americans at least are the products of two conflicting grand narratives, the capitalist and the Judeo-Christian narratives. Because of this most, if not all, Americans suffer from a kind of moral or ethical *schizophrenia*. With respect to business, they have two personalities that don't quite mesh. They belong to two cultures or two forms of life (to employ a Wittgensteinian phrase) that are in conflict—the aforementioned Judeo-Christian form of life and the capitalist form of life. Much of the time the cultures don't clash. When being ethical or being fair leads to good business, there is no problem.

At such times the Thomas Labreque's of the world say,

> Although behaving ethically should be an end in itself, there also are valid business reasons for doing what's right. If there also are valid business reasons for doing what's right. If you look closely at examples of *unethical* business behavior, you discover two things: the company derives only short-term advantages from its actions, and over the longer term, skimping on quality or service doesn't pay. It's not good business.
>
> Consider the food company which, a few years ago, came under fire for selling a sweet-flavored and colored drink labeled as pure apple juice. Whatever short-term profits it gained in passing off the cheaper drink as fruit juice, the damage to a good company's reputation was far more costly in the long run.
>
> Another example is the Lockheed Corporation, whose aircraft have served this country in times of war and peace. Yet, some people remember it for a long-ago bribery scandal, and the company has had to spend years fighting the adverse publicity generated by the case.
>
> On the other hand, Johnson and Johnson immediately took its pain reliever, Tylenol, off the market when faced with claims of product tampering. J&J knew the decision would be costly in dollars, but refused to put a price tag on its integrity. Some thought their sales could never recover, but the company ended up reinforcing its strong market leadership.[1]

But, as David Vogel is careful to point out, there are times ethics and profit don't always go hand in hand, and sometimes management will have to choose between what's right and what's profitable.[2] It is at times like that the schizophrenia becomes apparent.

Consider the following example: John and his friend Pete had started their manufacturer's representative business together. But Pete was more the salesman and John the organizer with management skills. The business was quite successful but Pete didn't want to be an owner, just a salesman with special privileges. He carved out the prime territory for himself and worked it so that the company was successful beyond both John's and Pete's wildest dreams. Both made a great deal of money. But now in their advancing years Pete is slowing down, and aggressive young salesmen are pestering John to break up Pete's territory. After all, Pete had announced that he wanted to take it easier, now that he was getting a bit older. But Pete and John had agreed years ago that Pete would always have the last say in picking his territory. It was his reward for all the sales he had made to get the company started. John is being pushed by the demands of his younger sales force and for profitability reasons to remove Pete from his sales territory. What should John do? Abide by his promises to Pete or act in the name or profit and productivity and take the territory away from Pete? John is torn between two sets of rules—the rules of a world valuing friendship and loyalty over profits, and the rules of a world valuing profits over other relationships. That is an example of the schizophrenia.

This schizophrenia is also manifest in another way. We are all familiar with the sarcastic statement, "There is no such thing as business ethics."[3] Such a statement declares there are two worlds with their own sets of rules, the business world and the ethical world. What is more, in the business world, one is expected to check one's morality at the door.

Of course, there is also the thoroughly overused statement "Business ethics is an *oxymoron*"—that is, *a contradiction in terms*, like "jumbo shrimp" or "military intelligence." Obviously, there is a view of business as a competitive, aggressive profit making venture that seems to be in basic conflict with behavior that is deemed ethical—behavior that is honest and just and fair, and involves altruistic concerns and caring for others. As in our example, ethics, which requires care or keeping promises might seem to oblige us to keep the loyal friend who is not producing. But contrary to that, business demands of productivity might force one to retire or fire the friend in conflict with the caring behavior. We often justify such action by saying, "That's business." But James Autry points out the schizophrenia inherent in that defense:

> I take seriously the role of business and its impact on society. I shudder when I hear some businessperson say, "It's just business," because that usually means something is being done in the name of business that would not be done if that person were doing it in the name of himself or herself.
>
> Always remember this: if we can commit an injustice in the name of business, we can commit an injustice in the name of anything.[4]

As we can see from Autry's comments, the remark, "That's business" is not just a descriptive remark, it is a justification. The quasi serious advice, "Don't do business with friends or family" has a ring of truth to it because two cultures or two forms of life, the world of the friend and the world of business conflict.

At times we attempt to bridge the gulf by appealing to notions such as *fair price, and fair wage*. However, as Vogel has pointed out, according to the tenets of free market capitalism economics, prices and wages are determined by supply and demand, not by ethical notions of fairness, so that in capitalism there is no such thing as a fair price. If we ask about fair prices we are having recourse to notions of *distributive* justice (fairness), a concept from the Judeo-Christian culture (form of life). Recent attempts have been made to re-introduce a biblical concept like stewardship, which demands that one put limits on profit and curb conspicuous consumption. But such approaches seem inconsistent with capitalism.

In the light of the above, I want to claim that the current insistence on business ethics has its roots largely in the spirit of the Judeo-Christian moral tradition, (a spirit of caring) secularized by Kant and enunciated currently by business ethicists such as Ed Freeman and Norman Bowie, while the attempt to separate business from ethics and the use of the justification, "That's business," is the result of the development of the spirit of capitalism, which disregards or conflicts with a large part of the Judeo-Christian tradition. I am using the word "spirit" to indicate the unanimity (agreement in forms of life) any group of people have about the most fundamental and basic moral or ethical principles. Such agreement is often so deep that it remains unrecognized and hence unexamined, but it leads to mutual acceptance of similar justifications.

The insistence on being ethical in business recalls the Judeo-Christian view, which was supplanted by the capitalist view, as R. H. Tawney says:

> Capitalism involved a code of economic conduct and a system of human relations which were sharply at variance with … the accepted scheme of social ethics and with the law, both of the church and of most European states.[5]
>
> What is significant is not the strength of the motive of economic self-interest, which is the commonplace of all ages and demands no explanation. It is the change of moral standards that turned a natural frailty into an ornament of spirit, and canonized as the economic virtues *habits* which in earlier ages had been denounced as vices.[6]

In this discussion we can substitute the notion of the world of business for the notion of capitalism, which we understand to be a system that Max Weber identified as being in accord with one main rule or having one spirit. According to Weber, "Capitalism is identical with the pursuit of [profit] and forever *renewed* profit by means of continuous, *rational*, capitalistic enterprise."[7]

1. MEANING OF SPIRIT

Such a spirit is a form of life. The Latin word *spiritus* is almost identical to the Aristotelian notion of *form*, where the soul or spirit or *geist* is the form of the organic body having life in potency. Viewed in this way, we can see that what gives the capitalist society its shape or form of life is the single minded pursuit of profit and *forever renewed* profit. Such a capitalist form of life, by informing the body politic defines the culture. Having such a view of capitalism in mind, Weber predicts that " [I]n a wholly capitalistic order of society, an individual capitalistic enterprise which did not *take advantage* of its opportunities for profit-making would be doomed to extinction."[8]

Hence, according to the spirit of capitalism described above, if we don't fire our friend to take advantage of ever renewed profit making opportunities, we will lose our competitive edge and be defeated by others in the competitive marketplace. Those young aggressive salespersons will leave to go elsewhere, and take their potential customers with them.

Weber's view of the capitalist form of life reveals itself today in the work of economist Milton Friedman, who uses it to legitimate business culture. Friedman states, in an infamous passage, that, "the *primary* and *only responsibility* of business is to make a profit, *without* deception and fraud"[9] Note that Friedman calls the pursuit of profit the "primary" and "only" responsibility of business. That is not accidental. It is consistent with Weber's characterization of the spirit of capitalism, which "continuously" takes "advantage of 'forever renewed' opportunities for profit making."

Friedman's notion of the primary function of business as profit making did not spring up from nowhere. It was derived from the teaching of Adam Smith, as presented in his eighteenth-century classic *The Wealth of Nations*. Friedman's characterization and justification of capitalism reiterates the classical justification found in Smith's doctrine of the invisible hand. In *The Wealth of Nations*, Smith utilizes the then current model of economic man, the rational self-interested utility maximizer, who is concerned with increasing his own utility. Smith notes that humans are motivated by self-interest, and says, "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."[10]

Smith adds to that observation the claim that such self-interested pursuit will make commerce flourish. He argues that if each business person pursues only his interest, then the entire society, as if led by an "invisible hand," will be better off. Friedman claims that Smith was dead right, and that this is exactly what has happened. According to Friedman, the success of an economic system which encourages business to pursue profit single-mindedly, is attributable to the fact that when business concerns itself about nothing but profit, competition is created, more goods are produced and the entire society enjoys a higher standard of living.

However, the single minded pursuit of profit causes claims that businesses have responsibilities to stakeholders other than the owners to be either ignored or denied outright. Such claims of stakeholder theorists insist that business have duties to more than just the stockholders, duties which evolve out of relationships to those other stakeholders based on some sort of social understanding or contract. But such social understandings or contracts seem to be inconsistent with the spirit of capitalism as defined. To fulfill responsibilities to stakeholders other than shareholders would require a reevaluation and circumscribing of capitalism's relentless pursuit of profit.

It is often argued that our society, under the influence of such a wholehearted capitalist spirit has become materialistic and thoroughly individualistic,—egoistic, if you will—setting aside principles of justice which insist that those who possess more than they need have an obligation to care for those possessions and share them, when necessary, with those in need. That notion of stewardship and its consequent principles governing the just distribution of property was fundamental to the

Judeo-Christian world view. It is instructive to see how it was originally articulated and consequently discarded.

2. THE HISTORY OF THE RIGHT TO PROPERTY

The breakdown in the normative force of the notion of stewardship followed the legitimization of the processes of wealth acquisition and lending money at interest. It will be helpful to trace how such a notional shift occurred to see how business broke with the *unanimity* (oneness of spirit) about rules, which *Western Culture*—largely religious—held, specifically the rules governing the just holding of property.

What were the rules held with unanimity? One of the best articulations of those rules, which rested on a notion of property as a natural, undeniable but limited right, was given by the theologian Thomas Aquinas, a thirteenth-century doctor of the church.

> Aquinas says that, … according to the natural order instituted by divine providence, material goods are provided for the satisfaction of human needs. Therefore the division and appropriation of property, which proceeds *from human law*, must not hinder the satisfaction of man's necessity for such goods. Equally whatever a man has in superabundance is *owed*, (italics mine), by natural right, to the poor for their sustenance.[11]

In this passage Aquinas clearly indicates that the means of appropriating and dividing property, which would give right to specific property, are a human invention, and are overridden by the natural right of recipience (what is "owed") of those who don't have property but have need. There is an obligation rooted in nature to the poor for their sustenance. The obligation falls on those who have a superabundance of property. Those who have more property than they can use have an obligation to be stewards, entrusted with the care of that property. They are not free morally to waste it and they are not free to do whatever they wish with it. They must care for it and share it when that is required. They certainly cannot morally use it to take advantage for the pursuit of forever renewed profit, if that pursuit violates the needs of others. Superabundance makes no sense in capitalism.

This view of Aquinas is reiterated by John Locke and then modified by him and even further by Adam Smith, until it is abandoned and replace by the chief distribution rule of capitalism, "The owner of the means of production controls the surplus value created (the profit)."

The shift from Aquinas' view to the contemporary view of capitalism involved several important steps:

1. Locke's justification of the accumulation of money.
2. Money's becoming viewed as "working capital," that is, money being put to work as investment capital.
3. The legitimatization of the pursuit of self-interest by the introduction of the utilitarian doctrine of the "invisible hand," which predicted that self-interested pursuits would lead to the greatest good for the greatest number. (A rising tide lifts all boats.)
4. Finally, the development of an argument that since investment capital is property that works for an investor, what it accomplishes, the profit, belongs to the investor.

These steps led to the principle that the owner of the means of production is entitled to the profit, a principle of distributive justice. Further, this principle of just distribution has become so deeply imbedded in the psyche of those who live in capitalist countries that it goes virtually unquestioned. My own anecdotal evidence that this principle is taken for granted is the fact that not one of my students in recent memory has challenged what seems to them to be the self-evidence of the claim, "The owner of a business is entitled to the profits."

3. LOCKE'S THEORY

To appreciate how the classical capitalist view replaced the traditional Judeo-Christian view as presented by Aquinas, we will examine those four steps more carefully beginning with the philosophy of John Locke, who stands with one foot in the Aquinas tradition but another in the tradition of Adam Smith whose views inform the economic beliefs of most free market advocates.

In his *Second Treatise on Civil Government*, a treatise written as a justification for the overthrow of the king by Parliament in the Glorious Revolution of 1688, Locke argues there are three natural rights: the rights to life, liberty and property. The right to property is so important that protection of property is given as the primary reason for the establishment of government. As Locke said, "The great and chief end … of men … putting themselves under government, is the preservation of their property."[12]

The right to property is also important because it is the ground for the rights to life and liberty, since according to Locke, everything is God's property.

> No one ought to harm another in his life, health, liberty or possessions; for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master sent into the world by His order and about His business; they are His property, whose workmanship they are made to last during His, not one another's pleasure.[13]

According to Locke, human beings have value because they are God's property, and property has value because it is the result of work. We are God's property and His agents going about "His *business*." Such a model is extremely important in understanding the basis of Locke's thinking. Any taking of someone's life or interfering with someone's liberty, interferes with something that is God's property. First, this means that all natural rights rest on property rights and are noninterference rights that accrue to someone who expended their labor on those things, (in this case God). Second, it means that something becomes someone's property because of that person worked on it. Just as when God works on us, we become his property, so when we work on something it becomes our property.

> Though the earth and all inferior creatures be common to all men, yet every man has a "property" in his own "person." This nobody has any right to but himself. The "labor" of his body and the "work" of his hands, we may say, are properly his. Whatsoever, then he removes out of the state that Nature hath provided and left it in, he hath mixed his labor with it, and joined to it something that is his own, and thereby makes it his property.

> From all which it is evident that, though the things of nature are given in common, yet man, by being master of himself and proprietor of his own person and the actions or labor of it, had still in himself the great foundation of property; and that which made up the great part of what he applied to the support and comfort of his being, when invention and arts had improved the conveniences of life, was perfectly his own, and did not belong in common to others.
>
> Thus labor, in the beginning, gave a right to property, wherever anyone was pleased to employ it upon what was common, which remained a long while the far greater part, and is yet more than mankind makes use of.[14]

Labor allows us to take objects out of the commons, objects that were held in common, and make them one's own. Something previously held in common is now mine because I worked for it. (It is important to remember that at this time property was being taken out of the commons in England and being "enclosed." This enclosure movement was exceedingly important for the rise of capitalism.)

On the face of it, Locke's theory makes sense. If you work for something it should be yours. Who else's? But surprising as it might seem, Locke's view broke with the earlier Christian tradition, which grounded right on a different basis than Locke; it grounded the right to property in need. Hence, the tradition never wholly agreed with this view that work "gave a right to property." Work might be a condition to acquire property, but it is neither a necessary nor a sufficient condition to give a right to property. In the Christian tradition, work does not automatically give title. Rather, people have a right to things because those things are appropriate to their human needs. Indeed, one of the classic scholastic arguments showed that labor was not the basis or foundation of ownership.

The scholastic argument was simple and straightforward. If we were not entitled to something before we worked for it, the working alone would not make it ours. Labor is not the basis of ownership, it is the disposing of or working on things that we already have a right to on some other grounds. According to scholastic philosophy that ground always has been human need. A thing doesn't become mine simply because I have worked on it. It becomes mine because it fulfills certain needs of my nature and I have gotten possession of it before anyone else.[15]

But even if we pass over that scholastic critique of Locke' belief that labor is the basis of property, and allow his work theory of acquisition, one still has to ask whether there are limits to acquisition. Initially, Locke seems to reiterate a version of Aquinas' principle and agree there are limits on property.

> As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labor does, as it were, enclose it from the common. However … whatever is beyond this (what a man can use) is more man his share and *belongs to others*. Nothing was made by God for man to spoil or destroy.[16]

Here the notion of stewardship, the notion of those in need being entitled to another's property, if that other holds superabundant goods, and the notion that the disadvantaged have entitlements, are all still present in Locke's philosophy. From Locke's perspective God is the glue that holds all these entitlements together. Locke is firmly rooted in the religious tradition. What is held in super abundance, what is "more than his share," "belongs to others."

4. THE INVENTION OF MONEY

Locke circumvents this limitation on property based on need. He argues that the invention of money, and the agreement of men to put a value on money introduced "larger possessions and a right to them." Labor makes something mine, and indeed puts a value on it, but I am initially entitled only to what I can use. What I can't use reverts to the commons. However, the invention of money allows me to sell what I can't use and convert it to money that can't spoil. Since money can't spoil, I can accumulate as much of it as I wish. Thus Locke legitimates the accumulation of wealth:

> And thus came in the use of money; some lasting thing that men might keep without spoiling, and that, by mutual consent, men would take in exchange for the truly useful but perishable supports of life.
>
> But since gold and silver, being little useful to the life of man, in proportion to food, raiment, and carriage, has its value only from the consent of men—whereof labor yet makes in great part the measure—it is plain that the consent of men have agreed to a disproportionate and unequal possession of the earth … they having, by consent, found out and agreed in a way how *a man may, rightfully and without injury, possess more than he himself can make use of* (italics mine) by receiving gold and silver, which may continue long in a man's possession without decaying for the surplus, and agreeing those metals should have a value.[17]

According to Locke, the agreement of society, (a social contract), made money, since it is not perishable, the means not only for the exchange of goods, but for the accumulation of wealth. So Locke fees himself from Aquinas' constraints and justifies peoples' claiming title to more than they can use. In that way, Locke opens the door to the legitimation of the capitalist spirit by justifying the accumulation of wealth and thus dispensing with a notion of a fair share.

5. PUTTING MONEY TO WORK

Still, two more conceptual shifts are needed to get to capitalism. First, it is necessary to reconcile the accumulation of wealth with the work theory of acquisition. Clearly, for Locke, labor or work gives title to possessions. But investing money is hardly work. Money is wealth, but capital is more than mere wealth. Capital is wealth used for investing, and investing is the process of "putting one's wealth to work for oneself." If working for something entitles me to call it my property, a governmental, societal, and economic system is necessary to allow us to view our money as "working."

Thus to say we are putting our money to work for us when we are investing it is not simply an accidental way of speaking. Since we acquire property originally when we mix our labor with things, we are entitled to what we work for. If our money as an extension of ourselves can "work," then we are entitled to the fruits of its labor, since it is really we who are, by extension, working. The phrase "putting one's money to work" rather than being accidental, reflects a "form of life" and contains an implicit justification of capitalism. Since capital is money put to work for someone, that person is entitled by right to the profits that his or her money makes. Thus, in a sense, the root meaning of the notion of capital is really money ready to work. Capital is not just wealth or ownership of goods but "working" capital. On this the primary distributive rule of capitalism, "The owner of the means of production owns the profits" was developed.

6. A CHANGING VIEW OF USURY

Another important conceptual attitude shift that allowed wealth to become capital was the changing view on usury (lending money at interest) and justifications that eased the laws against usury. It is informative to recount the reasons for this developing leniency toward usury. Usury originally meant lending money at any interest (not just lending money at exorbitant rates). Early Christian views painted the usurious man as greedy and avaricious. Christianity demanded that man be altruistic. In his theology St. Ambrose saw the demand for interest as the result of greed. It is frowned upon as late as Martin Luther who says, "He who lends expecting to get back something more or something better than he has loaned is nothing but an open and condemned usurer, since even those who in lending demand or expect to get back exactly what they lend, and take no chances on whether they get it back or not, are not acting in a Christian way … Christians are brothers, and one does not forsake another."[18] Contrast Ambrose's and Luther's view with that of a twentieth-century entrepreneur, who simply sees the charging of interest as a utilization of capital, an activity that if even thought about is viewed as value neutral. Yet it is not value neutral.

To highlight the difference between these two approaches, let us suppose we have some capital, some nonconsumable goods that we do not need at present, that someone else could use. What should one do with those goods? Give them away? Lend them to others without charging interest? Or lend them with interest? The capitalist would recommend putting this capital to work. Lend it out and use it to make more money. That's how the "game" is played in capitalism. Ambrose and Luther would say, depending on the circumstances, either give it away, which would be charity or allow it be used by those in need, which would fulfill the demands of justice. Which is the better way to play the game? That depends on which form of life establishes the rules by which one plays. What is clear is that how one plays the game, and under what circumstances, alters relations between people. The following example illustrates this point.

As a teacher, I have some wealth—my books. Suppose a student needs to use one or more and wants to borrow them. Should I just lend it because I won't be using it this weekend, or should I adopt a capitalist position and put my property, my accumulated wealth, my books, to work for me—that is, charge interest or a fee for using my books? The latter action seems cold and calculating and out of sync with the expected relation between student and teacher. Indeed it is, because it turns the student-teacher relationship, which was a social one, into an economic one by turning my library into a commodity. It also turns the student into an economic unit, in the sense that it now treats the student as a means for making money. The attitude of the teacher who loans the book without charge reflects the Church's attitude toward usury and against capitalism. The attitude of the teacher making money from his books reflects the "cleverness" or "business savvy" of capitalism, with its penchant for turning things into commodities.

To summarize, there was a shift in perspective on and attitude toward property and its proper use that developed from early Christian views, through Locke, up to our own time. Society began to see a use for property as investment capital—goods to be used to make more goods for oneself.

7. A NEW VIEW OF MAN

One last conceptual shift occurred helping to develop the coherent capitalist picture—a justification of egoism and the denigration of the concepts of greed and avarice. This involved the development of the view of man as essentially or naturally a self-interested rational utility maximizer, *homo economicus*. Thomas Hobbes began the process by reducing human motivation to fear and desire. He reestablished the view of human beings as selfish and grasping, a view that had fallen out of favor since the time of Plato's reaction to Thrasymachus in the *Republic.* But such a view, required an account of the orderliness of the world. Hobbes attributed the orderliness to rational self-interest that convinced individual human beings that without a social contract and self-sacrificing agreements, life would be "nasty, brutish and short." This contract view was based on a view of human nature that believed human relationships and the consequent obligations people have to each other, can only be grounded in enlightened self-interest. Obligations to fellow human beings are no longer to be grounded in the brotherhood of man, a brotherhood based on the belief that all people are children of God.

From this egoist perspective, human beings were and ought only to be moral because it was in their interest to be so. Genuine altruism was either psychologically impossible or ethically undesirable. This implied a view of the individual as an isolated atom, bound to other humans by external rules, contractually agreed upon by members of society. Society was not viewed as an organism with interrelated interdependent parts, but as an aggregate of individuals bound together by those external rules. People were less and less viewed as members of a mystical body, or as a chosen people united by their being brothers and sisters who were children of God. The communitarian perspective of society was set aside.

Of course, given its focus on self-interest, such a view would not immediately displace the Judeo-Christian world view, which demanded altruism and being one's brother's keeper. Indeed, Hobbes was dismissed as an Atheist monster. Additionally an acceptance of Hobbes' view would make it difficult to provide a reason for agreeing to principles of justice. Why obey contracts if they were not in my own interest? Hobbes was forced in his philosophy to posit the need for a strong monarch, who was above the law, able to use sanctions in enforcing the law to curb individual desire. But such a monarch would violate the system of natural liberty.

Consequently, English philosophers such as Locke and later Adam Smith, attempted to modify Hobbes' view of human beings as naturally selfish. Locke saw human beings as fellow feeling and social. Hence the social contract for Locke was not one that created a society, but one which created civil government. Smith insisted that, along with self-interest, human beings were also motivated by sympathy. According to the opening lines of his book on ethics, *The Theory of Moral Sentiments*,

> Howsoever selfish man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it … . That we often derive sorrow from the sorrow of others, is a matter of fact too obvious to require any instances to prove it; for this sentiment, like all the other original passions of human nature, is by no means confined to the virtuous and humane, though they perhaps may feel it with the most exquisite sensibility. The greatest ruffian, the most hardened violator of the laws of society, is not altogether without it:
>
> As we have no immediate experience of what other men feel, we can form no idea of the manner in which they are affected, but by conceiving what we ourselves should feel in the like situation.[19]

Smith, unlike Hobbes, did not see the pursuit of self-interest leading to a life that was nasty, brutish and short. He developed an argument that would defend individual liberty and guarantee the common good, while justifying self-interest The argument anticipated utilitarianism in that it justified self-interested pursuits by claiming they will lead to the greatest good for the greatest number. It is Smith's celebrated invisible hand argument:

> Every individual is continually exerting himself to find out the most advantageous employment for whatever capital he can command. It is his own advantage, indeed, and not that of the society which he has in view. But the study of his own advantage, naturally, or rather necessarily, leads him to prefer that employment which is most advantageous to the society.
>
> By directing that 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. Nor is it always the worse for society that it was no part of it. By pursuing he own interest he frequently promotes that of the society more effectual than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good.[20]

According to Smith, concern for the common good, while engaging in trade will probably do more harm than good. But this view of Smith is based on no more than a hunch, and his own limited experience. Still it has taken on the status of an economic law, the belief that everyone will be better off is if every individual looks out for his own interest. The common good, a basic concern of government according to Locke, will be served by allowing individuals all the freedom to dispose of their property as they needed, Locke's second concern of government. Voila! Leave people free to be self-interested and society will flourish. Smith calls it the system of natural liberty.

Most of us flourishing in capitalist countries don't articulate the above belief, but it is imbedded in our belief system and is a cornerstone in the justification of capitalism. No matter how unverifiable or how much evidence there is to the contrary, Smith's principle has become an article of faith, a shared attitude, and a "form of life" devoutly to be believed. Such a belief allows us to jettison the Judeo-Christian attitudes with their proscriptions against greed, avarice and selfishness and the consequent attitudes toward property, work, and lending money at interest. Such views are looked upon as reactionary relics from the past, a past that necessarily differed from the present, and still differs today, from the attitudes of capitalism.

8. THE PROTECTION AGAINST UNCONSTRAINED EGOISM

Milton Friedman, in his writing, does not question the assumed good outcomes of the system of natural liberty, the system of pursuing one's own interest. But Smith must have had doubts that the unconstrained pursuit of self-interest would always lead to better things, for he puts limits on the pursuit of self-interest—considerations of justice. Hence, he says:

> Every man, *so long as he does not violate the laws of justice*, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men.[21]

9. THE LAWS OF JUSTICE SMITH'S APPEAL FAILS

The laws of justice then are to trump the system of natural liberty. But Smith's appeal to sympathy and justice is bound to fail. A recognition of other regarding sentiments, while taking cognizance of fellow feeling does not furnish sufficient grounds for defending justice, and such a defense is necessary. Smith's appeal to an existing sentiment, fails the "is/ought test." For even if man is sentimental in a Smithian way, that does not show when, if or why he *should* be sentimental, nor does it show why he should respond to the demands of the laws of justice. If self-interest leads to the common good, a reigning in of self-interest, based on sentimentality would be unjustifiable for it would undermine the common good. Further, to what laws of justice is Smith referring? It seems Smith's appeal to justice in *The Wealth of Nations* reflects latent Judeo-Christian concerns but has no theoretical basis and cannot function to justify his concern for justice.

Because of the belief that the single minded pursuit of profit always leads to a just society, Smith's concern for justice got overlooked. Further his concern for justice was logically doomed and would come to be overridden by the basic laws of capitalism, the maximization of profit and its requisite ever renewed taking advantage of opportunities. The doctrine of the invisible hand provided capitalism with a logical way to abandon the Judeo-Christian view of justice and adopt a view of society as an aggregate composed of the rational, individual, atomistic, liberal, utility maximizers. Such a view is in sharp contrast to a view of human beings who are part of an organic whole which manifests a human spirit directed to fulfilling their divine calling to love their neighbors as themselves and take satisfaction in their work, not as an instrument for making money, but as a way of creating and thereby imitating their maker. The metaphysic of the human as either a child of God or a creature sharing a spark of the divine which served as the ground for human dignity and justice was replaced by the metaphysic of atomistic individualism. What was lost or in danger of being lost was any ground for human dignity other than the assertion that a human being was an autonomous self, a claim, incidentally, roundly denied with the onset of behaviorism.

10. JUSTICE, CAPITALISM, AND RELIGION

It seems, then, that the spirit of capitalism is incompatible with justice concerns. If justice is necessary, it is helpful to remember that capitalism is an economic system, which is a human invention and could have developed in other ways. For our economic system to concern with justice, it will need to change and we will need to rethink the fundamental spirit of capitalism. In that context, it is important to remember what Weber said: "The impulse to acquisition, pursuit of gain of money has in itself nothing to do with capitalism … —an impulse that has always existed with everyone. This is a naïve idea of capitalism that must be given up."[22] The *impulse* to acquire without constraint got legitimated and became a form of life. As it exists now, *capitalism* is the form of life that *legitimates* the unconstrained *pursuit of self-interest*.

11. TURNING PSYCHOLOGICAL IMPULSE INTO A SOCIAL FUNCTION VERSUS AIMS

But legitimating the unconstrained pursuit of self-interest is itself based *on a mistake* of turning a psychological impulse or personal intention into a social function. In his book, *On Suicide*, Emile Durkheim points out that, " [T]he function (i.e., the purpose between a system of vital movements and set of needs) of a practice is not to be confused with any *aims* of its practitioners. (That would confuse sociology with psychology.) Nor is the function of a *practice* an efficient cause. That would *imply* an impossible anticipation of consequences."[23] Durkheim warns that the purpose of a social institution is not to be confused with the individual motives of its practitioners. Yet this is precisely the mistake that the followers of Smith such as Friedman seem to make.

Such a mistake is truly significant, for the function is the purpose of an enterprise and a such is what gives legitimacy to an enterprise. The purpose of any thing or activity gives us the standard by which we can judge it. Just as we judge a knife as good or bad by whether it fulfills its purpose, so we can judge a business good or bad by whether it fulfills its purpose. If the purpose of business is the relentless pursuit of profit, then a good business is one which continues to make profit and keeping a healthy profit becomes its paramount concern, to which all other concerns are subordinated.

However, if we keep Durkheim's distinction in mind, we realize that the purpose of a business is not to make a profit. Profit is the *aim* of the practitioner, not the purpose of the practice. It would seem to make more sense to set up a system where the purpose of business to provide goods and services.[24] If a purpose is a "what for," it must be the "what for" of some conscious being or beings. Business is a societal practice, a developed conventional form of life. The purpose of any societal constructed system or institution should be an end that is compatible with the common good. No society or group, if it was rational, would create a social institution if that institution was not seen as fulfilling some need for that society or group. Our society does not sanction the creation of groups to manufacture and distribute heroin, or create pornographic films that exploit children, because these activities are not seen as having any redeeming social value.

On this account, we see that society has instituted and allowed business practices—the competitive profit-motivated free-enterprise system—to develop and survive, because that system was seen as beneficial to society, since it is a very efficient *means* for bringing about a laudable goal—the common good. To the extent that business is seen as harmful, society constrains it. Thus, viewed from a societal perspective, the purpose of business is to promote the production and distribution of goods and/or services.

Friedman, and possibly Smith, let the aim of the practitioner, profit making (a personal motive) override the function of a practice, to provide goods and services (a societal purpose). Turning the aim of a practitioner into the function of a practice leads to ignoring the need of society—the *only* basis for legitimization other than self-interest or power.

Hence, Friedman cannot be correct in asserting that increasing profit is the "primary and only" concern of business. Generating profit might be a necessary condition for business, and it is certainly an individual MOTIVE for doing business, but it is not business' purpose or function. For example, there are all sorts of ways to make money, and wanting to make money is certainly okay as a *motive*, but the purpose of *practices* such as accounting or medicine is not to make money. Accounting's purpose is to organize debits and credits, and medicine's purpose is to minister to the sick. Thus the social practices have their own purposes independent of the motives of the persons engaged in the practices. A good business provides a good service while making a profit.

It seems plausible, though, that Smith and Friedman implicitly recognize their mistake, because they bring the whole business enterprise under the umbrella of the common good guaranteed by the invisible hand. This legitimates the impulse to acquisition, and turns self-interest into an instrumental good, not a final end. But a legitimization of unconstrained self-interest as an end in itself will not work and as Weber reminds us, capitalism as society has construed it needs to be unfettered in its pursuit of profit.

12. A NEW IDEAL TYPE

But what is to be done? Clearly everyone is not better off in unrestrained capitalism, and unrestrained capitalism leads to exploitation and injustice. Smith recognized this and adopted the justice constraint. The business system as it has developed is not the only way to produce goods and services. The capitalist system, is permitted and legitimated because it is seen as a very productive system, if not the most productive. It requires a certain distribution and use of profits, which are distributed in such a way as to incentivize or motivate the entrepreneur,[25] which necessarily leads to competition. However, as we have shown, profits are merely the means to achieving the purpose of business, and as the means should not usurp the ultimate goal of business.

If we accept Smith's justice proviso and constrain capitalism with justice, how do we determine what counts as fair or just, and on what ground do we establish justice? What we need is a new model. Weber's work *suggests* a solution is possible.

According to Weber, "[E]valuative choice does not depend merely on technical considerations applied to given ends or formal requirements." For a functioning society, we require *ideal types* or a *Verstehens*, that is, "A model of what an agent would do if he were to act completely rationally according to the criteria of rationality (whose justice, which rationality?) involved in his behavior's sense."[26] Within capitalism we have invented the ideal type of homo-economics. The rational self-interested utility maximizer. But this bottom-line oriented ideal type even though it serves as a practical guide for behavior in business, is seriously lacking an ethical dimension. It needs to be modified or replaced.

We *need* to introduce or reintroduce the justice perspective. We can reintroduce that by offering the professional ideal and the stewardship ideal. I have talked elsewhere about the professional ideal.[27] I turn my attention to the *stewardship perspective*. The stewardship perspective (as well as the professional ideal) introduces the justice perspective and does so by channeling and controlling the motive of economic self-interest. It recognizes that to say, "That's just business" doesn't *justify* a practice. Thus it provides us with an alternative ideal type.

Any economic system, as a social system, has three functions—production, exchange and distribution. Homo-economics, while it addresses production and exchange functions does not address distribution function. What makes behavioral sense from a productivity and exchange perspective does not make behavioral sense from a distributive justice perspective. To be fully legitimated and ethical any business must address societal needs and the society's forms of life. Calvinism, which stressed individual virtues of diligence, thrift, sobriety, and prudence—all reliable passports to commercial prosperity—created an ideal type of business person who was constrained by virtues, including the virtue of justice.[28] So, too, in *The Theory of Moral Sentiments*, Adam Smith points out that man is somewhat constrained by his moral sentiment and sympathetic concern for his fellow man. But the capitalist entrepreneur abandoned the ideal of serving his fellows needs in order to devote himself to the exclusive pursuit of profit. To do that, he emphasized the virtues of hard work, thrift and sobriety, and others that aided in the pursuit of profit. However, the justice constraints were lifted, self-interest became the operative principle, and business ethics became an oxymoron.

13. RECOMMENDATIONS

While defenders of the classical capitalist view need to see *the unfairness* to society that flows from the *legitimization* of this view, those who critique the classical view need to recognize that this legitimization is now part and parcel of our ordinary form of life. How frequently heard and accepted are phrases such as, "That's just business," or "There is no such thing as business ethics."

Is there any hope in overcoming this embedded form of life? Cornelius Castoriadis says, "Our form(s) of life are our creations. Since they are to a large extent nomos (rules), and conventions and not phusis (nature), they can be *changed* through human *action* (politics) and *reflection* (philosophy)."[29] Can philosophy and politics bring new perspectives, new paradigms, new ideals that will pressure society to bring about (re)forms? Or perhaps they can remind us of older perspectives that can be reformulated?

Politics calls institutions into questions and changes them through deliberate collective action. Philosophy calls into question the instituted representations and meanings. Philosophy can help us recognize our understandings. It can help us recognize our reasons, that is, our legitimating *Verstehens* as well as our concepts, rules or *nomoi*.

Philosophy should help us recognize the *limits of our market model* and realize that the wholly capitalistic *ideal* will not work. The market model leads to two evils, (1) exploitation and alienation of the worker and, (2) inequities in the distribution of goods. Ruskin addresses the first:

> We have much studied and much perfected, of late, the great civilized invention of the division of labor; only we give it a false name. It is not, truly speaking, the labor that is divided; but the men; … . [N]ow it is a good and desirable thing, truly, to make many pins in a day; but if we could only see with what crystal sand their points were polished—sand of human soul, much to be magnified before it can be discerned for what it is—we should think there might be some loss in it also. And the great cry that rises from all our manufacturing cities, louder than their furnace blast, is all in very deed for this—that we manufacture everything there except men; we blanch cotton, and strengthen steel and refine sugar, and shape pottery, but to brighten, to strengthen, to refine, or to form a single living spirit, never enters into our estimate of advantages. And all the evil to which that cry is urging our myriads can be met only in one way; not by teaching or preaching, for to teach them is but to show them their misery, and to preach to them, if we do nothing more than preach, is to mock at it. It can be met only by a right understanding, on the part of all classes, of what kinds of labor are good for men, raising them, and making them happy; by a determined sacrifice of such convenience, or beauty, or cheapness as is to be got only by the degradation of the workman; and by equally determined demand for the products and results of healthy and ennobling labor.[30]

Like Weber and Castoriadis, Ruskin calls for a new "understanding" and new "*Verstehen.*" It is interesting that the type of labor Ruskin thought was ennobling was working on the stones of the Cathedrals in Venice. Working for God ennobled the drudgery of stone cutting. So one ideal has to do with meaningful work. But what of the other—distributive or economic justice?

Once we realize the shortcomings of the market entrepreneurial ideal type we can deliberate about distribution and production tradeoffs as well as create, reform or reinstitute new forms of life or recapture old forms of life that will provide us with a new ideal type. As we indicated, the viewing of business as a profession and recent works, which see business as a calling, not to mention stakeholder theory might all serve this purpose.[31]

But beyond that, one of the most recent attempts to give us a new *Verstehen*, to my mind, is the powerful attempt by John Rawls, in his *Theory of Justice*. Rawls claims that natural distributions are not just and that the mark of a just society is what it does for its least advantaged. He sets up the procedures for determining what the principles of justice are so that they concern themselves with the least advantaged.[32]

14. CAN RAWLS' VIEW BE JUSTIFIED?

But can Rawls' contemporary liberalism justify concern for the disadvantaged? It is certainly a classically liberal concern. Rawls approaches his theory by asking us to adopt the Original Position, a modern day heuristic device to employ the golden rule or Kant's categorical imperative, "Act so as never to use another merely as a means to your ends." But Rawls does not tell why a person who is in the condition of being privileged *should* employ the heuristic of the original position. If there is no self-interested motive for being just, why be just? If one says as Adam Smith, be just from a feeling of sentiment for one's fellow human beings, one is faced with the questions, when and why following one's feelings is the right thing to do?

Kant attempts to ground human dignity in our autonomy, the fact that we are self-conscious beings who create our own goals. But why does being autonomous give us dignity? Only because autonomy makes us "god like" because we are self-legislating. But how do we get from self-law to universal moral law and why? It is the demand of rationality and consistency. But post modern philosophers and Nietzsche ask, "Why be rational?" and romantics like Thoreau remind us that foolish consistency is the hobgoblin of little minds.

Rawls, the inheritor of the Kantian tradition, can only dogmatically assert the inherent worth of human beings or look for democratic agreement or consensus. So the difficulty with Rawls' position, which I have argued elsewhere and will merely summarize here, is that it is based on one of two concepts, the notion of a contract that I need a reason to assent to (why should I go along with the agreements) or an ungrounded notion of human dignity. (Why is autonomy the basis of dignity?)[33]

I would submit that Rawls has no philosophical answer to the question "Why concern oneself with the disadvantaged?" except perhaps, the Kantian one, that is, they are ends in themselves, belonging to a kingdom of ends. But as we hinted, Kant's justification of human dignity falls short from a philosophical perspective, and it is only his latent belief in Christianity, which provides the ground of human dignity. It is helpful to recall that according to Kant, the central ideas of reason, God and immortality need to be pragmatically posited to make ethics viable. Indeed, it seems that Rawls' appeal to human dignity, his very appeal to Justice, his agreement with Aquinas' position can not be grounded philosophically. It would seem to some that it can only be grounded by appealing to religious belief.

Whatever one thinks of religion in late twentieth-century Western culture, it is that which *binds* the individual to others. Hence the word "religion," taken from the Latin Legatus, means "binding," and, I would suggest, from religion comes obligation. The Judeo-Christian tradition, as well as the Islamic tradition, believe that human beings have *dignity* because they are children of God, hence brothers and sisters of a world community.

If we are looking for a new verstehen, one could do worse than to bring back religious considerations in ethics such as the stewardship model, if indeed it has ever completely left. A new ideal would be to return to an old ideal and recognize that property is given to us to use for our needs. It is not absolutely ours and needs to be shared with those in need. What we own legally is in a sense only lent to us, and we must be wise stewards in its maintenance and use. But I see no way a concept like stewardship can be derived from merely philosophical activity. It is a belief that is thoroughly bound up in a religious perspective, a perspective that needs to be reemployed in constraining the profit motive of business.

NOTES

* "The Religious Roots of Business Ethics," *Research in Ethical Issues in Organizations*, Edited by Moses L. Pava and Partick Primeaux, Volume 1, 1999, pp. 79–104.

1 Mr. Thomas Labreque, President and COO Chase Manhattan Corporation, "Good Ethics is Good Business," *USA Today Magazine*, May 1990, p. 21. Copyright 1990 by Society for the Advancement of Education.

2 David Vogel, "Let's Ditch That Ethics-Means-Profits Canard," The Los Angeles Times.

3 CF. Albert Carr, "Is Business Bluffing Ethical?" Carr's article argues there is no such thing as business ethics and the world of ethics is unrelated to the world of business. The picture he paints is clearly that of a schizophrenic world.

4 James A. Autry, *James A. Autry's, Life and Work: A Manager's Search for Meaning*, New York: Avon Books, 1995.

5 Richard Henry Tawney, *Religion and the Rise of Capitalism,* New York: Harcourt, Brace, and Company, 1920.

6 Tawney, p. 2. For example, the acquisitiveness that capitalism requires is closely related to covetousness, which was categorized as a vice in the Judeo-Christian tradition.

7 Max Weber, *The Protestant Ethic and the Spirit of Capitalism,* translated by Talcott Parsons, Anthony Giddens, Boston: Unwin Hyman, 1930, Hereinafter referred to as *PE&S of C*, p. 17.

8 Weber, *PE&S of C*, p. 17.

9 Milton Friedman, "The Social Responsibility of Business is to Increase it Profit," *New York Times Magazine*, September 13,1970.

10 Adam Smith, *An Enquiry into the Nature and Causes of The Wealth of Nations*, I, ii, 2. Hereinafter referred to as WN.

11 Thomas Aquinas, *Summa Theologica*, II-II. Q. 66, A. 7.

12 John Locke, *Second Treatise on Civil Government*, References are made to paragraph, par. # 24.

13 Locke, *Treatise*, par. # 61.

14 Locke, *Treatise*, pars. # 26, 44–45.

15 For such a view see, Cardinal Mercier, *Manual Of Modern Scholastic Philosophy*, Vol. 2, third edition, 1950. B. Herder, St. Louis, pp. 272–279.

16 Locke, *Treatise*, par. # 31.

17 Locke, *Treatise*, par. # 50.

18 Martin Luther, From *Luther's Works*, edited by W. I. Brandt and H. T. Lehmann, Vol. 45 (Philadelphia: Muhlenberg Press, 1962), pp. 265–267.

19 Smith, *The Theory of Moral Sentiments*, Part I, Sec. I, Ch. 1, par. 1.

20 Smith, *WN*, Bk. IV, ii., 9.

21 Smith, *WN*, IV, ix, 51.

22 Weber, *PESC*. p. 17.

23 Emile Durkheim, *On Suicide*, p. 24.

24 I have argued this elsewhere. Cf. The Why's of Business Revisited, *Journal of Business Ethics*.

[25] Weber, *PESC*, p. 71. See also *The Theory of Social and Economic Organizations, 1947, Oxford*.

[26] Weber, *PESC*, p. 71.

[27] "Why Be A Loyal Agent? A Systemic Ethical Analysis" in *Ethics and Agency Theory*, edited by Norman Bowie and R. Edward Freeman, Oxford, 1992.

[28] Weber, PESC, p. 71.

[29] *Cornelius Castoriadis Philosophy, Politics, Autonomy: Essays in Political Philosophy,* (New York: Oxford University Press, 1991), p. 38.

[30] John Ruskin, The Stones of Venice, in M. Abrams et al. Eds. *The Norton Anthology of English Literature*, Vol. 2 (New York: W.W. Norton, 1968), p. 1295.

[31] See the recent work by Robert Solomon, *Ethics and Excellence* and Michael Novak, *Business as a Calling*.

[32] Rawls concern for the disadvantaged is so powerful that the American Catholic Bishops invoked it in their letter on economic justice as one of the contemporary enunciations of the justice concerns we saw in Aquinas' position. The bishops use Rawls in defense of their controversial principle of "preferential option for the poor."

[33] Cp. animal rights.

CHAPTER 6

LIFE BOAT ETHICS: A PROBLEM IN ECONOMIC JUSTICE*

The issue of economic justice, in many cases comes down to the questions of whether there is, or what is the right, fair, or just way to distribute the goods and materials of the world. It is an issue that brings philosophers and economists cheek to jowl. One might want to say that economics as a descriptive science need not engage in questions of justice, whereas philosophy, or at least ethics, as a normative enterprise deals with rights and wrongs but has no recognizable scientific validity and consequently nothing to offer economics. We could then conclude that each enterprise ought to tend its own garden but that would be mere academic nicety. Milton Friedman and John Galbraith have a moral normative tone to their economics as surely as John Rawls and Robert Nozick recommend economic systems on the basis of their moral or ethical values. Like it or not philosophers and economists are wedded together, just as they have been from Aristotle, through the scholastics, up to Adam Smith, Bentham, Mill, and Marx. As an ethical theorist I have no choice but to evaluate economic systems, just as economists have no choice but to bring value presuppositions to their work. We might try to fool ourselves into thinking that philosophers can limit themselves to a strict study of individual justice, while economists can restrict themselves to a description of how differing economic systems work. That however, would be impossible as well as necessitate ignoring some of the most important questions we human beings face.

Indeed it would seem to be irresponsible. We really have no choice but to encroach on one another's territory. Irving Kristol reminds us that even though Adam Smith described the capitalist system in *The Wealth of Nations*, the work that made him famous initially was *The Theory of Moral Sentiments* where he asked moral questions such as what should be done with the money the rich get from their investments? The expectation of Smith was that a person of proper moral sentiment would invest to help others improve their lot thereby helping the indigent. According to Kristol, it was Malthus and Ricardo who, interested in merely the descriptive aspects of economic theory, presented man as if he lived only in an economy and ignored the fact that man also lived in a society with the moral duties consequent upon that. This divorce of economic realities from moral concerns then caused Economics to look "inhumane" so that someone like Carlyle could call it the "dismal science." According to Kristol it was this lack of concern for moral issues that made capitalism its own worst enemy in its struggle with socialist economic doctrines.[1]

In this short paper, I do not propose to solve any large issue of economic justice. Rather I want to present two opposing ethical views concerning what needs to be done about malnutrition and starvation in the world. The first position asserts a moral imperative that, if followed, would seem to disrupt a capitalist society. It is a pure ethical theoretical position in the sense that it takes little or no account of the economic consequences of adopting the moral position. The second position approaches the moral problem of starvation and malnutrition from a point of view pre-disposed to preserve certain characteristics of capitalism. The conclusions of this view seem to offend the sensibilities of moralists. Both arguments are persuasive in their own way. The respective solutions, however, seem contradictory and irreconcilable. My purpose in discussing them is to use them as an example that will help to show how moral issues require considerations of economic systems, as well as how solutions to moral problems that are reached by uncritically applying certain economic systems with their inherent priorities, beg important moral issues. It should then become clear that while ethical theorists cannot afford to be sanguine about the effects the application of their principles have on economic systems, neither can economists be sanguine about the moral consequences of the systems they defend.

The first position I will discuss is that of Peter Singer found in an article called "Famine, Affluence and Morality."[2] The second is that of Garrett Hardin, in an article entitled "Life Boat Ethics: The Case Against Helping the Poor."[3]

Singer's position begins by asserting what appears to be a simple moral principle: "[I]f it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we *ought* morally to do it."[4] For example, if I see a child drowning in a shallow pond, I have a moral obligation to wade in and save him even if it means getting wet and muddy. Singer then applies this principle to the problem of famine in the world. Since there are people in the world who are suffering from lack of food, shelter and medical care, if it is in our power to prevent these evils, we ought to prevent them.

This principle is not as innocuous for our economic system as it appears, and as Singer unpacks the requirements of the claim we begin to see why. First, Singer's principle takes no account of proximity or distance, and second, it makes no distinction between cases where the person is the only one who can prevent an evil or where the person is one among millions who can prevent an evil. On the matter of proximity or distance, Singer says,

> The fact that a person is physically near to us, so that we have personal contact with him, may make it more likely that we *shall* assist him, but this does not show that we *ought* to help him rather than another who happens to be further away. If we accept any principle of impartiality, universalizability, equality, or whatever, we cannot discriminate against someone merely because he is far away from us (or we are far away from him).[5]

Given modern communications and transportation systems that turn the world more and more into a "global village" we begin to recognize new obligations. As the world shrinks we find ourselves with the capacity to prevent evil in areas where it was impossible before. For Singer, the possession of modern means of communication, transportation systems and technological capabilities gives us powers we did not have before and consequently lays new moral obligations upon us. An important but still unrecognized difference has occurred in our moral situation as compared with our grandparent's situation.

Concerning the second point, Singer holds that whether I alone have the power to help or am one of a large number of people who can offer help makes no significant moral difference in terms of my personal obligations. Being part of a large number of people might make it psychologically easier not to do something, since I can point to others who are inactive, but that does not justify my doing nothing. "Should I consider that I am less obliged to pull the drowning child out of the pond if on looking around I see other people, no further away than I am, who have noticed the child but are doing nothing?"[6] Thus even if a society does not fulfill the obligation Singer outlines, this does not excuse me as an individual from helping where it is in my power.

The adoption of the principle that we ought morally to do what is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, has the effect of upsetting our moral categories by breaking down the distinction between our *duties* to others and charity. (Singer claims that charity is viewed as a gratuitous act, or supererogatory—an act that it would be good to do, but not wrong not to do.) Currently, giving money for famine relief is considered an act of charity, and there is nothing wrong with not giving. But, Singer says it follows from his principle that we *ought* to give money away, rather than, say, spend it on clothes we do not need. In sum, Singer is arguing that present categories make it an act of charity for a people living in affluent "developed" nations, whereas it is really a *moral duty*. This has radical implications and Singer expects objections.

For one, it appears to be a "drastic revision of our moral scheme." In our scheme we usually don't condemn those who indulge in luxury instead of giving to famine relief. This is so because we view moral precepts applying within a society and we feel no particular obligations to these outside our society. Moral precepts really function "so as to prohibit behavior that is intolerable if men are to live together in society."[7] But under this reading of moral precepts moral attitudes get shaped by the internal needs of the limited society and do not extend to people outside one's own society. Singer rejects this popular view:

> If this is an explanation of our common distinction between duty and supererogation … it is not a justification of it. The moral point of view requires us to look beyond the interests of our own society. Previously, as I have already mentioned, this may hardly have been feasible, but it is quite feasible now. From the moral point of view, the prevention of the starvation of millions of people outside our society must be considered at least as pressing as the upholding of property norms within our society.[8]

Here Singer hits the heart of the issue that of importance to us from an economic point of view. Property rights are sacred in American society. But if morality demands going beyond our particular society, those rights do not override his principle and in many situations his principle demands the surrender of property rights. It follows then that property rights even though they might be essential to preserving one's society, such as the American society, might have to be abandoned in certain situations if morality so demands. Clearly, it follows that, to the extent that excessive consumption and exploitation of the world's resources are required to maintain one nation's economy, morality requires those practices be abandoned.

Singer does not see this as a terribly radical or novel view. It is one that can be found in someone like Thomas Aquinas the thirteenth century philosopher-theologian, hardly a radical, who held:

> Now, according to the natural order instituted by divine providence, material goods are provided for the satisfaction of human needs. Therefore the division and appropriation of property, which proceeds from human law, must not hinder the satisfaction of man's necessity for such goods. Equally whatever a man has in superabundance is owed, of natural right, to the poor for their sustenance.[9]

Let us for the moment assume that Singer is correct in his account. What is one to say? It seems that if we are morally obliged at times to override property rights, and we have a twentieth-century and thirteenth-century philosopher insisting against Locke that they are not a natural right, then at times, an insistence on them might lead to the rejection of a moral obligation. If so, then *a fortiori*, capitalism or free enterprise, in those areas where property rights are absolutely required might find themselves as systems that are either immoral or at least prevent moral behavior. But is this so?

The usual defenses of capitalism are that as a system it was responsible for raising the standard of living throughout those countries where it is utilized to an unprecedented degree, and that it did this while maintaining the overriding value of freedom of choice as found in the market. One can grant that, we are better off than in Aquinas' day and probably better off in capitalist countries than in those dominated by social planning systems. But does a defense of the historical utility of capitalism and the appeal to it as a preserver of freedom get to the moral issue? Can the consequences of a system justify the practice within it, and the seeming insensitivity of the system to the needs of those outside it? Is there a response to Singer?

To my mind, one of the most intriguing answers to Singer is the answer that proposes that the earth is not a "global village" or a "spaceship." It joins the issue with Singer precisely because it begins from a radically different perspective of the world, and disagrees with Singer on an important point—whether his principle should be applied without regard to the circumstances of proximity or distance.

Garrett Hardin, in his article "Life Boat Ethics: The Case Against Helping the Poor" begins with the following observation:

> Environmentalists use the metaphor of the earth as a "spaceship" in trying to persuade countries, industries and people to stop wasting and polluting our natural resources. Since we all share life on this planet, they argue, no single person or institution has the right to destroy, waste or use more than a fair share of its resources.
>
> But does everyone on earth have an equal right to an equal share of its resources? The spaceship metaphor can be dangerous when used by misguided idealists to justify suicidal

> policies for sharing our resources through uncontrolled immigration and foreign aid. In their enthusiastic but unrealistic generosity, they confuse the ethics of a spaceship with those of a lifeboat.
>
> A true spaceship would have to be under the control of a captain, since no ship could possibly survive if its course were determined by a committee. Spaceship Earth certainly has no captain; the United Nations is merely a toothless tiger, with little power to enforce any policy upon its bickering members.
>
> If we divide the world crudely into rich nations and poor nations, two thirds of them are desperately poor and only one third comparatively rich, with the United States the wealthiest of all. Metaphorically each rich nation can be seen as a lifeboat full of comparatively rich people. In the ocean outside each lifeboat swim the poor of the world, who would like to get in, or at least to share some of the wealth. What should the lifeboat passengers do?
>
> First, we must recognize the limited capacity of any lifeboat, for example, a nation's land has a limited capacity to support a population and as the current energy crisis has shown us, in some ways we have already exceeded the carrying capacity of our land.[10]

Hardin joins the issue with Singer at several points. It is all very well for Singer to insist that we need to help others, but Singer has an all too optimistic view of the affluence of the "developed" countries. It is not the case that we inhabit a spaceship loaded to the gunnels with provisions sufficient to keep us sufficiently fed and clothed and comfortable for generations. Rather, we are running out of resources, or will shortly, and if we do not protect ourselves we will all be swamped. Hardin appeals to a standard move in ethics. The sanctity and application of principles such as Singer's hold only if there are not circumstances that force us into a dilemma which that us choose some people to live and others who will be condemned to death if we do not help. Early Greek moralists often argued about the obligations of a group of people who were clinging to a log in the sea. Suppose the log could only hold four and there was a fifth? Should they all drown together? Who should be allowed on the log? First come? Moralists tend to wither when such questions are asked.

If indeed the world is a lifeboat and has a limited capacity then we obviously cannot care for everyone. Who gets cared for? According to Hardin, those lucky enough to get aboard. Hardin insists that we ought not to feel guilty about good luck. Indeed Irving Kristol goes further,

> Capitalism does recognize, incidentally, that luck is a very important factor affecting the distribution of rewards in a market system. (As a matter of fact, all systems recognize this point except modern utopian systems, such as socialism.) Obviously, in order for a person to collect rewards of whatever kind, he has to be alive. The fact that he is alive is a matter of luck. We could have been hit by a truck.[11]

Hardin reinforces the lifeboat model by introducing the tragedy of the commons.

> The fundamental error of the spaceship ethics, and the sharing it requires, is that it leads to what I call "the tragedy of the commons." Under a system of private property the men who own property recognize their responsibility to care for it, for if they don't they will eventually suffer. A farmer for instance, will allow no more cattle in a pasture than its carrying capacity justifies. If he overloads it, erosion sets in, weeds takeover, and he loses the use of the pasture.
>
> If a pasture becomes a commons open to all, the right of each to use it may not be matched by a corresponding responsibility to protect it. Asking everyone to use it with discretion will hardly do, for the considerate herdsman who refrains from overloading the commons

> suffers more than a selfish one who says his needs are greater. If everyone would restrain himself; all would be well; but it takes only one less than everyone to ruin a system of voluntary restraint. In a crowded world of less than perfect human beings, mutual ruin is inevitable if there are no controls. This is the tragedy of the commons.[12]

Hardin does not sympathize with a position such as Singer's. Even worse, Hardin predicts that the sharing of resources will only overpopulate the people in the water and further compound the problem. Miracle foods lead to overpopulation, liberal immigration policies lead to an encouragement of irresponsible reproduction and further depletion of the available supplies. We might be able to prevent something bad from happening (starvation, etc.), but not without sacrificing something of comparable moral importance (our own survival?) If our survival is of paramount importance and moral importance at that, the situation described by Hardin falls outside Singer's restrictions. Hardin sums up in the following way:

> Clearly, the concept of pure justice produces an infinite regression to absurdity. Centuries ago, wise men invented statues of limitations to justify the rejection of such pure justice, in the interest of preventing continual disorder. The law zealously defends property rights, but only relatively recent property rights …
>
> Without a true world government to control reproduction and the use of available resources, the sharing ethic of the spaceship is impossible. For the foreseeable future, our survival demands that we govern our actions by the ethics of a lifeboat, harsh though they may be.[13]

Here, then, are two views, both of which seem to be persuasive on their own, but incompatible with each other. Singer seems to demand moral action without considering the economic effects of such action, while Hardin in his concern for the preservation of the economic system seems to jettison the moral point of view, or at least undermine its application. Should we conclude from this that if a moral philosopher approaches a problem of economic justice he will invariably find himself at odds with an economist committed to some sort of capitalist system? It would seem so, for there is as a matter of fact a strong egoistic bias in most versions of capitalism, insofar as they appeal to and are justified by the rewards and self-interest of the entrepreneur and the consumers he provides commodities for. It would be premature to view the situation as all that unresolvable. To unpack the various strands of the problem, however demands more space and time than available here. Consequently, I wish to limit myself to a few observations that might indicate how some of the incompatibilities might be dissolved. If we can resolve some in this case where we are faced with rather extreme positions, it would seem to follow that disparities in more moderate approaches would be fewer.

It should be noted initially that there are factual questions that might at least in principle be resolved. Is our lack of resources as desperate as Hardin would have us believe? Is the malnutrition as severe as Singer indicates? Such factual questions, however, are not the crux of the issue. Consequently, we will leave them aside and turn to other concerns.

Are we on a lifeboat or on a spaceship? Since moral principles must be applied in specific circumstances, and since the application might or might not be fitting, depending on those circumstances, it is important to recognize that there will be a significant difference in what we think *ought* to be done for the poor of the world if we think we are on a spaceship rather than a lifeboat or vice versa. Hardin might be right in asserting that a spaceship requires a captain and a central government. But it is not clear that our situation is exactly like a lifeboat either. Lifeboats imply that whoever is in the water started out on one large boat together. But this was not the case. Some of the people in the water would remind us, that if we are all at sea, each group started out in their own boat, that there was extensive pirating and stealing of possessions and only now, because of the rape and pillage do we have a shortage of boats for some while others live quite commodiously in their "lifeboat." What one might conclude from this is that either model, even though it had a heuristic function for a time, is simplistic and ought to be abandoned. We are on earth with a history and not on a lifeboat or a spaceship.

The fact that there might have been many boats at one time presents an even more serious difficulty concerning property rights and luck. Hardin recognizes that the people on the lifeboat might have stolen from the people in the water. He says, "We are all descendants of thieves." Since we stole from the poorer people do we not have some responsibility for them? Is it merely luck that put us in the boat or was it past exploitation? Hardin says, "Centuries ago, wise men invented statutes of limitations to justify the rejection of such pure justice, in the interest of preventing continual disorder. The law zealously defends property rights, but only relatively recent property rights."[14]

Hardin admits an injustice might have been perpetrated in the past, but to seek redress for past wrongs pushes the search for justice to absurdity. Hardin bases his rejection of justice on what is for him the higher claim of the value of order and survival. Such goals will only be achieved if we maintain a strong system of ownership or property rights. This however requires that we overlook in a good many cases equality and fairness of distribution.

This is clear if we ask who the order is for. We find it is for the sake of the "haves." The people with the luck to be descendants of thieves and occupy the boat. But is there not something cynical about Hardin's position? He is defending a crassly self-interested ethic, where actions are justified by their consequences, and not merely consequences such as the greatest good for the greatest number, but the greatest good for a select fortunate few, who got where they are by being "thieves" or at least the descendants of thieves. Pure justice might lead to absurdity, but Hardin's recommendations lead to gross egoism, a notoriously difficult position to defend ethically. If Hardin adopts such a position he simply refuses to adopt the moral point of view, a point of view that insists on judging the worth of actions on grounds other than consequences. If he does this there is simply nothing the ethicist can say to him, and if his position is required by his economic system, then it is at least an amoral economic system if not immoral.

But even if Hardin is not impressed by appeals to justice and equality, but only by arguments that appeal to consequences and consequences that are in the self-interest of the haves there might still be a response to him. Even from an egoistic point of view, his recommendations seem a trifle short sighted. After all if we were on a real lifeboat we could row away from the people in the water and protect our supplies.

Given the situation of the world however, it is as if we are in the water surrounded by more and more people who want to get in the lifeboat. We cannot escape them. If such is the case and we do nothing to help there is every possibility that they will attack and swamp the boat. This would lead to a tragedy more appalling than the tragedy of the commons. Hardin's model, which leads to complacency might mislead him into thinking there are no rewards for being concerned about distribution of goods.

But if we can raise questions about Hardin's consequentialism and egoism on both moral and practical grounds, is there anything to be said about Singer? Need we go as far as Singer suggests?

The contemporary ethicist William Frankenna would identify Singer's principle as one of four possible formulations of the principle beneficence. The four are:

1. One ought not to inflict evil or harm (what is bad);
2. One ought to prevent evil or harm;
3. One ought to remove evil;
4. One ought to do or promise good.[15]

The question is whether all of these are moral duties or whether some are acts of supererogation (i.e., acts of charity). According to Frankenna there is an obvious hierarchy and an ascending level of difficulty, and all of them are only prima facie duties that can be suspended for good reasons. They make an original claim on us, but given certain circumstances they can be overridden and not remain an *actual* duty. Imprisonment, for example violates the very first principle. Obviously, then, if we justify imprisonment we have reasons for overriding even the minimal position such as not to inflict evil or harm. If the first principle can be overridden, and if Singer's is more stringent than the first, which it is since it not only prohibits evil being done, but demands the prevention of evil, then it is clear that it need not in every case be raised to the status of an actual duty. Singer needs to address this problem more clearly. Further, he needs to tell us why, if he takes the second formulation as binding, he does not make his morality more stringent and demand the third and fourth.

Singer also needs to address the question of whether certain people have stronger claims on my beneficence, or each person's claim is as strong as every other person's. Even though Christian ethics interprets one's neighbor as including everyone who is alive, and ethicists often talk about universal application, where everyone counts as one, it is fairly obvious that this only works as a purely theoretical principle. Different roles and relations give different obligations. Obviously, as a parent, I have weightier obligations to my own children to do good to them, (e.g., make sure they are fed), than I have to my neighbor's child. Proximity does make a difference, and if not proximity in place, at least special human relationships confer special duties. Certain social relations put moral requirements on us. Certain loyalties do too, as do debts and obligations from gratitude. Where one draws the lines on social groups is a problem. Obviously being a member of a family imposes special obligations. Does being a member of a neighborhood, a company, a city, a state, a country, the human race involve the same obligation in each situation? Obviously not the same. The question that Singer and other ethicists need to address is, "What of kind obligation?"

In fairness to Singer, we ought to note that he does qualify his principle by saying it holds when it can be practiced "without sacrificing anything of comparable moral importance." While it is clear, however, that to give aid to the suffering in Bangladesh by taking food out of the mouths of my children would sacrifice the moral importance of my role as provider for my children, it is not so clear to what extent the sacrifice of property rights and the curtailing of a conspicuous consumption is of importance. If the practice were universalized, done by all, it would have adverse effects on the economy. Obviously, if we stop buying designer jeans there will be a ripple effect on the economy. Is that effect on the economy of moral importance? Singer needs to spell out to what extent economic stability is of moral importance.

Up to this point, I have merely raised difficulties without resolving any issues. In one sense I have no solutions. Since I am not an economist any attempt at proposing a moral-economic system would be ludicrous. Further, a systematic critique of the various models available would, for me, be impossible. Still I think it is important to see that some popular defenses of capitalism conflict with a stringent moral point of view. It is also important to see that the adoption of too stringent a moral point of view might destroy a system that brings about an immense amount of good. Still I would like to make one more point. I am not sure I can defend the following position, but I raise it for a point of discussion.

It seems to me that the problem of distributive justice alters if we are talking about property rights that protect the possibility of gross consumption as practiced in an affluent society, rather than property rights in a society struggling for survival. Put simply there seems to be a problem as to just how much affluence and conspicuous consumption is morally permissible, even if it is necessary to keep a specific system functioning.

Capitalism has been praised and defended for two reasons: first because as a system it has dramatically raised the standard of living across the globe. Second it is praised for the freedom of the market place it allows, thereby allowing people to determine their own needs, and to choose which they will fulfill, rather than having these needs determined by some economic planner. Point one seems well taken. Point two is more problematic, for it is not clear that the market is as free as some economists would have us believe, given that it is manipulated by the government on the one hand and the creation of needs by advertising on the other. Advertising promotes a grossly consumptive economy.

It is interesting to remember that in the initial stages of capitalism, thrift was regarded as a virtue. Whatever the disposition of the entrepreneur, lavish spending and consumption was frowned on by society. Such an entrepreneur could take pride in the fact that he made jobs available for others, but would not take pride in excessive frivolity. This is not to say there wasn't excessive consumption among capitalists, but at least it was morally frowned on as wasteful.

Capitalism can work without excessive consumption. This raises an interesting point. Could it be that the evil of capitalism seen by the opponents of the system in the underprivileged part of the world is not so much the entrepreneurial system as the conspicuous waste of our society—a waste fostered because capitalism needing ever new markets, preferred to create them by creating frivolous needs, rather than by expanding them to include people who had very few of the world's goods? The current decline in the American standard of living might not be a sign that our lifeboat is running short of supplies! Would it not be ironic if there were a second "invisible hand" leveling out and distributing the goods of the world in response to a moral imperative, an imperative that insists that the economic system will only succeed when the morally necessary leveling takes place?

NOTES

* "Life Boat Ethics: A Study in Economic Justice," *Encounter*, 5 (1987) pp. 79–94.

1 Irving Kristol, "A Capitalist Conception of Justice," *Ethics, Free Enterprise and Public Policy*, ed. by Richard T. DeGeorge and Joseph A. Pichler, N.Y. Oxford University Press, 1978, pp. 61–62.

2 Peter Singer, "Famine, Affluence and Morality," *Philosophy and Public Affairs*, Vol. 1, Spring 1972, pp. 229–243.

3 Garrett Hardin, "Life Boat Ethics: The Case Against Helping the Poor," *Psychology Today*, Vol. 8, no. 4, September 1974, pp. 38, 40–43, 123–124, 126.

4 Singer, p. 231.

5 Singer, p. 232.

6 Singer, p. 233.

7 Singer, p. 236.

8 Singer, p. 237.

9 Thomas Aquinas, *Summa Theologica* II-II, Q. 66, 7 as quoted in Singer, p. 239.

10 Hardin, p. 38, 40.

11 Kristol, p. 59.

12 Hardin, p. 41.

13 Hardin, p. 126.

14 Hardin, p. 126.

15 William Frankenna, *Ethics*, Englewood Cliffs, N.J., Prentice-Hall, 1967, p. 47.

ETHICAL ISSUES IN EMPLOYMENT LOYALTY AND AGENCY

CHAPTER 7

WHAT'S THE POINT OF A BUSINESS ETHICS COURSE?†*

ABSTRACT

The paper argues that the point of a business ethics course is to *improve* behavior in business, and that an essential ingredient in that improved behavior is *knowing* what's right or wrong. To make that claim, the paper attempts to dispose of three arguments that support the contrary claim, that business ethics courses are useless. First, it is argued that morals can't be taught, since they only result from training. Second, it is argued that such courses are unnecessary because business executives already know right from wrong. Third, it is argued that ethical knowledge is impossible, so there is nothing to teach. The first two arguments are dealt with briefly, and the third is addressed extensively. The paper argues that the skepticism about ethical knowledge is part of a pervasive "relativism" in our society, but shows that such a - relativism/skepticism is untenable and indicates how ethical knowledge is possible. If, then, knowledge of right and wrong is an essential ingredient for improving business behavior, and such knowledge can be imparted in an ethics course, there is some point to teaching business ethics.

Disreputable business practices, ranging from the merely questionable to the wholly indefensible, have become commonplace. Defective pacemakers are sold to unsuspecting medical teams; sugar water is sold as pure apple juice for babies; oil spills are half-heartedly cleaned up; rivers are deliberately polluted when unscrupulous companies find they can dump waste without being detected; entrepreneurs buy out healthy productive companies simply to make a quick buck; and the list continues.

To combat this apparent spread of unethical business behavior, society turns, among other places, to teachers of business ethics. The anticipation is that somehow a business ethics course will help improve unethical business behavior. Business ethicists respond by offering more and more courses, producing more and more texts, and a new industry of business ethics is created. But how good is its product?

As the number of courses increases, so does serious criticism of them. The New York Times recently carried an Op-ed piece by Michael Levin titled, "Ethics Courses: Useless." As the title indicates Levin argues that business ethics courses are practically useless (Levin 1990). Similarly, in a Wall Street Journal article entitled "Ethics Anyone? Or Morals?" Irving Kristol asserts that business ethics courses will not help improve the behavior of business people and it is naïve to think they will.

At the risk of appearing naïve, I will argue in this paper that somehow business ethics courses *can* and *should* improve business behavior, and if they don't there's not much point to them.

But why do Levin, Kristol and others think business ethics courses cannot improve behavior? Basically, three reasons are given. One reason is that people already know right from wrong so ethics courses are superfluous. A second reason is that moral behavior is the result of training and can't be improved by giving courses in ethics. A third reason, directly in conflict with the first, is a skeptical reason, which claims that no one can "know" right from wrong, so there's no ethical knowledge to be taught.

What these three approaches have in common is that they maintain that ethics courses are useless due to the very nature of ethics, even though they disagree with what that nature is, I propose to show that ethics courses might be "useless," but that uselessness is not due to the very nature of ethics, rather that uselessness is due to *the way ethics courses are taught*. The futility of ethics courses is not due to ethics being (1) already known, (2) unteachable, or (3) unknowable, but rather due to the way ethics is taught.

Let's briefly critique the reasons given why business ethics courses are useless. The first reason, that ethics courses are superfluous because people already know right from wrong, is found in Kristol's op-ed piece. There he claims that business ethics courses are unnecessary because,

> [M]ost corporate executives *know*, without prior instruction, the fundamentals of what is right and what is wrong in the conduct of their affairs. (Kristol 1987)

Let's assume that what Kristol has in mind is that most executives already know that it is unethical to do something like sell defective pacemakers. One hopes that is the case. Nevertheless, even though executives know that some actions are wrong, that does not mean they know about the ethical implications of all their possible actions. As a matter of fact, the existence of difficult case studies, about which sincere executives disagree, belies Kristol's claim. There are many areas where executives do not know what is right or wrong. Thus it might not be useless to examine the fundamentals that business executives know to see how those fundamentals are not in harmony, or how they come to be modified in application. Many of the issues in business ethics are fairly complex, and assuming we can gain some knowledge about ethical issues, analysis of them would seem somewhat useful. So even though some executives might know what's right in some cases, it seems presumptuous to claim they always "know." Hence, some ethical instruction might make them see more ethically viable alternatives to some of their usual courses of action.

The second reason given for the uselessness of ethics courses is articulated by Michael Levin. Levin claims that improved behavior is a matter of training and not of teaching. Thus, even if we *knew* what was morally correct behavior, and could be taught that, it wouldn't improve our behavior.

Our response to Levin will be brief, for he raises the age old question of whether and how virtue can be taught and to respond fully to that question would lead us too far. Within the constraints of space, we can merely hint why it is tenable to assume there is more to becoming ethical than mere training.

To insist that teaching ethics cannot affect behavior, only training can, seems to go too far. Even Aristotle, the chief proponent of the theory that ethical education was mostly training, who clearly distinguished between the artist who can use his "know-how" to subvert good ends without becoming less of an artist and the ethical person who must direct his skills of living to right ends to remain virtuous, still recognized that one didn't reach the ethical level simply by loving and doing the good. Even Aristotle insists that the truly virtuous person *knows* the good. Human beings might incidentally do good things, but if they don't *know* why what they are doing is good, they are not fully virtuous.

Though Levin seems right to insist that "Moral behavior is the product of training," he fails to see it can also be influenced by theoretical "reflection." Studies of developmental psychologists such as Kohlberg and Piaget indicate that there is cognitive moral development, which can be taught as well as moral development acquired through training. Further, training alone does not seem able to explain phenomena such as changing one's mind about moral issues. Isn't it possible to imagine that one can teach another to see other people as ourselves? If education other than training has no effect, how can one explain such phenomena as an ante-bellum southerner, raised to defend slavery, changing his mind? New reasons, and new considerations certainly cause him to see things differently and have different attitudes toward those things. Ethics, taught by examining and evaluating moral beliefs, causes people to examine their views of what's right and wrong, their views about the equality of all people, their views of what actions are justified and why, and a host of other matters. To examine one's views, and to critically evaluate one's reasons for holding a position, certainly opens one to the possibility of changing one's *mind*, and it is simply farfetched to think that a serious change of *mind* will not affect one's attitudes and hence one's behavior. Intellectual reflection can affect behavior. To see that one's reasons for holding a position are inadequate is, then, a way, though admittedly not the only way, to achieve moral improvement.

Let's sum up the response to Levin's contention that ethical courses are useless, because moral improvement only comes through training. We have seen that even though someone like Aristotle insists that moral education involves training, training is not the only way to improve ethical behavior. It is helpful to remember that to be ethical involves three activities: (1) knowing the good, (2) loving the good, and (3) doing the good. Any behavior, to be moral, must be deliberate and involve knowing. Otherwise it is simply reflex behavior. If knowledge of the good can be taught, and knowing the good is an essential part of ethical behavior, we can see how improvement in ethical behavior is tied to learning what is good.

But the assumption that knowledge of the good can be taught, moves us to a third consideration, the consideration of the moral skeptics, who say ethical knowledge is impossible. Is our assumption of the possibility, not to mention the teachability, of ethical knowledge justified? Having responded to the claims that ethics courses are useless either because people already know the good, or because ethics is something we can only be trained into, we need to turn to the claim that ethics courses are useless, because there is no such thing as ethical knowledge, the claim of the moral skeptics.

The existence, importance and pervasiveness of this problem is articulated by H. Tristam-Englehardt, Jr.

> Given the substantial arguments in the twentieth century against the possibility of rationally establishing any particular moral philosophy as intellectually canonical, the broad cultural success of applied philosophy and the continued interest in theories of justice are incongruous at best. At some point the power of skeptical arguments will undermine the universalistic claims of much of contemporary applied philosophy. Yet the contemporary cultural needs that promote interest in applied philosophy are likely to become more intense rather than abate. For these reasons, the significance of applied philosophy will need to be reconsidered (Tristam-Englehardt, 1989).

The intent of a major part of this paper is to address Tristam-Englehardt's concern and to "reconsider" the "significance of applied philosophy" in the light of the skepticism about ethical knowledge. For, as we have seen, if moral skeptics are correct, business ethics courses are useless because there is no knowledge to teach.

1. SKEPTICISM AS A PERVASIVE ATTITUDE

Kristol echoes Tristam-Englehardt, Jr. and goes even further, finding the skepticism that affects the teaching of ethics not only in purveyors of ethical theory but throughout our universities among academics who, "cheerfully allow that they are much too sophisticated to know right from wrong, and regard claims to such knowledge with disdain." (Kristol 1987) But along with the skepticism in the heart of ethical theory and the skepticism that pervades academia, there is a derivative skepticism that has spread beyond academia into the general culture.

In that general culture, one finds the skeptical attitude expressed in the use of such phrases as "who's to say?" Everyone's attitude to their ion; "There are no absolutes"; "It's all subjective"; "It's all relative"; "If you believe it, it's true for you"; "Don't judge"; or any number of other related phrases. I would claim that these phrases are the symptomatic expression of a pervasive skeptical attitude that is found in several closely related forms such as (1) *subjectivism*, which denies objective ethical knowledge and maintains, that everyone's moral opinion is "true for them"; (2) *emotivism*, which denies ethical knowledge by insisting that ethical assertions are merely expressions of pro- or con-attitudes that simply reflect subjective preferences; or (3) *relativism*, which holds that every group has its own set of moral beliefs that are "true for that group."

Alan Bloom in *The Closing of the American Mind*, notes the pervasiveness of this skeptical attitude in the general culture which, he finds expressed in a form of what he calls "relativism."

> This relativism … is necessary to openness; and this is the virtue, the only virtue, which all primary education for more than fifty years has dedicated itself to inculcating … the students, of course, cannot defend their opinion. It is something with which they have been indoctrinated. The best they can do is point out all the opinions and cultures there are and have been. What right, they ask, do I or any one else have to say one is better than the others (Bloom 1987, pp. 25–26)?

My experience as a teacher of ethics concurs with Bloom's. This relativism/skepticism is constantly reiterated in the phrases mentioned above, which I take to be evidence that the relativism has become a prevailing attitude of many if not most students, and at least some faculty. For evidence of the assertion that this relativism has taken hold among faculty, one need only reflect on the struggle of philosophers with Post-Nietzchean relativism and the adoption of the theories of Paul DeMan and Jacques Derrida in that brand of literary criticism known as deconstructionist critique.[1]

In short, there is a skepticism, which takes the form of relativism pervading society and influencing the teaching of ethics. What is more, even if most teachers of business ethics are not relativist/skeptics, a number of the business ethics textbooks they use reflect Tristam-Englehardt's ethical-theoretical skepticism. Rather than taking a position on issues the texts judiciously present both sides of an issue, with no attempt at resolution for the students. This approach is undoubtedly well-intentioned, taken in the name of tolerance and an attempt to be fair to all sides. But failure to resolve issues might turn ethics classes into eristic exercises of *sic et non*, that is, on the one hand position "A" seems correct, but then on the other hand, the contrary position, position "not-A," seems correct.[2]

An approach that involves looking at both sides of an issue can be fruitful if it is circumscribed by an agreed set of dogmas. Such was the *sic et non* approach of the medieval scholastics. But as Englehardt notes, today, approach of twentieth century ethics is a logical exercise presumably leading nowhere, since it is not circumscribed by such an agreed upon set of dogmas. Rather, it seems, that today, the reason for looking at all sides is the presumption that every opinion is self-validating for the person or group holding it. In short, the skeptical attitude, in a pluralistic, tolerant society, where there are two or more sides to every story, requires that every side be presented because every side has "its own truth."

In such an atmosphere the skeptic asks, "Who are ethics teachers to teach or promote their own views—views that, after all, are only their own subjective opinions?" Or: "Who are ethics teachers to say what's right or wrong? Whence their authority? Wouldn't they, after all, only be presenting the views of their society? Is that not ethno-centricism?" In the presence of such an attitude, the only acceptable approach is the detached, noncommital approach. Judging from the textbooks we use, one could conclude that even if we do not agree with the above, we succumb to the pressure of the reigning relativism.

Our contention is that such a non-commital approach which reflects the pervasive relativism/skepticism is not only not necessary, but also is not acceptable. It is not necessary because ethical knowledge is possible, and further it is not acceptable because it undermines the very teaching of ethics. But before we show how we take ethical knowledge to be possible and show why a relativistic/skeptical approach is unacceptable, we need to flesh out our claim that relativism is an expression of skepticism.

2. RELATIVISM AS SKEPTICISM

While there is a *descriptive* relativism that maintains the truism that every group has its own set of moral beliefs, and is not necessarily sceptical about ethics, there is an *ethical* relativism that goes further and asserts not only that every group has its own moral beliefs, but that those beliefs are correct (true) for that group. As John Hosper puts it,

> According to ethical relativism, if there are two tribes or societies, and in one of them it is believed that acts of a certain kind are wrong while in the other it is believed that acts of that same kind are right, both beliefs are true: in the first society acts of that kind are wrong and in the other society they are right. Polygamy is right in polygamous societies but not in monogamous societies. Thus there is no overall standard of right and wrong—what is right and what is wrong depends on the society of which you are a member. (Hospers, Human Conduct, p. 36.)

If Hospers' description of relativism is correct it is simple to see why it is a form of scepticism. If what is right or wrong depends on the society of which you are a member, then the only thing that validates your belief is your group's holding it. Thus, two groups can hold contradictory beliefs. But if two contradictory beliefs are true, then, logically every proposition is true or none are true. Hence there is no truth, and if a condition of knowledge is that a belief be true, then where there is no truth, there is no knowledge. Hence, the scepticism of relativism. Still, there are those who would claim that Hospers' and my characterization of relativism is too simplistic.[3]

According to that characterization ethical relativists would maintain that for a belief to be true two things are necessary: first, as we said, the group holds the belief. But the second condition, the one that allows truth, is the requirement that the belief coheres with the other beliefs of the group. Thus every belief coherent with the other beliefs held by a group is true, that is, justified and legitimized because of being held and cohering with the other beliefs. In the phrase, "true for the group," then, the word "true" means nothing more than *held* and *consistent* with other beliefs held by the group. In this way knowledge is reduced to mere internal consistency.

But does not knowledge require more than mere internal consistency? For example if a group believes that the sun has a god and the sun god demands infant sacrifice for the preservation of the tribe, then, infant sacrifice would be "justified" if all that is required for a belief to be justified is that the belief be held and be consistent with the other beliefs of the group. But, surely, justification requires us to look at several other factors. In the first place, the group of sun fearers seem to agree with other groups about the truth of the general principle that the common good of a group ought to be served. (Though they might not articulate it in those terms, their attitude of benevolence toward their group resembles ours.) We would suggest that such a general principle is universally recognized and can serve as an objective standard. But even if the sun fearer group's very general principle is justified or justifiable, the particular application of that principle, which requires infant sacrificing for the common good, is not justified. It is not justified, because, in spite of the fact that the view might be coherent given the beliefs of the group, the beliefs, for example, that there is a sun god and that the sun god demands infant sacrifice, are not true.

A thorough-going ethical relativist, of course, could maintain that it is possible for there to be a group that did not accept the principle of pursuing the common good. But, that means they hold morality, as we envision it to be just that, simply our society's view of what morality is. In that case if they were talking about "moral" matters they couldn't be talking in a language we understand, and what they did say would be incommensurable. Whereas, what we mean by morality has to do with the needs and goods for human beings as they are societally, and the justice among those human beings, and whereas, those human goods provide us with standards, the thorough-going relativist would deny those standards are objective. They are merely the standards our culture chooses to uphold. Hence the thorough-going relativist is a sceptic who continually denies any objective standard other than coherence can be used to justify a moral belief.

Herein, then, lies the scepticism. A set of beliefs, must, at some point be tied to the way things are. The sun god must be real. Or the fear must somehow be justified. Otherwise the set of beliefs, though coherent, is built on no solid ground. Hence a defense of relativism based only on an appeal to coherence constitutes a scepticism about knowing an objective world, where there is right or wrong. In the absence of any objective standard to justify a belief we are dealing with either scepticism or knowledge not worth calling knowledge. Since ethical knowledge involves more than just coherence of beliefs, a relativism which entails that ethical knowledge is impossible can only be a scepticism.

Still, to show that relativism is a scepticism, doesn't refute either relativism or skepticism. What we need to ask further are two questions. First, what if anything can be said in criticism of relativism, and second, how is ethical knowledge possible? We turn to the critique of relativism.

3. CRITIQUES OF RELATIVISM

There are three standard ways to show the difficulties with relativism. One involves showing that the phrase, "true for me," trivializes the meaning of true. A second objection involves a *reductio* argument which shows that if relativism or subjectivism were true then one would have to admit that Nazi beliefs about the moral probity of the holocaust would be correct at least for the Nazi's, or, on an individual level, Hitler's subjective beliefs about the holocaust would be correct, at least for Hitler. A third objection asks how we are to determine what constitutes a group, how many members are necessary to have a group, or how members of several groups are to reconcile the different conflicting beliefs between groups.[3] But these are objections to relativism as a theoretical skepticism.

Of course, these standard objections to relativism need not deter the serious theoretical relativist, for she can argue: first, that any use of "true" applied to moral beliefs is of course trivial, since there is no criterion of truth except coherence; second, that relativism exactly commits one to accepting Hitler's view as "true" for Hitler, but that just means Hitler holds that view, and, though we can be appalled by Hitler's beliefs, we really can't "know" whether he is right or wrong; and third, the question of what constitutes a group, although interesting is not decisive, for if by a group we mean a set of those having similar beliefs, nothing precludes a null set, a group with no members, or paradoxical as it sounds, a group of one. So we don't seem to be able to decisively refute theoretical relativism.

Even if one cannot refute theoretical relativism, there is an argument that bears investigation. It is an argument that maintains that whatever the status of theoretical relativism, it is impossible to live as a relativist.

This argument, that it is existentially impossible to live as a relativist is effectively presented by Mary Midgley in her book *Heart and Mind*. Midgley shows that relativism involves moral isolationism, a position impossible to live by. Midgley maintains that if each group's moral beliefs are self-validating, as relativism maintains, no person from any other group has any grounds for criticizing the beliefs of any other group. But it is simply a fact that no one can refrain from making moral judgments and that includes judgments about the adequacy of others' beliefs.

> The power of moral judgment is, in fact, not a luxury, not a perverse indulgence of the self-righteous. It is a necessity … [but] moral isolationism forbids us to form any opinions on moral matters … Moral isolationism would lay down a general ban on moral reasoning … This is essentially a program of immoralism and it carries a distressing logical difficulty. Immoralists like Nietzsche are actually a rather specialized sect of moralists. [They are parasitic on morality.] They can no more afford to abolish morality than smugglers can abolish customs regulations (Midgley 1981 p. 71-2).

Midgley continues, showing ironically, how the attitude of moral isolationism arose from taking a moral position seriously.

> Our involvement in moral isolationism [relativism/subjectivism] does not flow from apathy, but from a rather acute concern about human hypocrisy and other forms of wickedness. But we polarize that concern around a few selected moral truths. WE ARE RIGHTLY ANGRY WITH THOSE WHO DESPISE, OPPRESS OR STEAMROLL OTHER CULTURES. WE THINK THAT DOING THESE THINGS IS ACTUALLY WRONG. But this is itself a moral judgment. We could not condemn oppression and insolence if we thought that all our condemnations were just a trivial local quirk of our own culture. We could still less do it if we tried to stop judging altogether. Real moral skepticism, in fact could lead only to inaction, to our losing all interest in moral questions … We cannot avoid judging. What we must avoid are crude judgments (Midgley 1987 p. 72).

Midgley effectively shows that one cannot really be a relativist or skeptic. One can play at it intellectually, but at some point a person needs to make a judgment, which involves assuming the truth of that judgment, for what else is it to judge, but to assume one's position is correct? If that is so, people can only be skeptical or relativistic about beliefs they do not take seriously. Further, if people think they are right about their beliefs, they logically must think others who disagree with them are wrong about their beliefs and acting on those beliefs will effect harm or injustice. In other words, if they are concerned about preventing harm they must be ready at least to admonish the wrong doer.

Jonathan Bennett outlines this problem quite well.

> I imagine that we agree in our rejection of slavery and genocide … . But then we can say this because we can say that all those are bad moralities, whereas we cannot look at our own moralities (read: set of moral beliefs) and declare them bad. This is not arrogance. It is obviously incoherent for someone to declare the system of moral principles that he accepts to be bad, just as one cannot coherently say of anything that one believes it but it is false (Bennett 1974 p. 134).

If all this is the case then one cannot be a relativist. One can only play at it by adopting some sort of methodological skepticism. One cannot live as a relativist because one must make moral judgments and perforce find oneself in disagreement with others, and be "rightly angry" about some beliefs or behavior.

Very well! Suppose we have succeeded in showing that one cannot live as a relativist. Where does that leave us? For to say one cannot help but believe that one's beliefs are true certainly does not show that those beliefs are indeed true. So to show that one cannot live as a relativist still does not show that ethical knowledge is possible. Thus we still need to show how moral knowledge might be possible or what we take to be the equivalent, how we can have justified true moral beliefs.

4. THE POSSIBILITY OF MORAL KNOWLEDGE

To show, in any adequate fashion that moral knowledge is possible would require a longer excursion into moral epistemology, than is possible within the scope of this paper. However, we will attempt to sketch the route a defense of the possibility of moral knowledge might take.

Whether one thinks ethical knowledge, that is, justified moral belief, is possible or not depends to a large extent on one's starting point in addressing the issue. Does one start by adopting a methodic doubt and doubt every belief like Descartes or does one start by assuming that what one thinks is correct and doubt only those beliefs one has good reason to doubt? To doubt only when one has good reason to is congenial to an Aristotelian type of approach toward knowledge, which starts with common opinion (doxa) and an assumption that the opinion is probably correct, but allows the possibility of questioning that opinion if reasons to do so arise.[4] From this approach doubt makes sense only if knowledge is possible. Such a starting point offers a solution to the problem of knowledge not available to the skeptics who come out of the modern Cartesian framework.

One does not have to start with radical doubt. I remember a distinction I once learned from a critic of Descartes. He distinguished between "moral certitude" and "metaphysical certitude." On the critic's account, an example of metaphysical certitude is the certitude of the mother who, having stayed conscious through labor, and now cradling the child in her arms, knows that the child is hers. An example of "moral" certitude is that of the father who knows the child his, I have several children I "know" are mine. Why? *Because there is no good reason to think otherwise*. Thus "moral" certitude is the kind of sureness we have when there is no reason to doubt. I "know" my house is still standing because there is no reason to think otherwise and I live on such assured beliefs. I know I shouldn't lie, because in this case at least, there are no legitimate reasons to support the lying. This is moral certitude. Certainly the skeptic could imagine (*pace* Hume) the opposite … that the children are not mine, that my house has disappeared, that lying is justifiable. But, aside from the Quixotic Cartesian search for absolute certitude or a Platonic search for a world of forms, why side with the skeptic? What's the point of such radical doubt? We can *imagine* most anything. But, ethics needs to be grounded in *real* possibilities, not possibilities merely dreamed about.

If, then, we get rid of "methodic" doubt and examine the moral beliefs we have *no good reason* to doubt, we realize that, we have some pretty good reasons to accept a great deal of our moral beliefs. Take for example, the case of a person proposing to attend school. On examining that proposed course of action the person realizes that if she goes to school it will (1) benefit her as an individual, (2) benefit society, and (3) will not be unfair to others or violate her other commitments. In such an instance there is a *prima facie* case for the person to attend school, because there is every reason to attend and no good reason not to. On the other hand, activities such as abusing certain substances harm the individual, harm society, and most likely lead to the abuser's failing to meet obligations and commitments. With so many reasons against substance abuse, we can be fairly certain we are justified in condemning it as a practice. We "know" some actions are wrong by any sane sense of the word "know," and if anyone says they don't "know" such actions are wrong we are at a loss as to what to say to them. They speak a different language.

Incidentally, examination of the reasons we just gave show they are the reasons that provide the basis for the current categorization of ethical theories into egoistic, utilitarian and deontological, each of which gives primacy to one of the reasons we generally have for believing whether an action or practice is acceptable.

For example, the education case is a clear case of an action that benefits the agent (an egoistic consideration), benefits society (a utilitarian consideration), and meets the demands of obligations arising from promises and commitments and the concerns of justice and fairness (all deontological considerations). Similarly, the drug abuse case is a clear case where the practice is (1) harmful to self, (2) harmful to society, (3) unfaithful to promises and commitments, and (4) unfair and unjust.

Of course the examples we gave do not present us with moral dilemmas. But that is because moral dilemmas are precisely those cases where there are good reasons *for* doing things, as well as good reasons *for not* doing them. For example, an action that benefits society might not be fair, or vice versa, an action that is fair might harm society. Or some action that benefits me harms society or vice versa. Or it might not be clear whether some actions will be harmful or not to me or to society. Or, finally, there might be some actions that fulfill one obligation I have but violate another, that is, I might be faced with a conflict of duties. But these dilemmas are precisely the tough cases where one doesn't know quite what to do because one is "damned if he does and damned if he doesn't." But the fact that such difficult cases and doubts exist doesn't mean that every case is difficult or needs to engender doubt.

This, then, is the direction my epistemology would take. We would claim it is possible to have justified moral beliefs, based on good reasons of benefit and fairness and justice, beliefs we have no reason to doubt. That, in ethics is a close as we get to moral "knowledge." Within such an epistemological framework, one would only question those moral beliefs there is some *real*, not methodological, reason to doubt.

5. IMPLICATIONS FOR TEACHING BUSINESS ETHICS COURSES

Assuming, then, that moral knowledge is sometimes possible, but not always easy, and that gaining knowledge is to some extent important for improving moral behavior, we can see that the reasons given to show that ethics courses are useless are not decisive. Hence the uselessness of ethics courses is not due to the nature of ethics as something unteachable. Rather the futility of ethics courses is more than likely due to the way courses are taught.

What we propose to do now is attempt to defend the claim that ethics courses are useless because of the way they are taught, a way that adopts a method we shall call "methodological relativism." It would seem this method is adopted because of the pervasive attitude of relativism we talked about. Further, we would claim that the adoption of such a method not only makes ethics courses useless, but also might do harm to the student, which makes the method unacceptable.

Why does such an approach, which starts ethical debate from a skeptical stance, even if only a methodological one, have undesirable consequences? Levin mentions, correctly, that such courses cause loss of faith by the student in the effectiveness of ethical reasoning and *a fortiori* in the use of ethics courses (Levin 1989).

Kristol notes that,

> At worst, they (ethics teachers) can provoke severe moral disorientation among the young and immature. At the least, they encourage a superficial cynicism about moral beliefs that gradually pervades our culture and our society as a whole and makes the general task of moral education all the more difficult (Kristol 1987).

But why would such a loss of faith or disorientation or cynicism develop in the student? For one reason, because the student cannot take the teacher seriously. Consider two possibilities.

> [A] If on the one hand, the professor actually takes the relativistic approach seriously, the professor is committed to holding that:
> 1. no opinion is better than any other;
> 2. reasoning and being reasonable are a waste of time; and
> 3. ethics as justificatory evaluation is impossible.

In that case the student is right to ask "Why bother?"

> [B] If, on the other hand, the teacher does not take relativism seriously and is simply adopting relativism as a method, she is adopting a stance that she doesn't believe in. The student,

> in that case, encounters a professor who does not seem to *care* for any position enough to defend it and consequently seems to treat them all cavalierly.

In either case, why should a student bother with something the professor does not appear to take seriously?

In short teachers who adopt a relativistic stance either show that they don't take what they think seriously, or show that what they think should not be taken seriously, since no position can be judged better than any other. At best a teacher reverts to descriptive ethics where the teacher merely presents the world's best—on what ground we judge them "best" forever remains a mystery—but benighted (benighted because they really thought they were instructing in true beliefs) thinkers, whose speculations are aesthetically pleasing and psychologically interesting, but ultimately useless curiosity pieces from the museum of ideas past. To the extent, then, that teachers adopt this relativistic method, they appear as thinkers unwilling to take a stand in public on what they believe, and subject it to analysis. In this way they appear to lack the courage of their convictions. Such an approach, taken in the name of fairness to all sides, effectively trivializes what they are doing, and at best they appear to be fatuous blow-hards.

6. IS THERE A SOLUTION?

What should be done? How teach an ethics course so that it has a chance to make students better? I suggest adopting Socrates as a model. He believed there was knowledge of the good, which he passionately pursued, while maintaining a healthy skepticism about false coin. Further, I suggest adding to the Socratic quest the Aristotelian method of beginning any ethical investigation by examining the common experience of humankind, what Aristotle called (doxa), what Wittgenstein designates as "forms of life" we all agree on.[5] But, that is only the starting point. To paraphrase J. L. Austin, ordinary opinion is not the last opinion on the subject, but it certainly should be the first opinion.

Why common opinion? Because however independent we take our thinking to be, in reality it is not, for most of us agree on a large body of moral issues, simply because we share our "form of life." Too much emphasis on individualism, plurality, and diversity, the characteristics of an individual who stands out from the crowd, make us forget that for the most part we share a form of life with its communal and agreed on moral beliefs. So much so, that even the most idiosyncratic individual stands out on just a few moral issues while agreeing with the majority on most. (Pace Nietzsche.)

There is a further point to be made about this starting point in common experience. The reason this common experience is that a good deal of it is probably true. This point is made by Christina Sommers, who, like Kristol and Levin, shows a concern about the bad effects of a skeptical approach to ethics.

> [M]oral philosophers should be paying far more attention to the social consequences of their views than they are. It is as concrete as taking care that what one says will not effect adversely the students whom one is addressing. If what students learn from us encourages

> social disintegration, then we are responsible for the effects this may have on their lives and on the lives of their children … . This then is a grave responsibility, even graver than the responsibility we take in being for or against something serious as euthanasia or capital punishment—since most of our students will never these questions in a practical way (Sommers 1989).

Sommers, to avoid the skepticism, suggests common experience as a starting point, because if one learns from experience, one usually gets a good deal of things correct. Sommers cites William James' defense of common opinion as a starting point. As James said,

> [Experience] has proved that the laws and usages of the land are what yield the maximum of satisfaction … . The presumption in cases of conflict must always be in favor of the conventionally recognized good. The philosopher must be a conservative, and in the construction of his casuistic scale must put things most in accordance with the customs of the community on top (James 1948).

In line with this passage of James, Sommers concludes:

> A moral philosophy that does not give proper weight to the customs and opinions of the community is presumptuous in its attitude and pernicious in its consequences. In an important sense it is not a moral philosophy at all. For it is humanly irrelevant (Sommers 1989).

7. WHAT ETHICS COURSES NEED TO ADD TO COMMON OPINION

But, of course, simply beginning with common opinion is not enough to have ethics. As we said, common opinion, is not to be the last word. What does ethics add to common opinion? Here our appeal to the Socratic method comes into play. Ethics and ethics courses should involve us in the self-conscious analysis and evaluation of our commonly held, agreed upon, moral beliefs and principles. If we follow Socrates' lead, doing ethics is really just the examining of our life, for in a real sense, our human life, the life of ours that involves more than our unintended animal activities, is our life directed by our aims, and values, in short, our life directed by our moral beliefs.

Clearly, every human being has moral beliefs, that is, mental attitudes or dispositions about whether certain activities or life styles or character traits are good or fair. Further, every society or group has moral beliefs that it teaches to their members. The ethicist's task, then, is to begin with ordinary beliefs, and critically analyze and evaluate them, seeing if and why they are justified, and if not, to revise or abandon them.

We assume if ethics were done this way, Kristol would then see some use for it, for he spoke approvingly of the way it was taught before the twentieth century.

> Moral philosophy, as once taught … consisted mainly of the intellectual effort to justify by philosophical analysis alone and without reference to divine revelation, the main tenets of our traditional Judaeo Christian moral code … . But they (the ethicists) took it for granted that a moral code was a necessary and desirable enforcement of any human community—and, moreover, that our moral code, elaborated over two millennia of western civilization … was in most respects superior to any other … . One knew right from wrong, even if one went about knowing it in a different way (Kristol 1987).

From this perspective, the point of any ethics course is to present the commonly accepted moral beliefs to show how, or if, they can be justified, in short, to seek moral knowledge where knowledge means *justified belief*.

8. A FINAL DIFFICULTY: "WHO ARE YOU TO SAY?" TEACHING ONE'S VALUES

But there is a final difficulty we must address. Given the possibility that some of my beliefs are wrong, and that is a very real possibility, dare I teach them as if they are right? If we stay open to the possibility of being wrong, we can dispel that concern.

Consider the following. In reality, as we have seen, one cannot teach without taking some stand even if it is only the stand that a skeptical attitude is desirable, that tolerance is a virtue, that ethnocentrism is wrong, or that ethics is not a respectable intellectual discipline. These are not only second order, epistemological, or meta-ethical positions. They are themselves ethical positions about the proper attitude human beings should have toward truth, knowledge, other's beliefs and the role of the quest for truth in the fulfilled human life. Since we cannot help teaching positions, even if only inadvertently, why not sraightforwardly teach what one believes from where one stands. Since everyone has moral beliefs, why not teach them, instead of acting as if one were neutral? My suspicion is that more good would follow from teaching one's beliefs than from hiding where one stands in the name of impartiality.

Take anyone's ethical belief (this includes your own) that is seriously held. If the belief is presented in an ethics course by a *responsible* ethicist (remember ethics and the profession of ethicist is a human invention with its own standards of acceptable behavior) the presentation will involve analysis and evaluation of those values. If one's position agrees with society's then an *apologia* will take place, and if one's position disagrees with society's then reasons against society's position and for one's own will be forthcoming.

What are the worst consequences of an approach where ethicists teach positions they believe in? Take two worst case scenarios. Suppose that someone were a Nazi teaching ethics. If we agree that a Nazi shouldn't be allowed to teach his position, then we already condemn Nazism as a bad morality and consequently must hold that Nazi values are unreasonable and unacceptable. But then the ethicist, being reasonable will either not be a Nazi, or if he is a Nazi, what he is teaching will not withstand rational critique. (I assume those of us who think Nazism was evil have reasons for so thinking.)

Take a second scenario. Suppose someone teaches the value of apartheid. Note again the objection is made by citing a worst case scenario of what most of us already agree is a "bad" morality. The very act of objecting to defenders of Nazism or apartheid supporters shows that we at least at times believe that teaching certain values might be unacceptable and unreasonable and should not be done. But that would entail that we believe there are correct positions that should be taught. Since people are going to argue surreptitiously for their values in any case, what undesirable consequences arise from the conscious articulation and defense of them, even those we think are misguided? If the positions are incorrect and unreasonable, public profession should show that unreasonableness and if the positions are not incorrect, then they involve rationally defensible values.

But isn't teaching our own values different from starting with common opinion? Only to an extent, and not in all cases. We might have some idiosyncratic values different from society's, but by and large no one's position is radically different from, in the sense of totally incompatible with or incommensurable with, the position of their society. For example, Nietzsche, the great "transvaluer of values" recognizes that what makes human beings distinctive is their being the "promising" animal. Thus even the radical "immoralist" such as Nietzsche agrees with common experience that expects promises be kept and by his very actions of teaching and writing implicitly commits to valuing communication, integrity, truth, the good of self-assertion etc. In short, most of an ethicist's values will be in accord with his society's.

Further, ethics teachers are teachers, which means they are service oriented, and have committed to the obligations of a teacher as defined by their society. Even in the case where the values of the teacher differ from those of the society, the action of presenting and defending values is approved of and the presentation and defense of values the teacher takes "seriously" will be done in the value framework of her society. This presentation and defense will enable students to experience what is involved in a serious, responsible critique of society. In such a situation, students will also be exposed to a lived example of "the examined life" an example that should help develop the students' autonomy by coaxing them to examine and understand what implicit agreements (forms of life) move them. Such prodding should help students articulate their own positions.

Finally, it is helpful to remember that the evaluation or transvaluation of society's values and moral beliefs only occurs with respect to those beliefs where some disagreement already exists or arises. That about which all agree is rarely, if ever, challenged. Hence for a critical evaluation of a position, an opposing perspective must be presented, otherwise there is no dilemma, and chances are there is no problem to arise. If no problem arises, it could be none exists and the raising of one is simply superfluous or eristic. Since there are enough real problems to go around eristic arguments seem a wasteful superfluity.

In summary, not to teach and defend one's position, to act as if one is value neutral, as we saw, leads to either treating ethical issues eristically or creates skepticism or cynicism. If teachers and their students agree on most issues, the teachers can show the students what reasons ground their positions. If teachers and students disagree they can engage in a dialogue. In that dialogue, if the teacher's reasons are sound students are provided with tools (reasons) to use in the examination and critique of their moral beliefs; or if, as sometimes happens, the student's challenge to the teacher's reasons is sound, the teacher if honest (a value intrinsic to the teacher's role) should rethink her position and that position will be improved. In either case, a method that presents a position one holds seriously and attempts to justify seems a better approach than a method of adopting a detached neutral perspective.

9. CONCLUSION

In a sense we *are* our moral beliefs. They constitute our distinctly human projects. They indicate what we are, if that means we need to get our life in order to teach ethics so be it. Ours is a profession, and professionals have responsibilities. Teaching ethics as we do in the United States is a luxury. Not so in El Salvador and other countries, or recently and still, in communist block countries. But since it is a luxury, we tend not to take it seriously, and it gets treated as a frivolity, not having much point.

To sum up, if we firmly believe in (and think we have good reasons in support of) a course of action, why wouldn't we or shouldn't we try to persuade others to adopt such an attitude? In this way we can lead our students to know the good by insisting on justified beliefs while giving them an example of a person who cares about the good and within limits is committed to do it. Ethics courses taught in this way become more than a mere eristic exercise and have a point. Society and business would have to start taking such courses seriously. To the objection, this is an unwarranted use of power, the answer is, it is an honest one.

NOTES

† "What's the Point of a Business Ethics Course?," *Business Ethics Quarterly*, 4 (1991) pp. 335–354.

* I wish to thank several people who have read earlier versions of this paper and given invaluable advice for its improvement. They, however, should not be held accountable for the final results. In particular I would like to thank Henry Veatch whose lengthy and pertinent critique not only helped me see the flaws in the earlier structure, but afforded me some hints for improving the paper. It is no fault of his if that improvement has not come about. I would also like to thank John Serembus, for his help and insights and his seconding of Veatch's critique. Further, I would like to thank Norm Bowie who read the earliest version of this paper, the reviewers for the Business Ethics Society Meeting, where the paper was first summarized and the reviewers of the *Business Ethics Quarterly*. All of them agreed, correctly, that the paper needed restructuring. I trust the final product reflects some of that advice. Finally, thanks to the editors of the *Quarterly* for their comments and encouragement, Al Gini, for insisting on re-editing, and Pat Werhane for her early critiques of the relativism section, and, her insistence that I take a stronger stand.

[1] Without going into the issue at length, a good deal of the "relativism" can be seen in "postmodern" critiques of philosophy. Post modernism claims the death of a philosophy that could articulate the basis of the validity of right knowledge and correct action. This, according to Seyla Benhabib, is the view of philosophy as a meta-discourse of legitimation, articulating the criteria of validity presupposed by all other discourses.

"Once we have detranscendentalized, contextualised, historicised, genderised the subject of knowledge, the context of inquiry, and even the methods of justification what remains of philosophy? Does not philosophy become a form of genealogical critique of regimes of discourse and power as they succeed each other in their endless historical monotony? Or maybe philosophy becomes a form of thick cultural narration of the sort that hitherto only poets had provided us with? Or maybe all that remains of philosophy is a form of sociology of knowledge, which instead of investigating the conditions of the validity of knowledge and action, investigates the empirical conditions under which communities of interpretation generate such validity claims."

The "detranscendentalizing, contextualizing, historicizing and genderizing" of the knower, the context of inquiry and methods of justification, is exactly a move to "relativizing." We can substitute the word "ethics" where Benhabib uses "philosophy" and the existence of contemporary academic relativism with respect to ethical matters comes clear. Cf. Also, Richard Bernstein, *Beyond Relativism and Objectivism*, for an account of the development of relativism.

2 Cf. Robin Derry and Roy Green who note the sharp divisions of ethical theorists, who write text books, over issues in normative ethical theory. "The existence of these divisions makes one wonder why theory is viewed as helpful in any way. On the surface, it would seem that the opposite would be true: that a familiarity with theoretical debates would only complicate students' approach to concrete cases ... . [I]t would seem that the presence of fundamental disagreement at the theoretical level would tend to reinforce the impression, ... that ethics is ultimately "subjective" and lacks the rigor attaching to other, more "scientific" fields of study." "Ethical Theory in Business Ethics: A Critical Assessment," Robin Derry and Ronald M. Green, a paper delivered at the Business Ethics Society's annual meeting, 1989.

3 Cf. Richard Brandt's treatment of relativism in *Ethical Theory*, Prentice-Hall, Englewood Cliffs, N.J., 1959.

4 Here I have in mind the rather remarkable passage in the third chapter of book one of Aristotle's *Nichomachean Ethics* where he indicates that ethics will not yield exactitude. "Our discussion will be adequate if it achieves clarity within the limits of the subject matter. For precision cannot be expected in the treatment of all subjects alike, any more than it can be expected in all manufactured articles ... . Therefore, in a discussion of such subjects (the noble, just and good), ... we must be satisfied to indicate the truth with a rough and general sketch ... . For a well-schooled man is one who searches for that degree of precision in each kind of study which the nature of the subject at hand admits: it is obviously just as foolish to accept arguments of probability from a mathematician as to demand strict demonstrations from an orator." (1094b12–27)

In the next paragraph Aristotle continues to discuss the implications this has for answering some of the questions we have raised in this paper. We quote the paragraph in its entirety. Its relevance for our concerns is probably clear without our comments. Still, we will offer our observations in the parentheses.

"Each man can judge competently the things he knows, and of those he is a good judge. Accordingly, a good judge in each particular field is one who has been trained in it, and a good judge in general, a man who has received an all-round schooling. (Here Aristotle can be said to answer the question, 'Who's to say?') For that reason, a young man is not equipped to be a student of politics; for he has no experience in the actions which life demands of him, and these actions form the basis and subject matter of the discussion. (A thorough-going investigation of this matter, might yield some intersting results. Is what Aristotle says about the young, true?) Moreover, since he follows his emotions, his study will be pointless and unprofitable, for the end of this kind of study is not knowledge but action. (A course which does not lead to better behavior is pointless!) Whether he is young in years or immature in character makes no difference; for his deficiency is not a matter of time but of living and of pursuing all his interests under the influence of his emotions. Knowledge brings no benefit to this kind of person, just as it brings none to the morally weak. (If Alisdair Maclntyre is right in *After Virtue*, that ours is an emotive society, the claim that knowledge is of no benefit to one who lives under the influence of his emotions, would explain why ethical knowledge has so little standing in our society.) But those who regulate their desires and actions by a rational principle will greatly benefit from a *knowledge* of this subject. (Italics mine). So much by way of a preface about the student, the limitations which have to be accepted, and the objective before us" 1094b26–1095a 14. Paraphrasing the penultimate sentence, then, we get: "Business people who regulate their desires and actions by a rational principle, will greatly benefit from a knowledge of ethics." Aristotle, *Nichomachean Ethics*, translated by Martin Oswald. (New York, Bobbs-Merrill, 1962).

5 The claim that the acceptance of this form of life is simply the acceptance of western ethno-centrism, is, of course, a possible objection. To counter the objection we need to claim a human nature, that has objective needs and possibilities which are transcultural, given the way human beings have developed. I have no difficulty with that position and have argued it elsewhere. I would suggest, it is precisely Aristotle's rejection of Plato's world of forms that makes the good we are talking about in ethics, the good for human beings as they are and potentially can be, Cf. *The Justification of Ethical Principles*, Northwestern University Doctoral Dissertation, University Microfilms, 1970.

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CHAPTER 8

WHISTLEBLOWING AND EMPLOYEE LOYALTY*

> Three Mile Island. In early 1983, almost four years after the near meltdown at Unit 2, two officials in the Site Operations Office of General Public Utilities reported a reckless company effort to clean up the contaminated reactor. Under threat of physical retaliation from superiors, the GPU insiders released evidence alleging that the company had rushed the TMI cleanup without testing key maintenance systems. Since then, the Three Mile Island mop-up has been stalled pending a review of GPU's management.[1]

The releasing of evidence of the rushed cleanup at Three Mile Island is an example of whistleblowing. Norman Bowie defines whistleblowing as "the act by an employee of informing the public on the immoral or illegal behavior of an employer or supervisor."[2] Ever since Daniel Elsberg's release of the Pentagon Papers, the question of whether an employee should blow the whistle on his company or organization has become a hotly contested issue. Was Elsberg right? Is it right to report the shady or suspect practices of the organization one works for? Is one a stool pigeon or a dedicated citizen? Does a person have an obligation to the public that overrides his obligation to his employer or does he simply betray a loyalty and become a traitor if he reports his company?

There are proponents on both sides of the issue—those who praise whistle-blowers as civic heroes and those who condemn them as "finks." Glen and Shearer who wrote about the whistleblowers at Three Mile Island say, "Without the *courageous* breed of assorted company insiders known as whistleblowers—workers who often risk their livelihoods to disclose information about construction and design flaws—the Nuclear Regulatory Commission itself would be nearly as idle as Three Mile Island … . That whistleblowers deserve both gratitude and protection is beyond is disagreement."[3]

Still, while Glen and Shearer praise whistleblowers, other vociferously condemn them. For example, in a now infamous quote, James Roche, the former president of General Motors said:

> Some critics are now busy eroding another support of free enterprise—the loyalty of a management team, with its unifying values and cooperative work. Some of the enemies of business now encourage an employee to be *disloyal* to the enterprise. They want to create suspicion and disharmony, and pry into the proprietary interests of the business. However,

> this is labelled—industrial espionage, whistleblowing, or professional responsibility—it is another tactic for spreading disunity and creating conflict.[4]

From Roche's point of view, whistleblowing is not only not "courageous" and deserving of "gratitude and protection" as Glen and Shearer would have it, it is corrosive and not even permissible.

Discussions of whistleblowing generally revolve around three topics: (1) attempts to define whistleblowing more precisely; (2) debates about whether and when whistleblowing is permissible; and (3) debates about whether and when one has an obligation to blow the whistle.

In this paper I want to focus on the second problem, because I find it somewhat disconcerting that there is a problem at all. When I first looked into the ethics of whistleblowing it seemed to me that whistleblowing was a good thing, and yet I found in the literature claim after claim that it was in need of defense, that there was something wrong with it, namely, that it was an act of disloyalty.

If whistleblowing was a disloyal act, it deserved disapproval and ultimately any action of whistleblowing needed justification. This disturbed me. It was as if the act of a good Samaritan was being condemned as an act of interference, as if the prevention of a suicide need to be justified. It was as if my moral position in favor of whistleblowing was being challenged. The tables were turned and the burden of proof had shifted. My position was the one in question. Suddenly instead of the company being the bad guy and the whistleblower the good guy, which is what I thought, the whistleblower was the bad guy. Why? Because he was disloyal. What I discovered was that in most of the literature it was taken that whistleblowing was an act of disloyalty. My moral intuitions told me that axiom was mistaken. Nevertheless, since it is accepted by a large segment of the ethical community it deserves investigation.

In his book *Business Ethics*, Norman Bowie, who presents what I think is one of the finest presentations of the ethics of whistleblowing, claims that "whistleblowing … violate(s) a *prima facie* duty of loyalty to one's employee." According to Bowie, there is a duty of loyalty that prohibits one from reporting his employer or company. Bowie, of course, recognizes that this is only a *prima facie* duty, that is, one that can be overridden by a higher duty to the public good. Nevertheless, the axiom that whistleblowing is disloyal is Bowie's starting point.

Bowie is not alone. Sisela Bok, another fine ethicist, sees "whistleblowing" as an instance of disloyalty.

> The whistleblower hopes to stop the same; but since he is neither referee nor coach, and since he blows the whistle on his own team, his act is seen as a *violation of loyalty*. [italics mine] In holding his position, he has assumed certain obligations to his colleagues and clients. He may even have subscribed to a loyalty oath or a promise of confidentiality … . Loyalty to colleagues and to clients comes to be pitted against loyalty to the public interest, to those who may be injured unless the relevant is made.[5]

Bowie and Bok end up defending whistleblowing in certain contexts, so I don't necessarily disagree with their conclusions. However, I fail to see how one has an obligation of loyalty to one's company, so I disagree with their perception of the problem, and their starting point. I want to argue that one does not have an obligation of loyalty to a company, even a *prima facie* one, because companies are not the kind of things that are properly objects of loyalty. To make them objects of loyalty gives them a moral status they do not deserve, and in raising their status, one lowers the status of the individuals who work for the companies. Thus, the difference in perception is important and because those who think employers have an obligation of loyalty to a company fail to take into account a relevant moral difference between persons and corporations.

But why aren't companies the kind of things that can be objects of loyalty? To answer that we have to ask what kind of objects are proper objects of loyalty. John Ladd states the problem this way, "Granted that loyalty is the wholehearted devotion to an object of some kind, what kind of thing is the object? Is it an abstract entity, such as an idea or a collective being? Or is it a person or group of persons?"[6] Philosophers fall into three camps on the question. On one side are the idealists who hold that loyalty is devotion to something more than persons, to some cause or abstract entity. On the other side are what Ladd calls "social atomists," and these include empiricists and utilitarians, who think at most one can only be loyal to individuals, and that loyalty can ultimately be explained away as some other obligation that holds between two people. Finally, there is a moderate position that holds that although idealists go too far in postulating some super-personal entity as an object of loyalty, loyalty is still an important and real relation that holds between people, on which cannot be dismissed by reducing it to some other relation.

The chief exponent of the idealist position is Josiah Royce, Royce writes the following:

> Loyalty, then, fixes our attention upon some one cause, bids us look without ourselves to see what this unified cause is, shows us thus some one plan of action, and then says to us, "In this cause your life, your will, your opportunity, your fulfillment." … Loyalty has its domestic, its religious, its commercial, its professional forms, and many other forms as well. The essence of it, whatever forms it may take, is as I conceive the matter, this: Since no man can find a plan of life by merely looking within his own chaotic nature, he has to look without, to the world of social conventions, deeds, and causes. Now a loyal man is one who has found, and who sees, neither mere individual fellowmen to be loved or hated, nor mere conventions, nor customers, nor laws to be obeyed, but some social cause, or some system of causes, so rich, so well knit, and to him so fascinating, and withal so kindly in its appeal to his natural self-will, that he says to his cause: "Thy will is mine and mine is thine."[7]

Clearly for Royce the object of loyalty is not other individual persons but a cause that transcends individuals. Norman Bowie uses this passage of Royce to suggest that it might fittingly describe an employee's loyalty to a company. "With some proper changes in wording, Royce's characterization of virtue would serve as the basis for a corporate executive's speech on the importance of employee loyalty to the company where he or she works."[8]

What Bowie asserts is true in one sense. If an executive could get his employees to give the kind of loyalty that Royce describes, a loyalty without thought to himself or his fellow man, but to the will of the company, the manager would have the ideal kind of corporation from an organizational standpoint. As Paul R. Lawrence, the organizational theorist says, "Ideally, we would want one sentiment to be dominant in all employees from top to bottom, namely a complete loyalty to the organizational purpose."[9]

But because it is true that such a speech *could* serve as a basis for extolling loyalty in one's employees, it does not follow that it *should* serve in such a capacity. Rather I would argue it should not be used. There is a price to be paid for the type of loyalty that Royce subscribes to. Ladd tells us that Royce's view has been criticized because "it has the ethical defect of postulating duties over and above our duties to individual men and groups of men. The individual is submerged and lost in this superperson for it tends to dissolve our specific duties and obligations to others into 'superhuman' good."[10]

Such a devotion to a cause is frightening because one sees over and over in history the brutalization of individuals for the sake of causes. It is the kind of perversion that makes man for the Sabbath and not the Sabbath for man, or man for the law and not the law for man. Individual persons should be the ultimate beneficiaries of morals and virtues. If not, ethics and virtue gets perverted. One ought not to "identify one's will" with anything. Such a surrender constitutes the age old sin of Idolatry, unless of course the object of unity were God. But even then God would need to be a person and to be worthy of total surrender would have to be the perfect manifestation of good. Short of such a *summum bonum* there is nothing that should be the object of devotion as Royce describes. It is precisely this kind of identification of one's will with causes that the atomists, who include the liberal individualists, rail against. The railing is justified because such identification with causes allows us to justify the slaughter of the Albigensians, to exterminate the Jews, to lead people on death marches or to destroy a village to save it. It seems then, that if the object of loyalty is a cause or abstract entity, loyalty ought to be jettisoned. *A fortiori* if the object of loyalty in business is some cause it, too, needs to be repulsed.

Nevertheless, there does seem to be a view of loyalty that is so extreme. According to Ladd, " 'loyalty' is taken to refer to a relationship between person—for instance, between a lord and his vassal, between a parent and his children, or better friends. Thus the object of loyalty is ordinarily taken to be a person or a up of persons."[11]

This raises a problem that Ladd glosses over. There is a difference between a person or a group of persons, and, besides instances of loyalty, which relate to two people such as lord/vassal, parent/child, or friend/friend, there are instances of loyalty relating a person to a group such as a person to his family, a person to his team and a person to his country. Families, countries and teams are presumably groups of persons. They are certainly ordinarily construed as objects of loyalty.

But in such a group to what am I loyal? In being loyal to the group am I being loyal to the whole group or its members? It is easy to see the object of loyalty in the cases of an individual person. It is simply the individual. But to whom am I loyal in a family? Am I loyal to each and every individual or to something larger, and if to something larger, what is it? We are tempted to think of a group as an entity of its own, an individual in its own right, having an identity of its own. Thus Plato can see the state as a unified organism made up of the individual, citizens, and in the *Crito* has Socrates compared the state to a parent? Given the comparison Socrates then insists that he has a duty of loyalty to the state.

Think of the group as a being in its own right, though, we create a problem. To whom do we owe the loyalty, to the group, which now counts as an individual, or to the individuals in the group? Is the group for the sake of the individual or the individual for the stake of the group? The problem we had with Royce crops up all over again.

To avoid the problem of individuals being for the sake of the group, the atomists insist that a group is nothing more than the individuals who make it up, nothing other than a mental fiction by which we refer to a group of individuals. It is certainly not a reality or entity over and above the sum of its parts, and consequently is not a proper object of loyalty. Under such a position of course no loyalty would be owed to a company because a company is a mere mental fiction, since it is a group. One would have obligations to the individual members of the company, but one could never be justified in overriding those obligations for the sake of the "group" taken collectively. A company has no moral status except in terms of the individual members who make it up. It is not a proper object of loyalty. But the atomists go too far. Some groups like a family have a reality of their own, where as groups of people walking down the street don't. From Ladd's point of view the social atomist is wrong because he fails to recognize the kinds of groups that are held together by "the ties that bind."[12] The atomist tries to reduce these groups to simple sets of individuals bound together by some externally imposed criteria. This seems wrong headed.

There do seem to be groups where the relationships and interactions create a new force or entity. A group takes on an identity and reality of its own, which is determined by its purpose, and this purpose defines the various relationships set up within the group, the various roles. There is a division of labor into roles necessarily for the fulfillment of the purposes of the group. The membership, then, is not of individuals who are the same but of individuals who have specific relations to one another determined by the aim of the group. Thus we get specific relationships like parent/child, coach/player, etc., that don't occur in other groups. It seems then that an atomist account of loyalty that restricts loyalty merely to individuals and does not include loyalty to groups might be inadequate.

But once I have admitted that we can have loyalty to a group do I not open myself up to criticism from the proponent of loyalty to the company? Might not the proponent of loyalty to business say, "Very well. I agree with you. The atomists are short sighted. Groups have some sort of reality and they can be proper objects of loyalty. But companies are groups. Therefore, companies are proper objects of loyalty."

The point seems well taken, except for the fact that the kinds of relationships that loyalty requires are just the kind that one does not find in business. As Ladd says, "The ties the bind the persons together provide the basis of loyalty."[13] But all sorts of ties bind people together to make groups. I am a member of a group of fans if I go to a ball game. I am a member of a group if I merely walk down the street. What binds people together in a business is not sufficient to require loyalty.

A business or corporation does two things in the free enterprise system. It produces a good or service and makes a profit. The making of a profit, however, is the primary function of a business as a business for if the production of the good or service was not profitable the business would be out of business. Thus non-profitable goods or services are a means to an end. People bound together in a business are bound together not for mutual fulfillment and support, but to divide labor to make a profit. While we can jokingly refer to a family as "somewhere they have to take you in no matter what," you cannot refer to a company in that way. If you do not produce in a company or if there are cheaper laborers around, a company in order to fulfill its purpose should get rid of you. A company feels no obligation of loyalty. "You can't buy loyalty" is true. Loyalty depends on ties that demand self-sacrifice with no expectation of reward. Business functions on the basis of enlightened self-interest. I am devoted to a company not because it is like a parent to me. It is not, and attempts of some companies to create "one big happy family" ought to be looked on with suspicion. I am not "devoted" to it at all, or should not be. I *work* for it because it pays me. I am not in a family to get paid, I am in a company to get paid.

I might have a job I find fulfilling, but that is accidental to my relationship to the company. For example, I might go to work for a company as a carpenter and love the job and get satisfaction out of doing good work. But if the company can increase profit by cutting back to an adequate but inferior type of material as procedure, it might make it impossible for me to take pride in my work as a carpenter while making it possible for me to make more money. The company does not exist to subsidize my quality work as a carpenter. As a carpenter my goal might be good houses, but as an employee my goal is to contribute to making a profit. "That's just business!"

The cold hard truth is that the goal of profit is what gives birth to a company and forms that particular group. Money is what ties the group together. But in such a commercialized venture, with such a goal there is no loyalty, at least none need be expected. An employer will release an employee and an employee will walk away from an employer when it is profitable to do so. That's business. It is perfectly permissible. Contrast that with the ties between a lord and his vassal. A lord could not in good conscience wash his hands of his vassal nor could a vassal in good conscience abandon his lord. What bound them was mutual enrichment, not profit.

Loyalty to a corporation, then, is not only not required, it more than likely misguided. There is nothing as pathetic as the story of the loyal employee who having given above and beyond the call of duty is let go in the restructuring of the company. He feels betrayed because he mistakenly viewed the company as an object of his loyalty. To get rid of such foolish romanticism, and to come to grips with this hard but accurate assessment should ultimately benefit everyone.

One need hardly be an enemy of business to be suspicious of a demand of loyalty to something whose primary reason for existence is the making of profit. It is simply the case that I have no duty of loyalty to the business or organization. Rather I have a duty to return responsible work for fair wages. The commercialization of work dissolves the type of relationship the requires loyalty. It sets up merely contractual relationships. One sells one's labor but not one's self to a company or an institution.

To think we owe a company or corporation loyalty requires us to think of that company as a person or as a group with a goal of human fulfillment. If we think of it in this way, we can be loyal. But this is just the wrong way to think. A company is not a person. A company is an instrument, and an instrument with a specific purpose, the making of profit. To treat an instrument as an end in itself, like a person, might not be as bad as treating an end as an instrument, but it does give the instrument a moral status it does not deserve, and by elevating the instrument we lower the end. All things, instruments and ends become alike.

The treat a company as a person is analogous to treating a machine as a person or treating a system as a person. The system or company or whatever instrument gets as much respect and care as the persons for whom they were invented. It is important to remember that the primary purpose of business is to make profit. It is then seen clearly as merely an instrument and needs to be used and regulated accordingly. I owe it no more loyalty than a word processor.

As a corollary to what I have said, the claim that "business ethics" is an oxymoron is not unjustified. Business as an instrument is just that, an instrument and hence amoral. To *treat* corporations as people whether by treating them as objects of loyalty or thinking they are moral agents because they haw responsibility is misguided. Ultimately, the commercialization of everything—the buying of loyalty, for example, gets the tail wagging the dog.

Of course if everyone would view business in this way things might become more difficult for the smooth functioning of the organization since businesses could not count on the "loyalty" of their employees. Business itself is well served at least in the short run if it can keep the notion of a duty to loyalty alive. It does this by comparing itself to a paradigm case of an organization one shows loyalty to, the team.

Remember that Roche refers to the "management team" and Bok sees the name "whistleblowing" coming from the instance of a referee blowing a whistle in the presence of a foul. What is perceived as bad about whistleblowing in business from this perspective is that one blows the whistle on one's own team, thereby violating team loyalty. If the company can get its employees to view it as a team they belong to, it is easier to demand loyalty. Then the rules governing teamwork and team loyalty will apply. One reason the appeal to a team and team loyalty works so well in business is that businesses are in competition with one another. Effective motivation turns business practices into a game and instills teamwork.

But businesses differ from teams in very important respects, which makes the analogy between business and a team dangerous. Loyalty to a team is loyalty within the context of sport, a competition. Teamwork and team loyalty requires that in the circumscribed activity of the game I cooperate with my fellow players, so that pulling all together, we might win. The object of (most) sports is victory. But the winning in sports is a social convention, divorced from the usual goings on of society. Such a winning is most times a harmless, morally neutral diversion.

But the fact that this victory in sports, within the rules enforced by a referee (whistleblower) is a socially developed convention taking place within a larger social context makes it quite different from competition in business, which, rather than being defined by a context, permeates the whole of society in its influence. Competition leads not only to victory but to losers. One can lose at sport with precious few consequences. The consequences of losing at business are much larger. Further, the losers in business can be those who are not in the game voluntarily (we are all forced to participate) but are still affected by business decisions. People cannot choose to participate in business. It permeates everyone's life.

The team model, then, fits very well with the model of the free market system, because there competition is said to be the name of the game. Rival companies compete and their object is to win. To call a foul on one's own teammate is to jeopardize one's chances of winning and is viewed as disloyalty.

But isn't it time to stop viewing the corporate machinations as games? These games are not controlled and are not over after a specific time. The activities of business affect the lives of everyone, not just the same players. The analogy of the corporation to a team and the consequent appeal to team loyalty, although understandable, is seriously misleading at least in the moral sphere where competition is not the prevailing virtue.

If my analysis is correct the issue of the permissibility of whistleblowing is not a real issue since there is no obligation of loyalty to a company. Whistleblowing is not only permissible but expected when a company is harming society. The issue is not one of disloyalty to the company, but the question of whether the whistleblower has an obligation to society if blowing the whistle will bring him retaliation. I will not argue that issue, but merely suggest the lines I would pursue.

I tend to be a minimalist in ethics, and depend heavily on a distinction between obligations and acts of supererogation. We have, it seems to me, an obligation to avoid harming anyone, but not an obligation to do good. Doing good is above the call of duty. In between we might under certain conditions have an obligation to prevent harm. In whistleblowing can prevent harm then it is required under certain conditions.

Simon, Power and Gunnemann set forth four conditions: need, proximity, capability, and last resort. Applying these, we get the following: (1) There must be a clear harm to society the can be avoided by whistleblowing. We don't blow the whistle over everything. (2) It is the "proximity" of the whistleblower that puts him in the position to report his company in the first place. (3) "Capability" means that he needs to have some chance of success. No one has an obligation to jeopardize himself to perform futile gestures. The whistleblower needs to have access to the press, be believable, etc. (4) "Last resort" means just that. If there are others more capable of reporting, more proximate and they will, then one does not have the responsibility.

Before concluding, there is one aspect of the loyalty issue that ought to be disposed of, my position could be challenged in the case of organizations who are employers in non-profit are, such as the government, educational institutions, etc. In this way my commercialization argument is irrelevant. However, I would maintain that any activity that merits the blowing of the whistle in the case of non-profit and service organizations is probably counter to the purpose of the institution in the first place. If there were loyalty required, in that case, whoever justifiably blew the whistle would be blowing it on a colleague who perverted the end or purpose of the organization. The loyalty to the group would remain intact Elsberg's whistleblowing on the government is a way of keeping the government faithful to its obligations. But that is another issue.

NOTES

* "Whistleblowing and Employee Loyalty," *Contemporary Issues In Business Ethics*, edited by Joseph DesJardins and John McCall (Belmont CA: Wadsworth Publishing Co. 1984) pp. 142–147.

1 Maxwell Glen and Cody Shearer, "Going After the Whistle-blowers," *The Philadelphia Inquirer*, Tuesday, August 2, 1983, Op-ed Page, p. 11A.

2 Norman Bowie, *Business Ethics* (Englewood Cliffs, N.J., Prentice Hall, 1982), p. 140. For Bowie, this is just a preliminary definition. His fuller definition reads, "A whistle blower is an employee or officer of any institution, profit or non-profit, private or public, who believes either that he/she has been ordered to perform some act or he/she has obtained knowledge that the institution is engaged in activities which (1) are believed to cause unnecessary harm to third parties, (2) are in violation of human rights or (3) run counter to the defined purpose of the inspection and who inform the public of this fact." Bowie then lists six conditions under which the act is justified. pp. 142–143.

3 Glen and Shearer, Ibid.

4 James M. Roche, "The Competitive System, to Work, to Preserve, and to Protect," *Vital Speeches of the Day* (May 1971), 445. This is quoted in Bowie, p. 141, and also in Kenneth D. Walters, "Your Employee's Right to Blow the Whistle," *Harvard Business Review*, 53, no. 4. (1975), p. 26.

5 Sisela Bok, "Whistleblowing and Professional Responsibilities," *New York University Education Quarterly*, Vol. II, 4 (1980), p. 3.

6 John Ladd, "Loyalty," *The Encyclopedia of Philosophy*, Vol. 5, p. 97.

7 Josiah Royce, *The Philosophy of Loyalty* (New York: MacMillan Publishing Company, Inc., 1908), pp. 42–48, as quoted in Bowie, op. cit., p. 14.

8 Bowie, op. cit., p. 14. I ought to make it clear at this point that I thoroughly agree with Bowie's conclusions. His excellent treatment of whistleblowing is one of the best around. He is just a bit uncritical in adopting Royce's position, but he does qualify his acceptance of it with the following statement:

> "Nevertheless, loyalty to something. Suppose that one is loyal to an immoral cause or end. There is even loyalty among thieves. One should be loyal; but the object of one's loyalty should be morally appropriate. The virtue of loyalty does not require that one accept blindly the person or cause to which one is loyal. To be loyal to an employer does not require that the employee should do what the employer says come what may. Regrettably, however, it is just this kind of blind loyalty that some employers demand." p. 14.

Bowie is correct that loyalty is loyalty to something, and that the object of one's loyalty should be morally appropriate. I concur with this. But I disagree that an appropriate object of loyalty, moral or otherwise, is a cause. Bowie does not distinguish carefully enough between loyalty to persons or causes. Thus he talks willy nilly about loyalty to an employer, a company or a person, all different things as we will see. This flaws an otherwise excellent treatment of whistleblowing.

9 Paul R. Lawrence, *The Changing of Organizational Behavior Patterns: A Case Study of Decentralization* (Boston: Division of Research, Harvard Business School, 1958) p. 208, as quoted in Kenneth D. Walters, op. cit.

10 Ladd, op. cit., p. 97

11 Ibid.

12 Ladd says this about the mistake of the atomists:

> The social atomists fails to recognize the special character of the ties that bind individuals together and provide the basis of loyalty. Loyalty is not founded on just any casual relationship between persons, but on a specific kind of relationship or tie. The special ties involved arise from the two fold circumstance that the persons so bound are comembers of a specific group (community) distinguished by a specific common background and sharing specific interests, and are related in terms of some sort of role differentiation within that group. A friendship, a family, or such a highly organized group as a political, priestly, or military community illustrates the presence of these conditions. Special ties of this sort provide both the necessary and sufficient conditions for a person to be a proper object of loyalty, p. 97.

13 John B. Simon, Charles W. Powers, and Jon P. Gunnemann, *The Ethical Investor: Universites and Corporate Responsibility*, (New Haven: Yale University Press, 1972).

CHAPTER 9

WHY BE A LOYAL AGENT? A SYSTEMIC ETHICAL ANALYSIS*

The question guiding this reading is a rather simple one. "In a free market economic system, driven by motives of self-interest, why should an agent be loyal and act in another's (the principal's) interest, if it does not benefit the agent?"

Suppose a stockbroker who is your agent, having promised to service your account, is approached by a wealthier, more prosperous client. Given time constraints he cannot immediately service both. Delay in servicing your account will cost you money, but you will not know it. In such circumstances, if the point of being a stockbroker is to make money, why should your broker concern himself with your interests first if it will cost him? This question is an example of the perennial ethical problem, "Why keep a promise when it is inconvenient, in a society where the rules encourage everyone to do only what is convenient?" This is the general form of the ethical problem of agency in a market system.

There is an obvious answer to the problem: "Don't keep such promises. To do something for another in a system geared to maximizing self-interest is foolish." Such an answer, though, points out an inconsistency at the heart of such a system, for a system that has rules requiring agents to look out for others, while encouraging individuals to look out only for themselves, destroys the practice of looking out for others, that is, it destroys agency. This is structurally identical to the inconsistency Kant points out in his ethical theory. A society that has rules governing promise keeping, which begins to encourage keeping promises only when convenient, wills the disintegration of the practice of promise keeping.

Along these lines, this reading will highlight the paradox of agency in the market system by showing first, that the system needs agents who act on behalf of others' interests, and second, that the system (as promoted by neoclassical economists such as Milton Friedman) encourages self-interested behavior, which is antithetical to the self-sacrificing behavior necessary for agency. Consequently the system, if it is not modified, encourages the destruction of any meaningful notion of the agency-principal relationship. We will suggest a modification of the system using the loyal agent as a model.

A word about methodology: This reading utilizes ethical analysis, which involves two operations: first, the analysis, and second, the evaluation of either beliefs, practices, or systems having moral import. Economic systems have moral import since they do things for and to people. Hence they are subject to ethical analysis. Unlike some colleagues,[1] I do not think that agency theory as construed by economists "makes no ethical assumptions." Nor do I think that the concept of the self-interested rational maximizer is "neither good nor bad."

Many economists simply assume the ethical legitimacy of the free market system and the ethical neutrality of the self-interested rational maximizer model. But, paraphrasing Aristotle, any system like any activity aims at some good. It has a *telos*, that is, it is created for some purpose, which is its raison d'etre, that legitimates it for the society within which it exists. To analyze the ethical acceptability of these purposes is the task of ethical analysis. The agency relationship provides a fruitful area for investigating the legitimating purposes of the market system and business.

I begin with the assumption that any human system has a purpose, which defines and legitimates it. Adopting Wittgenstein's concept, I will treat these systems as "forms of life." Forms of life are conventional systems developed for some use, systems that develop rules implicitly agreed upon by those who share in that form of life. Following Wittgenstein's clue, ethical analysis begins by looking for agreement in forms of life, not explicitly contractual (deliberate) agreements, but learned agreements. The agreements are found in the language we use and concepts we share, which reflect the rules governing our societal living together. Our economic system (form of life) has rules we all agree on—rules about what's fair, or deserved, or just, or right. These rules are so much a part of our society, such basic principles, that we might not be conscious of holding them. But while a society's adoption of these rules implicitly legitimates them for the society, the task of the philosopher is to discover these rules, demonstrate their presence, and evaluate their worth.

In our society, the neoclassical theory of the social responsibility of business best articulates the rules of the economic system we live by. But when we philosophically analyze that form of life, we see a built-in paradox, for the basic rule is the rule of the market to maximize self-interest, but it is a rule legitimated by suggesting that such self-interest fulfills the utilitarian goal of producing the greatest good for the greatest number. Our form of life, in a sense, begins with Adam Smith's invisible hand, the guarantee that exclusively self-interested pursuit will benefit the whole of society. This classical ethical justification of the market system is adopted by neoclassical economic theorists such as Friedman and functions as an ethical justification of the economic system.[2]

Hence our society defines and legitimates business's purposes so that the goal of making a profit makes some behavior acceptable that ordinarily would be condemned. For example, we condone (justify) firing a loyal employee to cut costs under the rubric of "That's business," for we believe or agree with Friedman and the neoclassical theorists that "business's primary and only responsibility is to make a profit."[3] We agree on rules of fairness that dictate who "deserves" what and for what. The system has its own principles of distributive justice, and the economist does not just engage in descriptive tasks, for to the extent that he or she accepts the standards of the system, such as efficiencies at all costs, the economist accepts the justice of the system. "Profit" might descriptively mean value over costs, while "wages" are what are paid to workers, but we have generally agreed upon rules about who gets the profit and who "deserves" the profit, and why they deserve it. The answer to the *why* is the ethical reason. Anyone who has taught a course in business ethics and has asked students, *Who* is entitled to the profit? must be impressed by the unanimity of students in thinking it goes to the owner of the means of production. At any rate, how profit and wages get distributed and the reasons legitimating that distribution are prescriptive considerations dictated by the purposes of the system. In short, the economy does things to people, and defenders of economic systems necessarily become defenders of ethical systems.

Adopting this as the task of this reading, I will attempt to analyze and evaluate the market system and its relationship to the concept of agency, and will try to show that a system that recommends egoism but justifies that egoism by a utilitarianism is in conflict with any use of a concept of agency that implies loyalty. This will become clearer as the reading turns to an analysis of the principal-agent relationship.

1. AGENCY AND THE PROBLEM OF AGENCY

The agency relationship that concerns us is a business (economic) relationship modeled after other principal-agent relationships in which an agent is a person who acts on behalf of another person, the principal. The doctor-patient or lawyer-client relationships are clear examples of agent-principal relationships. The doctor as agent is expected to do what is best for the patient, the principal, and the lawyer as agent is expected to do what is best for the client. It is also expected, and this point is crucial, that, if necessary, the doctor or lawyer will set aside his or her own interests for the sake of the patient or client. Today a question has arisen about a doctor's responsibility to care for a patient with AIDS even if it means the doctor is risking his or her own health. The fact that the burden of proof is on those who argue against the doctor's being altruisitic shows that the ordinarily accepted notion of an agent is one who acts for another, even at a cost to himself or herself.

The principal-agent relationship arose in business because modern commercial relations needed people who could act on behalf of others. As Metzger says,

> It is difficult to imagine how modern commercial relations could continue without the legal institution of agency. If agency law did not exist, an individual proprietor's ability to engage in trade would be restricted by the need to make each contract for purchase or sale in person. Because they are artificial persons that can act only through their agents, corporations could not function without agency law. Agency makes it possible for such actors to expand the range of their economic activities by increasing the number of transactions that they can complete within a given time.[4]

So agents are necessary for business. While there might be cases where the entrepreneur is the sole owner, makes all the purchases, runs the entire business, and acts as his or her own agent, as soon as a business expands, the owner or entrepreneur needs agents to act on his or her behalf.

The original concept of agency used in business was a legal concept that defined agency as "a two-party relationship in which one party (the agent) is authorized to act on behalf of and under the control of the other party (the principal)."[5] The laws of agency imposed a specific duty of loyalty on the agent. Robert Clark identifies this as a "fiduciary duty of loyalty" contained within the law's concept of agency, a duty conceived in order to "help deter abuse of managerial discretion."[6]

Such a duty of loyalty means agents cannot always put themselves first. Clark, in support of the claim that agents have a duty to put the interests of the principal before their own, quotes Justice Douglas's "Seven Commandments of the Fiduciary Relationship." The first commandment clearly requires periodic self-sacrifice on the part of an agent. "He who is in such a fiduciary position cannot serve himself first and his cestius second."[7] Further, Clark asserts that in the law, almost by definition, the manager's job, as agent, is to act on behalf of others in carrying out corporate business activities.[8]

Since the first application of the agency-principal relationship to commercial ventures required loyalty, the concept of agency logically implied loyalty. However, as economists began to address the concept of agency, they dropped the notion of loyalty. My contention is that it was necessary for them to drop the notion of loyalty because the view of human nature that they adopted was the view of the self-interested rational maximizer, a view incompatible with any notion of a loyal agent. In order to see this, let's look at how the problem of agency arose for economists.

2. THE ECONOMISTS' PROBLEM OF AGENCY

Jensen and Meckling[9] note that Adam Smith raises the problem of agency in the following passage:

> The directors of such (joint-stock) companies, however, being the managers rather of other people's money than of their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master's honour, and very easily give themselves a dispensation from having it. Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.[10] Adam Smith *The Wealth of Nations*, 1776, Modem Library, 1937, p. 700

Pratt and Zeckhauser state the problem for twentieth century readers:

> A predominant concern for an economy, discussed since the time of Adam Smith, is to assure that production is conducted in the most efficient manner … . But even if we could figure out, or were willing to let the market figure out, the most efficient way to produce goods, there would be the problem of ensuring that each individual perform his or her agreed-on task.[11]

Economists, then, seek ways "to structure an agreement that will induce agents to serve the principal's interest,"[12] and what was a solution for lawyers becomes a problem for economists. For lawyers, agents are, by definition, individuals committed to being loyal, individuals bound by their word or their fiduciary bond. For economists, agents need inducement to fulfill their agency obligations because economists view human beings as self-interested rational maximizers, self-interested in the sense of selfish. We define selfish behavior as self-interested behavior at the expense of others. That means that given a conflict of interest, individuals will always put themselves first. (Any other view of self-interested becomes vacuous, for there is nothing wrong with putting oneself first, if no one else suffers. But do humans invariably put themselves first, that is, are they selfish? The crucial situations in life are those where the pursuit of one's own interest will hurt another. If there are times when humans put their interests aside, we need to be able to explain this altruistic behavior and factor it into our predictions. If there are not these times, then the view of self-interested maximizers is equivalent to the view of selfish maximizers. The failure to make the distinction between self-interested and selfish is crucial and leads to several of the difficulties we will address in this reading.)

Hence for economists, inducing the agent to do the principal's bidding is a problem because they adopt the paradigm of the self-interested rational human. This view of economic man expects no altruistic behavior, and hence no loyalty. From such a perspective, no predictions are made that would assume loyal non-self-interested behavior.

As we saw, Smith wrote that we could not expect "that (managers) should watch over other people's money than their own." While fiduciary responsibility requires just that, the economist's view of a human being does not expect adherence to altruistic fiduciary responsibility.

Clearly, there is an extent to which Smith and the economists are right. Human beings are self-interested and will not always look out for the interests of others. But there are times they will set aside their interests to act on behalf of others. Agency situations were presumably set up to guarantee those times. But agency, then, assumes the possibility of other-directed behavior. If, like the economists, we assume no altruistic behavior possible, we radically alter the concept of agency and skew the problem of agency costs.

But do economists make such an assumption of exclusively self-interested behavior? I think so. To show that, we will look at two attempts to set up the problem of agency costs, beginning with the attempt by Terry Moe. According to Moe, "The agent has his own interests at heart, and is induced to pursue the principal's objectives only to the extent that the incentive structure imposed in their contract renders such behavior advantageous."[13]

This implies that agents act exclusively out of self-interest, for it claims that the agent will be induced to pursue the principal's objectives, "only to the extent" that such behavior is advantageous to the agent. But an agent who acts for another only when it benefits the agency is not really an agent. This way of setting up the problem destroys the very concept of an agent, because it assumes altruistic agents are impossible.

But such an assumption has serious consequences. As we already saw, it destroys the original concept of agency. Second, to the extent that it is wrong and does not factor in altruistic behavior, it skews predictions of behavior. But more, as it gets accepted as a legitimating reason for certain behavior in our form of life, it becomes subtly self-fulfilling. In short, if I think humans are always going to be selfish and cannot help but be so, it becomes the height of foolishness to sacrifice myself or to predict their behavior on any other than selfish grounds. This is a classic example of self-fulfilling prophecy. Finally, such a prediction disintegrates the very concept of agency. After all, *ought* implies *can*, and if I cannot go against my nature and my nature is exclusively self-interested, I would be foolish to expect I could act otherwise and expect others to act otherwise. This makes the agency relationship foolish.

Not only does the assumption have bad consequences, but it is also mistaken. As we said, it is true that people act in their own interest most of the time, but there are clearly times when they don't—when they act in the interest of others. Factoring in those times when behavior is not exclusively self-interested would seem to be important for any scientific explanations or predictions.

Of course defenders of psychological egoism, the theory that all human behavior is always self-interested, would deny the above. But enough has been written about the tautological or trivial nature of that claim, which makes behavior self-interested by definition. Ironically, though, some of the best evidence against psychological egoism is found in the operation of agents. That is, when we look at people acting on behalf of others as their agents, we see people who set aside their own interest for the sake of others. To show the falsity of Moe's claim, we need only substitute the word "doctor" for the word "agent." Remember that Moe cites the doctor as a prime example of an agent. So substituting "doctor" for "agent" in Moe's quote, we get the following assertion: "The doctor has his own interests at heart, and is induced to pursue the principal's (the patient's) objectives (health) *only to the extent* that the incentive structure imposed in their contract renders such behavior advantageous."

But is this not patently false? Do doctors really pursue the patient's health only to the extent that pursuit is advantageous to the doctor? Hence, the manner in which Moe characterizes agents is not always true of doctors (hopefully it is rarely true), and doctors are a prime example of agents.

Perhaps, though, Moe's characterization of agents is true in systems where the incentive structures make self-interested behavior the norm, for example, in a business structure. If that is the case, there is a real difference in the notion of an agent as ordinarily used and the notion of the agent as it is used in systems having self-interested incentive structures like the business structure. Thus Moe could restrict the self-interested assumption to business practices so that only in the context of business does the agent act opportunistically. Human beings in the business structures then would be viewed as acting in a thoroughly self-interested manner, and Moe's passage could read, "In business the agent has only his own interests at heart." This sounds very much like Adam Smith's view and the latter day view of Friedman and other neoclassical economists.

But there is a problem with this view, for Moe does not intend to restrict his claim to business structures. Rather, he thinks that the economic analysis of the problem of agency can cover organizations of all kinds. He cites with approval the following passage of Jensen and Meckling's seminal work on agency:

> The problem of inducing an "agent" to behave as if he were maximizing the "principal's" welfare is quite general. It exists in all organizations and in all cooperative efforts … . The

> development of theories to explain the form which agency costs take … and how and why they are born (sic) will lead to a rich theory of organizations which is now lacking in economics and the social sciences generally.[14]

A theory of organizations pervading the social sciences, which is used to make policy decisions based on the rational maximizer paradigm, is enough to give one pause, for two reasons. First, predictions will be based on false assumptions of human behavior, and second, if we use those false assumptions about others in calculating our responses to them, they become self-fulfilling prophecies.

But let us return to the claim that economists assume exclusively self-interested behavior. We find that assumption also made by Jensen and Meckling. They do not categorically assert psychological egoism, but they use it as a working hypothesis. "If both parties to the relationship are utility maximizers, there is good reason to believe that the agent will not always act in the best interests of the principal."[15]

But why assume that both parties in an agency relationship are always utility maximizers? Rather, is it not the very nature of an agency relationship to require agents to set aside their own utility? For example, a student engages me to write a letter of recommendation for her. But the student doesn't assume I am a self-interested utility maximizer, so the student doesn't assume a problem of agency. From the student's point of view I am a professor, and part of my job, one that is tedious and hardly to my advantage, is to write a certain amount of letters of recommendation. The student assumes this is done because most teachers are supposed to do this.

But let's return to Jensen and Meckling's quote: "There is good reason to believe that the agent will not always act in the best interests of the principal." But what are those good reasons? When won't the agent act in the best interests of the principal? Only when it is detrimental to the agent? But that is precisely the time when agency is needed. And to say that agents act on their own behalf when their interests would suffer if they don't is to acquiesce in psychological egoism and make agency impossible. If there are factors other than self-interest motivating the agent, it would behoove the economist to discover them and modify the assumption. Economists who use the rational maximizer paradigm exclusively turn agency on its head, for if human beings are exclusively rational maximizers, agency on behalf of others is impossible.

Now, the implications of this are arresting. We can expect the original concept of agency, which contained notions of loyalty, fidelity, stewardship, trust, and concern for others, and hence implied a view of human nature that was at times altruistic, to be changed, in the hands of the economists, into a concept of purely contractual relationships made between rational maximizers, such that every human relationship is an agency relationship, and the notion of agency loses any special force. But this is exactly what happened in recent work on agency.

Note how Pratt and Zeckhauser described the agency relationship: "Whenever one individual depends on the action of another, an *agency relationship* arises. The individual taking the action is called *the agency*. The affected party is the *principal*."[16] But relationships where one individual depends on another are pervasive. Thus Pratt and Zeckhauser see the relationship as "pervasive in business. Recognizing this recurrent pattern, which underlies a variety of surface forms, helps explain a great deal about how business is organized. That is, business' relationships are structured so as to enable principals to exert an appropriate influence on the actions of agents."[17]

Of course, the agency relationship viewed this way is pervasive. But it is pervasive not only in business; it is pervasive everywhere. If an agency relationship exists "*whenever* one individual depends on the actions of another," then every relationship is an agency relationship. But such a description distorts the meaning of agency. Slaves depend on masters, and as Hegel showed, masters depend on slaves, but is the master-slave relationship an agency-principal relationship? In one sense every person can be shown to depend on every other person's actions. But if all agency involves is a dependent relationship with no further specification, then the "agency relationship" is simply a relationship and nothing is gained by adding the qualifier "agency" to it. But such a pervasive concept is not rich and can hardly explain a great deal about how business is organized. The agency relationship can be pervasive in business, then, only at the cost of the concept's becoming vacuous. An employer is not the agent of the employee even though the employee *depends* on the employer. But the employee might be the agent of the employer.

Thus far we have seen that "agency" at one time meant a relationship requiring loyalty and fidelity in the service of another and was a solution to a limited number of situations in business. An agent who lived up to his or her moral commitment of loyalty was an efficient solution to Smith's problem of getting one person in business to act for the sake of another. In most cases, even today, as a matter of fact, a loyal agent will be the most efficient solution to the problem of agency costs but then only where agency is limited in its applicability.

3. AGENCY COSTS

What impact does the above have on the problem of agency costs? We wish to suggest that the reason the agency literature has become so popular is that agency presents a solution to some costs rather than a problem. That is, if we have loyal agents, some agency costs are reduced. But what are these costs?

In agency theory there is talk of transaction costs, that is, what it costs to get the agent to do the principal's bidding. Since an agent is to do what is in the best interests of the client or principal, and since the agent is a different person with his or her own perceptions and interests, at least three types of costs arise: (1) Because the agent needs to learn what the principal needs or wants, there are information costs required to instruct the agent; (2) there is the cost of checking, or auditing the agent's behavior to see if what the agent does is done right—the monitoring costs; and (3) since the agent has his or her own desires, which might conflict with the principal's, some costs will be required to get the agent to do the will of the principal—motivating or policing costs. These monitoring, motivating, or policing costs are the costs that concern us in this reading. There is no way to avoid the costs of information and mistake correction. But at times the agent's loyalty can eliminate motivating and policing costs. So we need to ask what incentives or motivations are likely to bend the agent's will to the will of the principal.

Four possible types of motivation are usually recommended. The first two are the obvious modes of motivating—rewarding and punishing. A principal can engage in positive reinforcement with the use of money or other incentives (the carrot) or penalties (the stick) to encourage the agent. Besides these motivators, the principal has the law as a prod in the form of agency law, which requires a certain loyal behavior from the agent. Finally, some economists recently have suggested that there is a cost utility in encouraging ethical, that is, "altruistic" behavior. For example, Eric Noreen in an interesting article suggests that agents in business adopt ethical principles, because the adoption of such principles, which stress keeping promises, meeting obligations, and acting altruistically or even loyally, will reduce transaction costs and lead to more efficiency. He suggests, "At least some varieties of ethical behavior are not to be scorned; they are a necessary lubricant for the functioning of markets."[18] These claims are based on studies on game theory, which show that in some circumstances other-regarding behavior rather than competitive behavior leads to more productive results. The fourth motivator, then, is an appeal to other-regarding ethical principles.

Along with economists such as Noreen, there are a number of organizational theorists for whom loyalty is productive of efficiency. Obviously, if principals can get agents to take their fiduciary responsibility seriously, policing costs will be reduced and greater efficiency will result. In this vein, Paul Lawrence, the organizational theorist says, "Ideally, we would want one sentiment to be dominant in all employees from top to bottom, namely a complete loyalty to the organization purpose."[19]

But there is a problem with Noreen's and Lawrence's approach. Its appeal to altruism or loyalty runs counter to the assumption of humans as exclusively self-interested and hence looks naïve to those adopting an opportunistic view of human beings. For hard-nosed economists, appeals to ethical concerns such as loyalty necessarily look naïve because of the egoistic view of human motivation that they adopt. They expect self-interested, profit-oriented behavior. Hence the insistence that the system be guided by the self-interested pursuit of profit undermines all attempts such as Noreen's to bolster loyalty or cooperation or team spirit. With respect to agency obligations, this insistence on self-interest creates a paradox, for the agent is required to suppress his or her self-interest for the sake of a principal. But if the agent is like everyone else—entirely self-interested, as the egoistic view of the atomistic man suggests—why should or would that self-interested agent give up his or her own interest for the sake of a principal's interest, when the principal's interest conflicts with the agent's? On this account, there is no good reason. Thus economists are left with the anomaly of a system that rests on self-interest needing to find self-interested motives for individuals to give up their self-interest—a selfish reason for not being selfish, so to speak. This is indeed paradoxical if not downright contradictory.

4. GLAUCON'S PROBLEM

Thus we see that underneath the problem of agency costs is a philosophical problem, the problem of "Why be a loyal agent?" Students of ethics will recognize this as a perennial problem structurally similar to a problem raised first by Glaucon in Plato's *Republic*, again by Thomas Hobbes in the seventeenth century, and recently by John Rawls, among others, who dubbed it "the free rider" problem.

Glaucon presents the problem in the context of society as a whole, whereas the agency problem is a problem within the economic system. Nevertheless they are structurally similar. If everyone is motivated only by self-interest, then society is held together by agreements that are entered into only for the sake of self-interest. If that is the case, why abide by these agreements when they are not in one's self-interest? Glaucon maintains there is no reason. If the reason for making a contract in the first place was that it would make me better off, why abide by that contract when doing so will not make me better off?

The seventeenth century English philosopher Thomas Hobbes who, like Glaucon, sees our laws as the result of agreements ("social contracts") forged on the basis of self-interest, also clearly sees there is no reason for an individual to obey the law if it is not to the individual's advantage. Still, Hobbes, like Noreen, also looks at the problem from the point of view of society overall, and not just from the individual's point of view. He realizes that if everyone broke the contract, society would be chaotic and our individual lives would be "nasty, brutish and short." Hence Hobbes recommends strict sanctions that make it in the interest of the individual to follow laws. Now, it is true that life would be chaotic if all people looked out for themselves alone. But without strong sanctions why should we bother with the societal perspective that promotes concern for others, if from our individual perspective, our particular interests will not be served by honoring the contracts we have made? But Hobbes never answers the question, "Why not break the law if it is to my advantage?"

Ian Maitland gives a modem rendering of the Glaucon, Hobbes problem in an insightful article called "The Structure of Business and Corporate Responsibility." Maitland says,

> [M]inus coercion, codes of conduct are inherently unstable. The defection of even a handful of firms would undermine the social contract on which the consent of the majority was based … self-regulation is of limited usefulness because of the free-rider problem.

In our atomistic market economy, firms are bound to take a partial or parochial view of their behavior and its consequences. For the most part, their own actions, seen in isolation, have imperceptible impacts for better or for worse on the general welfare. Firms might well deplore the consequences that result when all firms engage in irresponsible actions, but so long as they have no control over other firms' behavior they have no incentive to behave responsibly themselves. In such circumstances, social responsibility is not rational but irrational.[20]

Maitland reiterates the structure of Hobbes's and Glaucon's argument. People made agreements to surrender some of their interests for the well-being of society, recognizing the trouble that arises when everyone behaves self-interestedly. But if we know everyone won't behave selfishly, then self-interested behavior is rational, because being a free rider will be in one's interest—it will give one an edge on the competition, while abiding by the rules, if there are not penalties attached to breaking them, will simply put one at a disadvantage. Thus one can justify being a free rider because, after all, everyone else is in this for his or her own interest. Others are just not clever enough to catch on.

For our purpose, it is important to reiterate that it is this egoistic view of human beings that is the view most adopted by economists. Reflecting on this view makes it clear why monetary rewards and sanctions are employed in business. Business, in this view, is a world of individuals bound together by contracts and agreements, which have force only because the violation of them can be or is externally sanctioned. There are no internal ties such as loyalty, fidelity, or gratitude to bind people together. The economist's problem is to determine how much the sanctions required to get the agent to do the principal's will cost or, in other words, what the price of the loyalty of the "loyal" agent is and whether the price is worth it. But our answer is, if the system is construed as we have just indicated, there is no way to get a loyal agent, for loyalty cannot be bought; it is not an economic commodity.

Still, is the system as committed to the self-interested rational maximizer as some economists say?

5. SELF-INTERESTED PURSUIT OF PROFIT IS EGOISTIC

Is the situation in business akin to that described by Glaucon and Hobbes? We would like to show that it is if one assumes like Friedman that "there is one *and only one* social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception and fraud."[21]

Business as a social institution and form of life is the result of conventional agreements, that is, it was created the way it is by human beings. There was no such thing as a business system when the first people either swung out of the trees or traipsed out of Eden. Since business is an institution that human beings have developed, the question arises, why have they developed it as a self-interested system? Why was it set up that way? The answer is long and complicated, but it is clear that the initial explanations and defenses of the system involved central assumptions that an appeal to the self-interested nature of man would work best for society at large. That defense of egoism begins with Adam Smith's observation:

> 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.[22]

Given that observation about human beings, Smith recommends business be set up to appeal to self-interest:

> We address ourselves not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.[23]

But Smith has a moral reason for appealing to self-interest, "to render the annual revenue of society as great as possible."

> As every individual, therefore, endeavours as much as he can both to employ his capital in the support of domestic industry, and so to direct that industry that its produce may be of the greatest value, every individual necessarily labors to render the annual revenue of the society as great as he can. He generally indeed neither intends to promote the public interest, nor know how much he is promoting it … and by directing that 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. Nor is it always the worse for society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good. It is an affectation, indeed, not very common among merchants, and very few words need be employed in dissuading them from it.[24]

Smith and many neoclassical disciples of Milton Friedman, then, defend self-interested action because it drives the market, and a flourishing market is best for all. Hence the assumption of humans as self-interested is the cornerstone of the free-enterprise system, the system that legitimates the way business is done, a system that has been successful in creating more goods and material wealth than any other system in history. But as we have seen, holding that view generates a serious problem. Such a system, because it becomes a form of life and is internalized, carries within it the seeds of its own destruction, for the agent in a system where everyone "intends only his gain" must assume principals and everyone else occupy a thoroughly egoistic stance, while the agent is expected to be concerned not with his or her own gain, but the principal's. But to be loyal in such a context is irrational. Thus agency or loyalty in such a system is unworkable in principle, and economically coercive contracts are the only rational procedure unless we can find fools for agents or restructure the profit-making goal of business.

Further, if the above view were always correct, business would be impossible. The very existence of business refutes the exclusively self-interested view of human beings. If there is no loyalty or agency, business must reduce every obligation to a contractual one, one where the only thing that motivates someone to follow the contract is monetary incentive or fear.

In such a situation, there is no obligation and indeed no need or motive to do anything for the principal that was not explicitly spelled out. If my only obligation as an agent is to do what I contracted for, then I need not and probably would be foolish to do something to help my principal, if (1) it was not spelled out in my job contract, (2) I was not inclined to do it, and (3) there was no monetary reward. Something as simple as putting in an extra half-hour, if it is for the sake of the principal, is not required if it is inconvenient for the agent, absent any reward or sanctioned specification of exactly under what circumstances the agent must act. In such a situation, loyalties are bought.

Is business this cold and calculating? It would seem not, that is, there is the existence of loyal behavior in business, and indeed loyal behavior does explain a good deal of the structure of business. But that means nonegoistic behavior explains a good deal of what does go on in business.

If the above is correct, in order for Noreen's or Lawrence's suggestions for more ethics or loyalty to be realized and agency costs to be reduced, it will be necessary to challenge the corporate ethos, the form of life, which embodies the classic model of business responsibility, and the milieu that unquestioningly agrees that business's overriding responsibility is the making of profit. The grip of this profit-oriented form of life needs to be loosened.

6. CHALLENGING THE CORPORATE ETHOS

Such a challenge does seem to be taking place. Note Philip Blumberg's remarks in an article called "Corporate Responsibility and the Employee's Duty of Loyalty and Obedience." Blumberg states,

> The nature of the American corporate world is changing, reflecting changing concepts of the objectives, roles and responsibilities of business. The public corporation as a social and economic organization is undergoing a process of re-examination which has not yet run its course, and the ultimate outcome of which one may still not safely predict. There is general acceptance of the concept of corporate social responsibility with the major public corporation assuming a role of increasing significance in social problem solving. Although highly controversial and not generally accepted, there is also increasing expression of a new view of the large American corporation as a social institution to achieve social objectives, rather than as an economic institution to be operated for economic objectives for the benefit of shareholders. It is inevitable, therefore, that as a corollary, new views will also emerge with respect to the changing relationship between the corporation and the groups vitally affected by it, particularly its employees, as well as such other groups as consumers, suppliers, and the public generally.[25]

Blumberg might be correct, and we are certainly sympathetic with what he says. Our view of what happened to the concept of agency shows what has gone wrong and what needs to be done. Our contention is that reflection on the agency relationship makes it clear that business operates on a double standard, claiming only the responsibility for pursuing self-interest on its part, while expecting selflessness and loyalty on the part of the agents working on its behalf. Further, consideration of the selflessness required by agency shows that to the extent economists argue that the self-interested pursuit of profit is the sole motive for activity, they implicitly defeat their own goal of lessening transaction costs. Ideally, a consideration of what effective agency requires, including the view of human beings it demands, will lead us necessarily to a sounder view of the function of the corporation.

7. THE NEO-EGOISTIC PURPOSE OF BUSINESS

What the ethical-philosophical analysis of agency suggests, then, is that defenders of the neoclassical theory of the corporation need to re-examine their use of the self-interested maximizer model, as well as the "profit-making" goal of business that arises from the use of that model, rather than altering the concept of agency to fit their paradigm. Even more, we suggest that the original concept of agency can become the new paradigm, at least for managers. Generating profits cannot be the sole reason for doing business, nor efficiency for the end the sole means.

It seems that the neoclassical view of the purpose of business overlooks two important distinctions. First, there is the distinction between motivating causes and justifying reasons, both of which can be given in response to the question “Why?” If I ask why I go into business, I might respond by saying, “To make a profit.” But that is not a justifying reason; it is a motivating cause. A justifying reason cannot be an individual motive; it must have societal implications. A reason that justifies business is an appeal to the societal goods that business creates. Thus the purpose of business cannot be to make a profit; that’s a motive. The purpose is to provide goods and services. That is why society allows business, as we will see, for profit is only the sole responsibility of business if the pursuit of profit will lead to more goods and services. Absent more goods and services, the profit motive cannot be used to justify business behavior. Where there are two ends, one must take precedence. The good of society is the end that is ethically to be preferred.

The second distinction is between motives. There are monetary goals, such as profit, but they do not always explain why businesses arise. Further, it is possible that one is motivated by concerns that do not fit the narrow self-interested category. Let us look at this question of motives using some examples.

Various concerns might motivate someone to start a company. Henry Ford began his work and hence his company with more of an interest in making cars than in making money. Making cars became a way of making money, not making money the reason for making cars. Writing, for a novelist, becomes a way of making money, but it is the poor novelist who writes solely to make money. Certainly Dostoyevsky and Dickens wrote to make money. But they chose writing as the way to make money. They chose it because that’s what they enjoyed doing, that’s how they fulfilled themselves, that’s what they were, writers, and that’s what they probably would have continued to be even if they didn’t make much money at it. One might claim that doing fulfilling work, an activity with goals other than economic satisfaction, is as important as, if not more important than, achieving economic goals. Indeed, some economists will point out that is a utility function, but it is a nonmeasurable utility function, and it is also a self-interested goal that costs the individual.

Hence Ford’s dedication to making automobiles and Dickens’ to writing novels can be seen as similar to the agent’s dedication to his or her work. The agent is dedicated to helping a principal. But merely for money? Hardly. That would be akin to prostitution, to suppressing oneself to another, not for a good reason but purely for monetary gain. But if what we have said of Ford and Dickens and agents in general is true, we have a possible strategy with which to address the question of the goal of business.

8. A NEW PARADIGM FOR BUSINESS: AGENCY AND PROFESSIONALISM, THE ENLIGHTENED VIEW

What I would like to suggest is the adoption of the original agency relationship as paradigmatic of some business relationships. But since that notion is antithetical to current views of the system, we have to recast our view of the system.

The system fails to distinguish between and hence confuses legitimating purpose with motivating goals. Moreover, profit is not the sole motivation for business. What we now need to make clear is an implicit point by Friedman and Smith. Making a profit can be the sole responsibility of business only if it affects the general welfare. The purpose of business that makes its practices acceptable is producing goods and services that will benefit the general welfare. That is the only moral good that justifies self-interested behavior. Hence self-interest, even for Friedman and Smith, as the making of a profit must be subordinated to the legitimating telos of business. The reduction of the goal of business to profit making leads to undesirable consequences:

> The fact that profit determines the quality of work allowed leads to a phenomenon called the commercialization of work. The primary end of an act of building is to make something, and to build well is to make it well. A carpenter is defined by the end of his work, but if the quality interferes with profit, the business side of the venture supersedes the artisan side. Thus profit forces a craftsman to suspend his devotion to his work and commercializes his venture. The more professions subject themselves to the forces of the marketplace, the more they get commercialized; e.g., research for the sake of a more profitable product rather than for the sake of knowledge jeopardizes the integrity of academic research facilities.[26]

It is easy to see how such a self-interested profit motive can corrupt the agency relationship we find in professions such as teaching, law, or medicine. To teach or practice law or medicine primarily for the money is to be a bad teacher, lawyer, or doctor, for when a conflict comes up between pursuing the interests of one's principal—student, client, or patient—and making money, those devoted to money will ignore their responsibility to the principal. But beyond seeing the corruption of those honorable professions when they become profit oriented, one can see the corruption of profit making in other areas. To reduce one's life primarily to the making of money is to ape King Midas and to turn an instrument of happiness into happiness itself. It was what religious scholars called "idolatry." We could also add for consideration the disillusionment of many young men and women who entered investment banking, not for their interest in providing investment services, but as a way to make huge amounts of money.

One can do business to make money, but it is unlikely that as a human being one can do business "solely" and "primarily" to make money without eroding the human spirit. Besides, as we tried to indicate, we need not say that business was primarily invented to make money. Business as an instrument was created to help increase production of goods and services. The mistake of the egoist is to confuse the object of the action with a desirable effect of the action. The object of business was to make goods or services. The desirable side effect of making a profit was an incentive for more production. Since humans are indeed self-interested, there is nothing wrong with such incentives and rewards. But it is a mistake to confuse incentives for good actions with the purpose of those actions. Good grades are incentives for study, but the purpose of study is primarily to learn, to expand the mind.

In the light of these observations, let us reverse the standard classical view of the purpose of business and insist that the function of the businessman is to be a good agent and fulfill the purpose of business, which is to produce goods and services. If we do this, we begin to develop a new model of the businessperson, the businessperson as agent, and consequently, the businessperson as professional. We will turn to that model in a moment.

So we want to suggest the agency paradigm as a model for viewing how business should be organized and run. At least the agency view should be on all fours with the profit maximizer paradigm. We will call this "the enlightened view." The enlightened view reveals that the agency relationship requires another purpose of the firm at least as important as the profit motive. This is a different view of the purpose of the business system, envisioning it as a cooperative venture where one works toward the interest of the principal's business, which has two thrusts: first, the social purpose of providing goods or services, and second, the agent's altruistic commitment to the principal. Profit is certainly an incentive, but as an incentive it is on all fours with other important incentives and purposes, such as noneconomic forms of fulfillment.

The agency relationship as a paradigm also reflects the purpose of business from society's point of view, rather than from the individual's point of view. We suggest that the purpose of a business might not be the same as the incentive or motive for starting one. Obviously if I buy stocks in a business, I desire a profit, so the business for me as stockbroker is seen as a profit-generating instrument. But no society would permit a business to exist if it were not perceived as beneficial to the society, that is, not perceived as providing a good or service. So from the societal point of view, one sees profit as an incentive offered in order to get people to do business, but the business must be beneficial to society, and society can hardly view the purpose of business as exclusively profit making. The agency paradigm, then, fits more with the societal view of the purpose of business.

Let us see what follows from adopting the societal perspective. The making of money, profit, should not be viewed as an obligation. It should be viewed as an opportunity. Stockholders are allowed to make money by the establishment of corporate law. But society developed corporations because the establishment of legal entities that allowed individual stockholders to avoid liability for the debts of the corporation proved to be an efficient way to increase the production and distribution of goods, a desideratum for society. Consequently, society's needs for goods and services and its desire for more efficient production of goods and the need for more investment capital to produce those goods gave rise to corporations. The good of society came before the good of the corporation in the development of corporate law. The type of institutions that society allowed to come into being, such as businesses and corporations, are not ends in themselves; they are instruments of society for the more efficient production of goods. But we should not treat instruments as ends in themselves. Turning Kant on his head we could maintain, "Act so as never to treat a mere instrument as an end in itself."

Our dedication and loyalty must be to worthwhile goals, not to the instruments that facilitate these goals. Hence our dedication must be to people and not to the profit motive that facilitates our work or production. To think we owe a company or corporation loyalty requires us to think of that company as a person or as a group with a goal of human enrichment. If we think of it in this way, we can be loyal.

The use of the new model will be aided if we adopt an additional strategy. We need to quit talking so generically about "businesspersons." After all, the notion of a "business" person is an abstraction. One isn't merely a businessperson; one has specific roles to play. The generic notion of "the businessperson" arises when the context of the discourse requires a term that includes all those managers, marketers, advertisers, public relations specialists, accountants, and financiers who work for a "profit" corporation, a business. But not all managers, marketers, and so on work for a profit corporation, which means they are not all "business" persons, and further not all contexts call for the generic term's use. What all managers, those who work for a profit corporation and those who work for a nonprofit corporation, have in common is managing people and services so that needed and desired goods and services are effectively produced and delivered. Keeping that in mind, it becomes clear that one does not practice business so much as one practices management, accounting, financial advising, marketing, and so forth. If one practices business for the sake of business, then one works for the money. But to practice management, accounting, and so on solely for the money, instead of developing well-managed companies, or keeping proper books, or giving good investment advice, or making wise investment decisions, or developing successful marketing programs, is to be a "bad" manager, accountant, financial adviser, or marketer.

Along this line, we now wish to suggest that the use of the agency model will be facilitated if we begin to view these various "business" practices as professions just as we view medicine, law, and teaching as professions. We already saw how the introduction of profit motivation corrupts the agency relation in the more traditional professions. We now suggest that the introduction of the profit motive as a primary goal can corrupt the business profession. To avoid that, one needs, among other things, to re-establish the service view of the various professions one finds in business, and investigate how these professions can be pursued in a business community with its profit motive without compromising themselves to the profit motive. To do this we first look at what professionalism involves.

Professionalism, according to Albert Flores, is commonly described as a "complex set of role characteristics involving specialized knowledge and training, dedication to public service, and autonomous decision making authority in matters of importance to society."[27]

> Professionals are expected to practice in ways that conform to certain prescribed ethical standards. To be a professional means, in part, to be committed to using professional skills and knowledge, in morally acceptable ways, for the benefit of society. There are several interrelated reasons, centering on the need for trust and protection against the abuse of power, that justify this interpretation.
>
> First, professionals possess the ability and power of knowing how best to deal with problems requiring professional expertise, and this creates a clear moral concern about how professionals should behave when dealing with clients. Second, clients are in the unusual position in which their need for expert assistance and their inability to satisfy this need for themselves makes them both dependent on and vulnerable to the professional's expertise. Hence they have little choice but to invest the relationship with their trust, though only to the degree that this trust is reasonable.

> To assure that this investment is warranted, professionals are expected to refrain from acts that would violate a client's trust.[28]

9. THE AGENT IN BUSINESS AS PROFESSIONAL, OR THE PROFESSIONAL AS AGENT

We suggest that the agency model of the businessperson is aided by viewing the businessperson as a professional. But such a suggestion is more than simply an heuristic device. A case can be made that to be an agent in business is to be a professional. A little reflection shows how most of the positions we have cited—managing, accounting, advising in financial matters, marketing—fulfill Flores's criteria of a profession. In all of these cases the following is true: One doesn't simply do what one is told; one has expertise; one reads and anticipates the needs and interests of the principal and operates for the principal's good. Managers, financiers, accountants, ad executives, sales representatives are all agents. Agents are, qua agent, committed to good, that is, the good of their client.

But, one might ask, isn't the good of the client the profit made? Certainly. But in business the client as a stockholder is allowed to make money because he or she has invested in a process that facilitates the production of a *good*. This certainly raises the special problem of the motives and responsibilities of the stockholders and owners. But we have already seen that profit, far from being the sole purpose of business, is rather the incentive or reward allowed by society to encourage the production of goods, which are desired and presumably beneficial to society. With this view it seems at least possible to blend the professional interests of agents and their principals.

What all of the above is meant to suggest is that economists rethink the rational maximizer model of the businessperson that they employ, as well as rethink the importance of community relationships on the economy. Their atomistic model is normatively skewed and empirically limited, leading to unreliable predictions of results. After all, as a predictive model, a model that takes into account only monetary rewards will fail to appreciate or compute the results of devotion to others, working for social goals, working for self-esteem, and other nonmonetary forms of fulfillment. A firm or corporation that gives its employees or agents satisfaction in their work because of its moral import or usefulness and is not devoted simply to profit maximization should be a firm that has lower transaction costs in motivating agents, for it allows these agents to view themselves as productive members of society and helps them avoid a good deal of value conflicts that "hardnosed" businesspeople insist one must cope with.

Further, the model is normatively skewed because it promotes narrowly self-interested behavior, expecting that to lead to morally acceptable results. An often overlooked and questionable assumption that Friedman makes is that the businessperson should have the same goal as the business. That is too simple. The purpose of the part need not be, and in general is not, the same as the purpose of the whole, although it should, in a well-working whole, contribute to it. Just as the purpose of the hand is not the purpose of the person, neither is the purpose of the bookkeeper the purpose of the entire enterprise. Ideally, the hand in fulfilling its purpose contributes to the whole person, just as the manager in managing well contributes to the purpose of the business, which, we reiterate, is two-fold, producing goods and services to make a profit. Our suggestion, then, is that only this complex normative view does justice to the normative issue.

Let us sum up. The necessity of the existence of agents makes it impossible for business to claim that its sole purpose is profit making. Even if profit making were the sole purpose of the business, the purpose and function of the managers, accountants, marketers, and other functionaries should not be construed solely as fulfilling the profit making purpose.

10. IS THE ENLIGHTENED VIEW ALSO NAÏVE?

But how realistic are we? Aren't we as naïve as Noreen? Aren't we trying to change an entire economic system with puny ideals? Is it not the case that some, if not most, people go into business simply to make a profit?

It is certainly the case that systems, and in particular economic systems, strongly influence human behavior, because systems provide points of view that present and legitimate certain goals. Capitalism, as a form of life conceived by economists, presents and legitimates the self-interested point of view. Such a legitimation has the power to feed on itself.

Still, these systems do not *necessarily determine* human behavior, and history shows us there is some mediation of views possible, that ideals, if not ideas, can have consequences for practical life. The fact that other-regarding goals are essential to human development might not help in reforming the views of capitalism, but if not, it is probably that brand of capitalism whose existence is threatened. Cooperation is essential for human development. Systems that do not encourage cooperation, or that systematically undermine it, have within them the seeds of their own destruction. Thus if ideas have consequences and our enlightened view is seen as naïve, then so must the neoclassical view, for it is flawed to the extent that it does not recognize that the making of a profit is insufficient as a fulfilling goal of human life.

Plato reminds us that there are three kinds of goods: those things good in themselves, those good for other things, and best of all, those good in themselves and for other things. Profit is good for other things as an incentive. But producing works or services for others can be rewarding both in itself and as a profit-making venture. Writing is good. Writing that is good writing and also brings monetary reward is better. We need to apply this two-fold notion of good to business: business as good for making profit, but more important, business as involving a creative activity good in itself or because of the goods it produces. The purpose of business need not be construed as an either/or proposition. Profit is not and cannot be the primary, let alone the only, purpose of business as a humane system. Rather, business should be construed as a system that encourages the production of goods by utilizing the incentive of profit.

We are suggesting a view of business as an activity, found in the older sense of "being about my business," one's work, one's tasks, or one's calling. Here individuals have activities that involve them in the production of goods or services and creating goods that benefit society. Just as, from society's point of view, the purpose of education is to produce learned people, the purpose of business, from society's, not the individual's, point of view, is to allow a system that maximizes goods.

We think, then, that a more enlightened view would construe profit as one of the benefits that come from pursuing a "good" end. But such a view should cause economists to reform their concept of human nature and what fulfills it. Economic incentives—monetary rewards that are treated as the sole incentives—are atomizing incentives. Nonatomizing, societally dependent incentives are more adequate because they take into account the societal needs and nature of human beings, a nature implicitly recognized and required if there is to be an activity such as "being an agent" for another. Organizational theorists seem to recognize more than some economists that human beings are societal and their full satisfaction and self-actualization is the result of a blend of their self-interest and feelings of benevolence for others. Thus they appeal to the concepts like "the team," "the family," and so on.

Action on another's behalf, the key requirement of agency, cannot be achieved if the primary motives are money or fear of the law. We need to realize that motivation as well as human fulfillment is found in social acceptance, social giving, fullness as a member of a group or groups, for we are partly defined in terms of how we relate to others. Our very identity is other-dependent.

In summary, business as a system requires agents. The rise of the corporation required persons acting on behalf of (in the interests of) others. However, business as a human practice has a telos that legitimates business as a system. The telos of business that legitimates it, according to neoclassical economic theory, is the pursuit of self-interest. But the pursuit of self-interest is, at least at times, incompatible with working on behalf of others. At times, then, agency (construed as working for others) is incompatible with "legitimate" self-interested business concerns. To avoid the incompatibility, market economists who study efficiency with the system perforce alter the concept of agency, turning it from a fiduciary relationship to a contractual relationship of two self-interested individuals. Thus the mediating power of agency is destroyed by the adoption of the neoclassical model. It can be restored by an adoption of a model of professionalism, a model that utilizes the fiduciary agency relationship—for example, the doctor-patient relationship.

Looking at agency and its problems should suggest to us that we need to (1) reformulate the purpose and nature of business, (2) recognize the danger of generalizing business as a type of work, and (3) recognize the advisability of viewing at least some persons engaged in business as professionals, not as mere profit (money) makers.

Taking satisfaction in our work is in many ways much more important, satisfying, and fulfilling than bottom-line efficiency. John Ruskin, responding to Adam Smith's example of a pin factory, reminds us of that in the following passage:

> We have much studied and much perfected, of late, the great civilized invention of the division of labor; only we give it a false name. It is not, truly speaking, the labor that is divided;

> but the men: Divided into mere segments of men—broken into small fragments and crumbs of life; so that all the little piece of intelligence that is left in a man is not enough to make a pin, or a nail, but exhausts itself in making the point of a pin, or the head of a nail. Now it is a good and desirable thing, truly, to make many pins in a day; but if we could only see with what crystal sand their points were polished—sand of human soul, much to be magnified before it can be discerned for what it is—we should think there might be some loss in it also. And the great cry that rises from all our manufacturing cities, louder than their furnace blast, is all in very deed for this—that we manufacture everything there except men; we blanch cotton, and strengthen steel, and refine sugar, and shape pottery; but to brighten, to strengthen, to refine, or to form a single living spirit, never enters into our estimate of advantages. And all the evil to which that cry is urging our myriads can be met only in one way: not by teaching or preaching, for to teach them is but to show them their misery, and to preach to them, if we do nothing more than preach, is to mock at it. It can be met only by a right understanding, on the part of all classes, of what kinds of labor are good for men, raising them, and making them happy; by a determined sacrifice of such convenience, or beauty, or cheapness as is to be got only by the degradation of the workman; and by equally determined demand for the products and results of healthy and ennobling labor.[29]

NOTES

* "Why be a Loyal Agent? A Systemic Ethical Analysis," in *Ethics and Agency Theory*, Edited by Edward Freeman and Norman Bowie (New York: Oxford University Press, 1992) pp. 143–168.

1 Richard DeGeorge, "Agency Theory and the Ethics of Agency," *Ethics and Agency Theory* (New York: Oxford University Press, 1992), p. 59.

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CHAPTER 10

EMPLOYEE RIGHTS*

Does drug testing violate an employee's right to privacy? Should companies be able to fire employees without cause? Is there a right to a safe workplace? All of these questions revolve around the notion of employee rights, one of the most important in business ethics. Much recent legislation has been passed that specifies employees' rights and that regulates working conditions, hiring and firing procedures, harassment and a host of other areas. There has been so much regulation and so many assertions of rights, recently, that some critics bemoan what they see as an unwarranted proliferation of rights. Sometimes, rights seem to be created out of thin air. Opponents of those critics, however, are not concerned about a proliferation of rights, but rather see the articulations of new rights as an inevitable product of a society's concern for preserving and protecting human dignity. Defenders of the expansion of rights follow the lead of Judge Blackstone (1941) who in Book I of his famous *Commentaries on the Law*, asserts that "The principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace, without the mutual assistance and intercourse of social communities. The primary end of human laws is to maintain and regulate these absolute rights of individuals."

From Blackstone's perspective, our human laws, rather than proliferating rights arbitrarily, are doing exactly what they are supposed to be doing—identifying and specifying human rights that were never before articulated, particularly in the workplace and particularly for the employee.

The purpose of this essay is to examine the nature of rights and their application in the workplace.

A right can be defined as either a capacity, possession, or condition of existence that entitles either an individual or group to the enjoyment of some object or state of being. For example, the right to free speech is a condition of existence, which entitles one to express one's thoughts as one sees fit. Of course, if someone has a right, someone else must have an obligation to respect that right. Hence, a right is a relational entity. In the case of employee rights, there are correlative employer obligations. However, employers have rights too, so that there are also employee duties. However, in this essay we will concentrate on employee rights, rather than the rights of other groups. First, though, we need a clearer idea about what rights are.

Quite simply, rights are entitlements by virtue of which one person justifiably lays claim to an object or state of being against another person, who has an obligation to respect that claim. One respects a claim either by providing the object claimed, assisting in the achievement of the state of being claimed, or, at the very least, not standing in the way of the obtaining of the object or the achieving of the state of being. We add the qualification that the claim is justified, for one could claim a right that was not justified, and, in that case, it would not be a right. Asserting a right thus carries with it the belief, that the entitlement claim is justified. Thus, if an employee has a right to a safe workplace, that employee is justified in claiming that right, and in expecting and demanding that his or her employer meet certain standards in setting up the employee's work area.

Rights are secured either by nature, human laws or societal conventions, including a grant or a purchase. That being so, we can distinguish between three possible types of rights: natural, conventional or civil (legal). Philosophers and jurists split on the issue of whether nature secures any rights. Positivists who deny the existence of natural rights and reduce moral law to the ethos and customs of various societies, necessarily claim that there are only customary (conventional) rights or legal rights, rights that are the result of legislation. Hence, rights apply only to those whom the laws or traditions designate. The difficulty with this positivist position is that, if it were true, every system of rights would be self-legitimating and there could be no claims of natural rights or objective moral rights by which one can evaluate the soundness of the laws or the conventions. Hence, there would be no framework of rights with which to criticize a regime that took away rights from one or another group, for example, gays, women, Jews.

Those who claim that there are universal rights and that some legal systems such as those that permit slavery are immoral and violate moral rights, must maintain that rights are grounded somehow in the nature of things, or in some sort of objective moral code. Most people implicitly recognize or appeal to such a higher set of rights, called moral rights or natural rights.

But what would those natural rights be grounded in? The most basic grounding would be in the needs of human beings. One is entitled, or has a right, to those things that are necessary for a Quality existence. This was the method of philosophically grounding rights in western cultures from the time of Socrates to the modern era, called Natural Law theory. For example, Aquinas, in the thirteenth century, with respect to the right of property asserted that "Whatever is held in superabundance is owed by natural right to those in need." John Locke (1960) in the seventeenth century echoed Aquinas, and argued for the natural rights to life, liberty and property. In line with the theories of Locke, the writers of the American Declaration of Independence claimed basic rights to life, liberty and the pursuit of happiness. For them, as for Locke, these rights were grounded in the fact that our dignity arises from our being children of God. Further, the existence of these rights, and the equality of all men, was thought to be a self-evident truth.

However, Locke added to the right to property argument a consideration of fairness. It is only fair that people be entitled to that for which they work. The notion of a right to property based on need begins to fade with the development of Capitalism, and the later enlightenment figures such as David Hume are skeptical of the self-evidence claim and attempt to ground rights without an appeal to God or Nature. This leads to a more modern approach from either a deontological or utilitarian perspective. Either rights flow from the basic equality and dignity of humans—Immanuel Kant grounds them in the fact that rational beings are ends in themselves—or they flow from the natural needs of humans that must be met to maximize happiness (John Stuart Mill).

Of course, the utilitarian, Jeremy Bentham (1941) refers to rights as "nonsense on stilts," since from his point of view, the word "right" is just shorthand for securing those actions that will bring about that greatest happiness. From Bentham's perspective one finds rights, not by consulting a catalogue of rights, but by examining whether behavior such as respecting peoples' property leads to more pleasure than pain. His successor, John Stuart Mill grounds rights in the same way. Mill defends the existence of a right to liberty by demonstrating that a society that allows its members to express themselves freely will be a society that is better off (happier) than a society that does not allow such sell expression.

Deontologists, following Kant, would maintain that the difficulty with this position is that it makes the rights of individuals susceptible to revocation if they no longer serve the needs of the society. This is incompatible with the notion of inalienable or indefeasible rights, where inalienable means those incapable of being surrendered or transferred, and indefeasible means not capable of being annulled, voided or undone. Of course, Marx, critiquing Kant's individualism maintained that rights are egoistic since they give the individual predominance over the community. Sides of this debate can be seen in contemporaries such as H. L. A. Hart (1955) and Ronald Dworkin (1978).

Whatever the grounding of rights, there are certain other aspects of rights theory that must be mentioned. It is often held that for every right there is a correlative duty. Hence, if I have rights to life and liberty, others have a duty to respect that right and not interfere with my life and liberty.

Since rights is a relational concept, the elucidation of the rights will reflect the view of the relationship. So while in England and Europe, the predominant view of the employer–employee relationship was that of master–servant, with its consequent rights and obligations, in the USA the predominant view of the relationship was as a quasi contractual or implied contractual relationship. Some Pacific Rim countries, of course, have their own cultural version of some sort of quasi familial relationship, with their consequent rights and obligations. Thus, the list of employee rights will vary according to the predominant image of the relationship. For example, if one views the relationship in feudal terms such as lord and serf, then while the serf has few claims to private property and independence, he has large claims to protection and sustenance.

The reciprocity of rights and duties leads to a distinction between positive and negative rights, for if every right has a corresponding duty and rights are based on needs, the question arises who has the duty to provide those goods? Positive rights are rights of recipience. They are claims to entitlement to receive certain goods or services. For example, the right to an education is a positive right. The right to employment is a positive right. Whether such rights exist is a subject of debate, for given the law of reciprocity of rights and duties, if I have a right to education, someone has a correlative obligation to provide the education. If I have a right to employment, someone has the obligation to provide the employment. The last is a difficult kind of claim in a free market society, for how can it be claimed that anyone has an obligation to start a business so that others have employment? If one lays the obligation on the state, then the free market is compromised.

Some argue that it makes sense to claim such rights only when there are facilities to provide the goods available. What sense would it make to claim a right to health care in a society that had no health care delivery systems? It certainly would make sense to claim a need for health care, but that underscores the difference between a right and a need.

Given the above difficulties with the notion of positive rights, some claim that there are only negative rights, for negative rights do not require others to provide the goods or the needs. They are rights that protect those goods or needs. Hence the rights to life, liberty and property are negative rights, for no one has the obligation to provide those goods, only an obligation to respect them, which means in essence, not to violate them.

Still, as Stanley I. Benn (1967) says, the positive rights are different, a more modern concept that is the corollary of the equally modern notion of social justice.

> Rights of this kind are different in that though they appear to make a very definite claim, the correlative duty seems to rest neither on individuals at large (as with freedoms) nor on anyone in particular. To say, as does the 1948 UN Universal Declaration of Human Rights, that "everyone as a member of society, has the right to social security" (article 22) and "to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing" (article 25), is not to say that his government has a duty to provide these things; many who subscribe to this declaration would deny that such services were a government's proper business. Rather, statements of this kind provide, in the words of the Preamble, "a common standard of achievement for all peoples;" that is, they are canons by which social economic, and political arrangements can be criticized. Human rights, in short, are statements of basic needs or interests. They are politically significant as grounds of protest and justification for reforming policies. They differ from appeals to benevolence and charity in that they invoke ideals like justice and equality. A man with a right has no reason to be grateful to benefactors: he has grounds for grievance when it is denied. The concept presupposes a standard below which it is intolerable that a human being should fall—not just in the way that cruelty to an animal is not to be tolerated but, rather, that human deprivations affront some ideal conception of what a human life ought to be like, a conception of human excellence. It is on the face of it unjust that some men enjoy luxuries while others are short of necessities, and to call some interests luxuries and others necessities is implicitly to place them in an order of priorities as claims. Upsetting that order then demands to be justified.

Are rights inalienable? Is not some interference justifiable? The classic case against free speech is that one is not free to shout fire in a crowded theater if there is no fire. Issues of killing in self-defense and in war, and issues of capital punishment, require working out the limits of the indefeasibility. It is helpful to remember that the modern working out of rights was for the purpose of securing a justification for rebelling against governmental authority. Since, one of the primary functions of government was to secure the rights of its citizens, if the government, for no good reason, violated those rights, it failed in its primary task as a government, thereby losing its legitimate authority.

Besides the traditional doctrines on rights, the number of rights articulated have expanded. For example the UN declaration of human rights in article 22, claims that everyone has a right "to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing." (This echoes the "right to a living wage" enunciated in the Papal Encyclical *Rerum Novarum*, in 1891.) Others claim rights such as a right to adequate health care. There are contemporary concerns for animal rights. In such contexts; we see clearly that these rights claims are statements of basic needs or interests, either of humans or animals, which rest on criteria for the good life, which become a standard by which to judge existing governments and policies.

1. EMPLOYEE RIGHTS

Given the above we can now sort out various claims about employee rights. Legal rights of employees are simply those that exist through legislation or government regulations. However, claims made about natural rights, or conventional rights of employees will be based on how one views the relationship between employer and employee. The supposed "proliferation of rights" that is taking place in the latter part of the twentieth century, can be best understood as what results from new ways of viewing the employer–employee relationship.

There are philosophers who view the employer–employee relationship as reciprocal relationships where moral obligations exist by virtue of those relationships. The primary example of reciprocal relationships are those found in a family. For example, parents are in a relationship with their children where they are obliged to provide for the children's food, shelter, clothing and education. Consequently, the children have rights to receive those things. However, this relationship also gives the parents the right to lay down rules without consultation with the children, a kind of paternalism. Of course, reformers of the nuclear family wish to invest the children with a right to participate in family decisions. Attributing such rights to children, however, alters the view of how the family should operate—and, consequently, what the family is—since, in one sense, a family is described by its nexus and relationships, and the obligations and rights that go with those relationships. Hence, some sets of relationships are in essence moral, since they specify rights and obligations in describing the relationship.

Different views of what the employer–employee relationship is, and ought to be, will yield different claims of rights and obligations on the part of the employer and employee. Depending on the way the relationship is viewed, different rights will be claimed.

One of the earliest views of the employer–employee relationship was of the master–servant view. That was the successor to the feudal dependency relationship of lord–serf. If we look at the lord–serf relationship, we see that the lord had the obligation to provide for the serf's safety. The serf owed his allegiance and first fruits of his labor to the lord. That means the lord had a right to those first fruits, but the lord, in return owed to the serf safety and protection. Thus the serf had rights that the lord needed to respect. There were, of course, unscrupulous lords who did not respect those rights, but they are considered evil, or at least some sort of moral slackers. Further, there was a bond of loyalty that was expected. Paternalism was justified and, although there was equality among lords and among serfs, there was no equality between lord and serf. As a matter of fact, it was commonplace for the serf to bow down to the lord in an expression of fealty.

The master–servant relationship, which was an operative paradigm at the beginning of the industrial revolution, was severely critiqued by Marx on the one hand and enlightenment utilitarians on the other. To break the feudal mode, the view of the employer–employee relationship had to be revised away from the master–servant view.

It was replaced by the implied contractual view, which simply views the relationship as a contractual relationship of two self-sufficient individuals, agreeing to engage in commerce with one another. One claim against the implied contractual view is that it does not take enough note of the complexity of the relationship between employer and employee.

Since each of these views are analogies to the real situation, the analogies sometimes fit and sometimes do not. A master–servant or slave view is more accurate to the extent that it reflects more the asymmetry of power inherent in some contractual relationships, particularly involving those employees with no marketable skills. An implied contractual relationship reflects more the equality relationship that is a political desiderata since the enlightenment. Contractual relationships do not carry the baggage of loyalty, which is a virtue, and obligation more in accord with master–servant Hence, the rights claimed will usually reflect the model of the relationship developed.

The most recent and useful model of the employer–employee relationship in business ethics, superseding the master–slave and implied contract views, that has been developed in recent years is the stakeholder model, according to which the various constituencies of the business as having a stake in the business. In the light of our subject, that means the business will impact on some of the interests of the stakeholders, be they members of the community where the business is located, potential hires, customers, other businesses with whom the company does business, stockholders or employees. If those interests are important, those stakeholder constituencies can make a rights' claim against the business. For example, vendors can claim a right to be paid for their services, but they can do that on the contract view. The consumer movement has claimed that consumers have a right to truthful advertising and a safe, quality product. The government claims a right to taxes. Communities make claims to rights to protection against environmental impurities, and last but not least, employees claim a plethora of rights. Rights expand and multiply as certain things are seen as necessary for a sufficient quality of life, or for the maintenance of one's dignity. We would expect those rights' claims to change as the view of the relationship of employer–employee changes.

Some rights are basic and some are derivative. Some philosophers have claimed that all human rights can be derived from Kant's second Categorical Imperative, "Act so as never to treat another rational being merely as a means to an end." Marx uses this as a moral critique of Capitalism. It reduces the worker to a commodity, a thing. Using someone as a thing is the height of immorality. Note though that Marx had no use for the notion of rights; neither, for that matter, did Jeremy Bentham. Kant's rule requires us to respect other human beings as fellow members of the Kingdom of ends. It is Kant's way of asserting basic human dignity.

Let us look at what specific rights have been claimed for employees in recent times. Such a list, of course, will not be exhaustive; no list of rights is. Nor will this list attempt to order the rights in terms of which are derived from which. To do that would require settling an issue in ethical theory of whether rights are derived from basic necessities for the good life or from the basic requirements necessary to achieve human dignity. In either case, as society changes and life adapts to new circumstances, newly perceived necessities will become candidates for rights. As the employer–employee relationship evolves, new rights will be asserted.

Clearly, one cannot be an employee unless one is employed, so it seems somewhat odd to talk about the right to work as an employee's right One can talk of a potential employee's right, but even, in that case, since there is no actual employer, who would have the corresponding obligation to provide a job. However, since having a job is currently an "essential need" or requirement for most people, it can be argued that all able-bodied individuals have a right to a job. The right to work would be a right of recipients that leaves it unspecified who has the obligation to provide the work. We cannot require a particular employer to provide a job for a particular individual. What can be claimed is that, if a particular employer has a job to offer, perspective employees, with proper qualifications, have a right to an equal opportunity to attain the job.

Does the person who is "most qualified" have a right to the job? The condition of qualified has force only within the context of a business that has as one of its primary goals, the maximization of productivity. In a family-owned private business, set up for the security of the family, the owner is perfectly within his or her rights to hire any of the children they wish without regard to qualifications, since the owner might have started the business for the specific purpose of providing jobs and financial security for members of the family.

Hence, if there are rights to work, they seem to be delimited by circumstances. It seems the claim that every able-bodied person has a right to work can only make sense if a consequent obligation to provide jobs falls primarily on the state to set up an environment that encourages job creation, and enforces equal opportunity for hiring. This would mean there would seem to be more force to the claim of a right to work within the context of a more socialist state than in a more free market oriented state. Certainly, one of the motivations behind socialism is the feeling of the necessity of providing jobs to the unemployed based on a belief that everyone who is able has a right to a job.

1.1 The Right to Meaningful Work

A corollary to the right to work, is the claim of some that there is a right to meaningful work, i.e. a moral claim that tedious, repetitive, and boring work is dehumanizing. As John Ruskin (1968) said, "It is a good and desirable thing, truly, to make many pins in a day; but if we could only see with what crystal sand their points were polished—sand of human soul, much to be magnified before it can be discerned for what it is—we should think there might be some loss in it also." All agree it is a good thing to create jobs that do not alienate or dehumanize, but is the creation of jobs, that have meaning and purpose (whatever that might mean beyond the fact that they provide, through the division of labor a desired good for society), really an obligation of anyone? Is it even possible? There are some jobs that are tedious and distasteful by their very nature. Yet they need to be done.

There is an analogy here with the right to property. Most people want to claim property as their own, as long as it is beneficial for them, but any right to property should carry with it an obligation to protect the rest of society from that property that turns obnoxious. Not all property is beneficial. There is garbage, old cars, junk, and old deserted buildings. Does the right to property entail a right to dispose of it without any obligation, if it is undesirable property? One would think not. There needs to be more attention paid to the downside of property.

Just as there is undesirable property, similarly there are tedious jobs in the world. Society needs someone to do them. The issue of distributive justice must focus on how this burden of the world is to be distributed, as well as the goods of the world. Since some jobs are burdensome, a view that claims a right to meaningful work and equates meaningful work only with jobs that are not burdensome, is seriously flawed in facing reality. At most, what can be claimed is a right of a worker to a job that is made as meaningful as possible. The correlative duty would be for the employers to do what they can to alleviate tediousness, burdensome, and dehumanizing working conditions.

1.2 The Rights of the Employee

Once hired, an employee certainly can claim rights such as:

- The right to a safe and healthy work environment
- The right to job security and due process in firing and promoting
- The right to privacy
- The right to compensation for injury
- The right to participation or voice in matters affecting workers
- The right to equal treatment without regard to race or gender
- The right to pension protection
- The rights to collective bargaining such as those established by the National Labor Relations Board
- The right to be free from harassment
- The right to a living wage.

We will examine each to see what the claim is based on and to what extent it is justified.

1.2.1 The Right to a Safe and Healthy Work Environment

One can defend the claim that employees have a right to a safe and healthy environment on the grounds that an employer like everyone else is obliged to do no harm. However, such a claim is challenged by some defenders of a free market view, which sees the employment relationship as simply a contractual arrangement, wherein both parties are free to accept or reject the terms of the contract. From such a perspective, the worker is seen as free to choose to do the job under whatever circumstances it occurs. If workers desire a safe and healthy environment, then they can refuse to work under those unsafe conditions. If enough workers refuse, there will be a short supply of workers and the employer will be forced either to develop safer work environments or to pay higher wages to reflect the higher safety risk. Defenders of the right to a safe work environment counter that the employment relationship must be seen in a more realistic light. It is clear that in an urbanized market economy where there are more workers than desirable jobs, there are severe asymmetries of power, between employer and employee. Given that fact, the employee is forced to take certain jobs to survive, so that the conditions of a contract—two free and autonomous individuals making an uncoerced choice—are difficult to meet.

Consequently, a claim that it is not incumbent on an employer to provide a safe and healthy work environment if the worker chooses to accept a job under such circumstances is disingenuous. Such an attitude justified the sweatshops of the late nineteenth and early twentieth century, but it seems no longer tenable.

Even if the free market contractual approach were tenable, the requirements of the free contract would make it imperative that the prospective employee knows the safety and health risks before going into the situation. So, the perspective employee could claim a right to the knowledge of the *conditions* of the job, as well as a right to some later choice if new and unforeseen health and safety factors come to light. There seems to be no way under either model that an employer can justify withholding such vital information from employees.

Given the realities of the asymmetries of power in the employer–employee relationship, it seems reasonable to assume that there should be a right to a safe and healthy work environment. Further, such a right would necessarily override the right of shareholders to profit maximization. All profit maximization is trumped by other stakeholder rights so the goal of business, which is to maximize profits, becomes limited to as much profit as possible while respecting the rights of other stakeholders.

1.2.2 The Right to Job Security and Due Process in Disciplining, Demoting, Promoting, and Firing

It was long held that the employer had a right to fire employees at will—the core of the doctrine euphemistically named, “employment at will.” The arguments were: for the sake of efficiency (a utilitarian argument) and to respect the property rights of owners (a deontological argument), owners were free to fire workers as they wished. The business was the owner's property and the owner had the right to do what he or she willed with that property, including firing employees for whatever reason or no reason.

This view, of course, fails to recognize that the employment relationship is a reciprocal relationship that involves interdependencies between an employer and an employee. Implied or explicit agreements and promises are entered into when a job is offered and accepted. No prospective employees, in their right mind, would *freely* accept a job on the condition that they could be let go on the whim of the employer. The operative word here is *freely*. If one has little or no choice, one accepts to work under conditions that would not otherwise be endured. Reasonable people expect that others have justifiable reasons for what they do. Hence, there is a right to job security, which means the person, once hired, has a right to hold that job as long as there are no good reasons for terminating the employment

Given the right to job security, it is incumbent on the employer to give the employee the right to due process when decisions are made concerning his or her welfare. Such decision involve a renegotiation of the implied understanding. The insistence on due process is made because employers who hold power over the employee is analogous to the U.S. government, which holds power over its citizens. Since, to avoid the abuse of power, governments cannot act against its citizens without giving due process and since the employee is in the same subservient relationship to the employer, as the citizen to the government, similar protections need to be given. Hence, there should be right to due process, a right to procedures, including notice and a hearing or process where good reasons for firing or demotion need to be presented. Of course, given that most states in the USA are still employment-at-will states, the right to due process can be no more than a moral right, since it is not recognized as a legal right, except of course, where it was negotiated into a contract. However, as we know, provisions in contracts that give power to one or the other party are only negotiated from strength.

1.2.3 The Right to Privacy

The right to privacy is also argued for by drawing an analogy of the employee to the citizen. The right to privacy is not specifically mentioned in the US constitution, but is asserted in the rulings of supreme court justices. Justice Brandeis (1890), one of the first to assert privacy rights, maintained that the right to privacy was "the right to be let alone." The claim to a right to privacy springs from an individualism, which asserts that no one has the right to tell another what to do in his or her personal and private life, and also asserts that other people do not have the right to know what goes on in a person's private life if that person does not wish to disclose it A derivative of the general right to privacy, is of course, the right to freedom in one's off hours, as long as what one does not hurt the employer. Privacy rights, of course, are negative rights. The employer need not do anything except respect an employee's privacy.

There are arguments against privacy rights or, at least, arguments that there are times when those rights can be overridden. Specifically, privacy rights can be overridden when private action *harms* others. That, of course, means the actions are no longer private. Such a stance, however, respects privacy rights much more than an earlier view, which held an employer had a right to tell an employee what they could or could not do in his or her private life. Here, we have the question of how much an employer is entitled to demand from an employee that is not job relevant. What are the rights of the employer vis-à-vis the employee?

Defenders of procedures that seem to violate privacy, such as polygraphs and drug testing, defend this invasion of privacy on the grounds that it conflicts with others' rights to a safe workplace. However, that would not be a denial of the right to privacy, only a claim that it conflicts with other rights.

The right to privacy, of course, implies a right to freedom in one's off hours and relates to a different and more controversial rights' claim, the claim that employees have a right to freedom of speech. Now, few contest the right to free expression of opinions, but what if those opinions, possibly gained in working for a company, when publicly expressed, are harmful to that company. The complexity of such issues indicate that a great deal of work needs to be done in resolving the public/private distinction and how it relates to the employer–employee relationship.

1.2.4 The Right to Compensation for Injury

A rather compelling case can be made for a right to compensation for injury, on the basis of economic harm. There are good reasons to believe in compensatory justice. When one person suffers economic harm from another person's activity, the injured party is entitled to compensation. It is the principle that makes parents tell their child to fix or pay for the neighbor's window that the child broke. If I suffer harm in your service, fairness would seem to dictate that you reimburse me for that harm. There is, of course, an exception in the case where the harm was expected and compensation initially took the risk of harm into account, so that the employee was paid more for participating in a high risk job. As in other cases we have seen, the strength of the rights' claim here will rest on the characteristics of the contract or agreement, explicit or implied, between the employer and employee.

1.2.5 The Right to Participation or Voice in Matters Affecting Workers

This is a recently articulated and much more controversial right, but it is a right that flows out of the temper of the times that call for solidarity and total quality control management. As the view of the relationships between owners, managers and employees changes, and as the notion of stakeholder gains ascendancy, the employee is seen as a more and more important player in the corporate culture. Accordingly, in those matters that seriously affect workers, participation in deciding their own fate is seen not so much as a desideratum, but more as a right. The existence of such a right becomes tenable, if one recognizes the asymmetry of power between employer and employee, and how that affects employment agreements. The right is asserted as a foil to ward off the potential abuse of power that can arise from such asymmetry.

Existing agreements, to be morally binding, need to be the result of informed mutual consent. If existing implied and explicit contracts or established relationships need to be changed, those affected by the result of the changes ought to have a voice in renegotiating the revisions.

1.2.6 The Right to Equal Treatment without Regard to Race or Gender

Since violations of equal treatment occur in the workplace, it seems obvious that one assert a right to equal treatment without regard to race or gender, where race or gender are irrelevant, as they usually are. This is a general human right, derived from the principle of justice, which can be applied to workers specifically.

1.2.7 The Right to Pension Protection

This right is a much more specific right and does not seem too problematic. Given the beliefs in a right to one's own property, or to what one worked for, and granting that the pension is the property of the workers, promised by the employer, it would seem that good stewardship would oblige the companies to protect the pension and not to put it at risk in speculative business projects.

1.2.8 The Right to Organization Bargaining and The Right to Strike

These are, of course, legal rights and established by legislation and regulation in the USA by the NLRB, but there is a moral basis for the NLRB regulations. The US bishops remind us that human nature being what it is, one way to overcome power is to confront it with equal power. In modern industrialized societies with most of the power on the side of corporations, organizations of workers or consumers are indispensable to redress the balance of power. Hence, to gain the power to secure their rights, workers need to be able to organize. To attack the ability to organize is to attack a right essential to human dignity.

1.2.9 The Right to be Free From Harassment

This right, like the right to equal treatment is a human right, that should not be violated anywhere, let alone in the workplace. Emphasis lately has been on the right to be free from *sexual* harassment, but it is imperative to note that there are other forms of harassment.

1.2.10 The Right to a Living Wage

This is the last employee right we wish to consider. As far back as 1891, Pope Leo XIII, in an encyclical entitled *Rerum Novarum* (Of New Things), articulated a number of employee rights. Among these was the right to a living wage. For him, a living wage was enough to support a family with children, so that the children were adequately cared for. It is debatable how many jobs today pay a living wage. At any rate, the Pope's call for rights was reiterated by the US bishops in 1986. The bishops not only argued for a living wage, they articulated a set of rights. The argument was simple and familiar.

According to the bishops, asymmetry of power presses workers into choosing between an inadequate wage and no wage at all. Justice demands minimum guarantees. "The provision of wages and other benefits sufficient to support a family adequately is a basic necessity to prevent (the) exploitation of workers. The dignity of workers requires adequate health care, security for old age or disability, unemployment compensation, healthful working conditions, weekly rest, periodic holidays for leisure and reasonable security against arbitrary dismissal" (National Council of Catholic Bishops, 1986).

We do not claim that this list is exhaustive, even if it is exhausting. For, if we ground rights on necessity, then as society articulates the new necessities required for living well in a new technologically advanced age, it will also articulate newly discovered goods that will become candidates for rights.

NOTE

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ETHICAL ISSUES IN FINANCIAL SERVICES

CHAPTER 11

ETHICAL ISSUES IN FINANCIAL SERVICES*

> "Some turn every quality or art into a means of getting wealth; this they conceive to be the end, and to the promotion of the end they think all things must contribute."
>
> Aristotle, *Politics*, Bk. 1, Ch. 9, 1258a13–14

"The unfettered love of money is the root of all evil." Such a claim, which got revised into "Money is the root of all evil," exaggerated as it is, reflects an ethical bias against money and money markets, and, by extension, finance and financial services that permeates many, if not most, cultures' thinking. Western philosophical culture, particularly as exemplified in Aristotle, defines the very notion of liberal as being free from concerns about money. Aristotle claims that it is all right to study wealth getting, but "to be engaged in it practically is illiberal and irksome." Further, he maintains that:

> Wealth getting that results from exchange is justly censured; for it is unnatural, and a mode by which men gains from one another. The most hated sort of wealth getting, and with the greatest reason, is usury, which makes a gain out of money itself, and not from the natural object of it. For money was intended to be used in exchange, but not to increase at interest (Aristotle, *Politics* Bk. 1, Ch. 11, 1258b10–11 and *Politics*, Bk. 1, Ch. 10, 1258b 1).

Major religions, such as Christianity and Islam, at one or another point in their histories, followed this lead of Aristotle and maintained prohibitions against usury, that is, the loaning of money at interest. Consequently from the perspective of western culture, the notion that there could be ethics in financial services is at least problematic if not downright oxymoronic.

Such an ethical indictment of the financial services industry carries over in the views of contemporary popular culture. Recent non-fiction best sellers such as *Liar's Poker* and *Serpent on the Rock* present us with a picture of cultures in the financial world rife with exploitation, manipulation, fraud and excess. Novels, such as *Bonfire of the Vanities* and motion pictures such as *Wall Street, Other People's Money, Barbarians at the Gate*, and *Boiler Room* among numerous others, portray the "Masters of the Universe," the investment bankers, arbitrageurs, the take over companies and stock brokers as the incarnation of evil. A new TV series, *Bull*, portrays life on Wall Street as life in a vicious, dog eat dog world, where the pursuit of big money is the overriding driving force. Individuals such as Ivan Boesky and Michael Milliken, become icons and exemplars of unethical behavior. Insurance companies such as Metropolitan Life, Prudential and New York Life are found guilty of market misconduct in their sales practices, misrepresenting and unnecessarily replacing life insurance policies to the detriment of their clients for the sake of a heavily front end loaded commission. Class action suits against the companies are settled for billions of dollars. In short, popular culture and recent events give us a picture in which the financial services industry appears essentially corrupt and unethical.

However, this essay will try to show that such a picture is seriously distorted, and that ethics in the financial services industry is not only present, but also necessary. A critique depending on Aristotle's view of money would be seriously flawed because would fail to take into account the extent to which money itself and money markets have become of significant instrumental worth to society by aiding the production and distribution of goods. Certainly if a culture turns the pursuit of money, an instrumental good, into the ultimate goal of human beings, such a culture would be ethically corrupt. That is the moral of the story of King Midas. Nevertheless, the invention of money and the conversion of it into a commodity itself, to be used for the purchase of a multitude of other goods, was a boon to the human race, and properly utilized and constrained, financial markets, which facilitate the exchange of money, have an abidingly important and positive impact on society.

For the purposes of this essay we stipulate that ethics is a normative enterprise that analyzes and evaluates not only individual actions and types of action, but also practices, institutions and systems. In that we follow the lead of Aristotle and John Stuart Mill, who remind us that human beings are social animals, and that the fulfillment of their appropriate ends, which is the goal of ethical behavior, can only take place in a society whose structures either help or hinder individual fulfillment (Aristotle, *Politics*, Bk. 1, Ch. 2, 1253a1–35, Mill). Hence, Aristotle and Mill, tell us that a complete ethical analysis requires the analysis and evaluation of the institutions and systems of a society to see if they contribute to or frustrate individuals' fulfillment.

Using such a broad scope requires that the ethics of financial services analyze and evaluate not only individual actions in the financial services industry, such as churning or stock manipulation, but also the entire financial system, including financial markets, financial institutions, and financial instruments. From a macro point of view, a system that benefits people is ethically preferable to systems that do not provide as many benefits for people. From a micro point of view, within the financial system itself, ethical issues such as insider trading, greenmail, de-mutualization or rebating in insurance, surface frequently and their resolution depends on understanding these practices in the context of the highly complex nature of the financial environment. Thus, to help us evaluate the system (the macro view) and the practices within the system (the micro view) it is important to begin with basic definitions, and develop a conceptual vision of how the system interconnects.

If a system is large, of course, individuals get reduced to ciphers, and their individual wants and desires play little or no role in assuring the development of equilibrium and efficiency. Given the ends of efficiency and equilibrium, individual propensities are necessarily sacrificed. Is such sacrifice justified? Yes, but solely for the sake of efficiency, an efficiency that is itself justified by something like an invisible hand argument, which assures that such efficiency will provide benefits for society in general, the greatest good for the greatest number. For the system to be justified it must provide a rising tide that lifts all boats, and do it with some semblance of fairness.

1. THE FINANCIAL SYSTEM

Financial systems mirror the complexities of a nation's economic system and its level of economic development, development being a normative term that implies a desirable end point. We will focus on the financial system of the United States where economic development is advanced, and the financial markets, instruments, and institutions set the benchmark for the rest of the world.

2. FINANCIAL MARKETS

Financial markets are the bedrock of the financial system. Their purpose is to allocate savings efficiently to parties who use funds for investment in real assets or financial assets. An optimal allocation function will channel savings to the most productive use of those savings. In the U.S. system the mediator in the allocation process is price, and price in a financial system is usually described in terms of an interest rate. Efficiency of allocation is critical to assure adequate capital formation and economic growth in a modern economy. System efficiency is achieved when the price reflected in the market is an equilibrium price; that is, a market clearing price. If disequilibrium exists, rapid adjustment to a new equilibrium is guaranteed. Efficiency will occur more readily if the number of buyers and sellers is large; both parties to a transaction easily obtain information; and transaction costs are kept to a minimum.

3. TYPES OF MARKETS

Financial markets can be categorized according to time or according to their purpose.

3.1 Markets According to Time

Categorizing financial markets according to time allows us to divide them into money markets and capital markets. Money markets trade in securities with original maturity of one year or less; whereas capital markets trade in securities with maturity greater than one year. Time is not arbitrary, but rather reflects the accounting cycle. Therefore transactions occurring within the accounting cycle, usually for cash management motives, are satisfied through money markets. These money market transactions involve the buying and selling of: (1) U.S. Treasury Bills, the largest and most important money market; (2) Federal Funds, which involve inter-bank borrowing and lending, and are a critical channel for monetary policy; (3) commercial paper, short-term debt issued by financial and non financial corporations; and (4) Eurodollars, the market for short-term dollar deposits outside the U.S. These markets are primarily institutional, since individual investors are less likely to deal directly in the money market. Rather individuals' cash management transactions are facilitated through a bank or a mutual fund.

Capital markets, whose securities have maturity greater than a year, include three broad areas—the bond, the mortgage and the stock market. The bond market includes the sale of government, corporate, municipal and international bonds. The largest and most important bond market is the U.S. Treasury market, since U.S. Treasury interest rates on government bonds are the reference for security valuation both domestically and internationally. This makes the Treasury bond and note market critically important around the world. The mortgage market involves the financing of residential and commercial real estate, while equity markets involve trading in common and preferred stock.

3.2 Markets According to Purpose

Markets are also divided according to the purpose of the transaction, whether that is raising new capital or the exchange of existing instruments. Transactions carried on to raise new capital for a corporation or government occur in what is called a primary market or new issue market. Transactions that exchange existing investments occur in what is called a secondary market.

4. CAPITAL GENERATION

Capital generation might be facilitated in a number of ways. Securities might be: (1) issued through an auction process, as is the case with Treasury securities; (2) privately placed to a small group of sophisticated investors, as is the case with many corporate bond issues; (3) issued through a rights offering to existing stockholders; or (4) facilitated by an underwriter or investment banker. The best test of efficiency in primary markets is the net cost of the capital the market generates. The lower the cost of the capital, the more efficient the allocation of financial resources.

Each method of capital generation is susceptible to a variety of ethically questionable activities, on numerous levels, ranging from manipulation, misuse of inside information, fraud, misrepresentation, to bribery, over or under-evaluation of assets, high pressure sales, etc.

5. SECURITY EXCHANGE

Most people are not as familiar with primary market activity as they are with secondary markets that are constantly referenced in the daily media. Secondary markets are either exchanges, like the New York Stock Exchange (NYSE) or over-the-counter markets. Exchanges use the auction process for price discovery, determining price through the interaction of buyers and sellers. Any exchange, be it the NYSE or the Chicago Mercantile Exchange (CME), involves (1) a physical location; (2) a set of rules governing trading, operations and behavior; and (3) members who have purchased the right to conduct transactions.

The over-the-counter (OTC) market deals with a greater volume of trading investments than the exchanges do with their auction process. Foreign exchange, which is the largest financial market, trades OTC. U.S. Treasury notes, bonds and bills are traded OTC. The majority of corporate and municipal bond transactions occur OTC, as do the trading in mortgage and asset backed securities. The common stock of many prominent and recognizable companies is traded on the NYSE, but the majority of equities are traded on The National Association of Security Dealers (NASD) systems. For example, prominent companies such as Microsoft and Cisco Systems are traded over the counter.

The OTC systems are made up of dealers, who stand ready to make a market in a particular financial asset, and brokers, who assist customers in trading. A dealer, as opposed to a broker, carries inventory. A dealer, usually through an electronic network, posts bid and ask prices. The dealer will purchase securities at the bid price and sell securities at the ask price. The difference is referred to as the spread and is how a dealer is compensated for the trade.

Any exchange is susceptible to the temptation of one of the parties to profit at the expense of the other. Consequently rules are in place governing what constitutes fair trading. These rules constitute some of the ethical rules governing those who conduct market exchanges. For example, the U.S. over the counter market is regulated by a code of ethics established by the National Association of Security Dealers. (NASD is a private organization, one of whose functions is to encourage ethical practices by its members.) The rules specified in the codes reinforce what are usually common sense intuitions about what is ethically acceptable behavior and what is not. If one promises to sell a customer a security at a certain price, it is unethical to renege on that promise because a later customer offers to pay a higher price. Ethics demands one keep one's word. It is unethical for a broker to give out information about a company, whose stock he is selling, which is colored to make the stock look more attractive. Perhaps the most important ethical principle among brokers and dealers is "Your word is your bond." Absent adherence to that rule, it is likely the system would break down.

6. FINANCIAL INSTRUMENTS AND INSTITUTIONS

Financial markets are at the heart of the financial system since they provide the infrastructure for issuing and trading securities, but there are two other critical components in the system, financial instruments and financial institutions.

Financial instruments are the securities that are traded. They are identified by either a time or contractual reference. As we have seen, classified according to time, money market securities are those having original maturity of one year or less while capital market instruments are those with a maturity of more than a year. Classified according to contractual reference, financial instruments are either debt or equity claims.

Debt claims usually provide the owner with a periodic return, called a coupon interest payment, and the return of principal at the end of the contract. Examples of debt claims include the fixed income securities such as bonds and mortgages, along with money market securities and life and long term care insurance policies and annuities. The chief ethical issue in this domain will involve the responsibility to honor contracts.

Common and preferred stock are two examples of equity claims. Equity claims imply ownership, whereas debt holders have no claim to ownership. If a company is dissolved, debt holders have first legal claim on the assets. Whereas debt claims mature, most equity claims are perpetuities, and whereas debt claims come with fixed obligations as to periodic or coupon return and the return of principal, most equity claims make no fixed promise as to future cash flows. Common stock, the most familiar equity claim, might pay the owner or investor a periodic return in the form of dividends, but there is no fixed or legal obligation to make the payment.

Along with financial instruments, there are the financial institutions, the portal for the average person to participate in the financial system, which help those people exchange those instruments. Financial institutions include, but are not limited to, banks, securities dealers and brokers, pension funds, accounting firms, mutual fund companies and insurance companies. Such institutions are an integral part of the financial system in that they facilitate the activity of exchange.

From the 1930s to the 1990s U.S. financial institutions were neatly compartmentalized, with each type of institution having a specific function in the overall workings of the financial system. The landmark law that created the compartmentalization was the Glass-Steagall Act (or Banking Act) of 1933, which was passed by Congress as a reaction to bank failures and the perceived responsibility of banks for the Great Depression and the general market failures of the time. The Glass-Steagall Act confined banking services to making loans and taking deposits, while insurance services were relegated to insurance companies, and home lending to savings and loans. Banks were also prohibited from assisting their large corporate customers in purchasing corporate stock and reselling it in the open market. In the 1990s the clear demarcation of financial institutions began to get muddied. Passage of the Financial Services Modernization Act (The Gramm-Leach-Bliley Act) in 1999 has ushered in a new chapter in U.S. financial history, some of the implications of which are still not clear.

7. FINANCIAL INTERMEDIARIES

Financial institutions are often referred to as financial intermediaries. In a world of direct finance, where borrowers and lenders interact using primary securities, there is no need for financial institutions, but direct finance creates problems that intermediaries can help resolve. There are three types of intermediation—of denomination, maturity, and risk.

Intermediation of denomination and maturity occurs because very often borrowers and lenders have different desires with respect to the dollar amount of a transaction and the maturity of the loan or the investment. A financial institution, such as a bank can easily allow depositors to save in any convenient amount and then package the saving and accommodate a lender's desires. With respect to maturity the intermediator can guarantee a saver one time frame, say six months, and simultaneously make a loan for a different length of time, say two years.

Financial institutions also engage in is risk intermediation. The typical household saver is risk adverse and they would have difficulty dealing directly with a borrower. In such a situation the bank provides a secure and risk free way for money to be transferred from the saver to the borrower, while simultaneously controlling the risk of the transaction. Insurance companies are risk inter-mediators in a different way. They create pools of risk adverse people so that they can insure themselves against catastrophic events that would ruin them financially.

Besides functioning as intermediaries, financial institutions facilitate exchange by acting as depository, contractual, or investment institutions. Commercial banks and thrifts, including credit unions, are the chief depository institutions, where the major source of funds is deposits sold to savers, and the major use of funds is loans to borrowers. Contractual institutions include insurance companies and pension funds where the source of funding are premiums paid to obtain various types of insurance policies or pension contributions that create annuities guaranteed by a structured contract. Investment institutions are comprised of investment companies, primarily mutual funds and broker dealers

To sum up the financial system is the complex array of financial markets, securities, and institutions that interact in facilitating the movement of capital among savers and borrowers. That financial system is also used for mediation of risk among parties. In the best possible model, this is all accomplished in a very efficient and hopefully ethical manner.

8. THE ETHICS OF THE MARKET SYSTEM

In the light of the above the following seems clear. Financial markets are a critical component of a modern developed economy, that is, they are the fundamental element of the free market or capitalist system. Historically they have lead to the highest overall standard of living in history. In short they are instrumentally beneficial in helping bring about material conditions for the good life of society.

That being the case, it is interesting to note to what extent, even the religious opposition to the free market system mentioned in the opening paragraph, has abated. In 1991, in the encyclical *Centesimus Annus*, Pope John Paul II states, "It would appear that on the level of individual nations and of international relations, the free market is the most efficient instrument for utilizing resources and effectively responding to needs."(John Paul II, p. 489.) It seems clear, then, that the free market economy, and the financial system that facilitates it have become almost universally recognized as instrumentally beneficial for society. Not only that, but it benefits society, participation in it, in some ways, can now be viewed as a noble calling. (Novak) So if the market and its instruments are not abused, it is a least ethically acceptable from a macro point of view.

9. ETHICAL PRACTICES WITHIN THE SYSTEM

Still, we need to examine the various types of behavior within the system from a micro point of view. There are financial services practices generally recognized as unethical like fraud, stock manipulation and churning. There are also practices in financial dealings whose ethical acceptability is questionable. Questions can be raised about the following sorts of practices. Is insider trading really wrong? If so, what exactly is wrong with it? How much disclosure is necessary in sales of financial instruments? How much disclosure is necessary in financial statements that show the financial strengths and weaknesses of a company? Should mutual fund managers put themselves in unwarranted conflict of interest situations by engaging in private purchases of stocks their company trades in? Should banks be able to sell insurance and investment products, and does such a capability create unnecessary conflicts of interest for them? Should accountants do consulting for firms they audit? Is day trading merely legalized gambling? Should law firms and accounting firms join together into multi-disciplinary estate planning teams? Is it fair for mutual insurance companies to demutualize? What should the limits of privacy be in the credit industry? What climate should be created so that those interests of the broker do not conflict with those of his client? Do we need fee based advising only, or is commissioned based selling with an agent's responsibility to give a client the best possible advise? Are financial service personnel professionals or simply sales people, and what are their responsibilities as such?

10. A LITANY OF UNETHICAL PRACTICES DECEPTION AND FRAUD

The ethical rules in the market place, even the market place of money, that individuals should follow, are fairly straightforward. Market transactions between individuals ought to be carried on without using others and without engaging in deception or fraud in accordance with one's role. However, human beings, being what they are, they will, for a variety of reasons fall short of fulfilling their responsibilities or what is worse greedily and selfishly use others for their own gain. What follows is a list of ethically problematic ways of behaving in the financial services industry.

Ways of being deceitful or dishonest in the financial services industry include misrepresenting the financial product, including deceptive illustrations of possible returns, concealing of risk factors, withholding full disclosure, misrepresenting one's ability, and other activities. Fraud is a legal concept and has specific meanings in specific instances, but generally involves "intentional misrepresentation, concealment, or omission of the truth for the purpose of deception or manipulation to the detriment of a person or organization." (Downes and Goodman, p. 148.) Beyond deception and fraud, there are other ways of using a client, particularly in exchange situations, but possibly elsewhere, which involve coercing or manipulating the client, by fear mongering or other means.

A central concern in financial services arises from conflicts of interest. There is conflicting interest when either the broker or agent's interest is served by selling a product the client does not need or is inferior to another product, typically a product that provides less remuneration to the sales person. There is also conflict when an agent has two clients, and service to one will be detrimental to the other. If the interests in conflict are the interests of the agent against those of the client, professionalism demands that the agent subordinate his or her interests to those of the client. When the interests in conflict are those of two parties, both of whom the agent serves, solutions are more complex.

There are particularly difficult conflict of interest situations for accounting firms arising from providing external audit function for a publicly held firm while simultaneously selling consulting services to the same firm. Also the audit function has inherent conflicts balancing confidentiality to the client and their duty to inform the public of possible illegal practices. The SEC has historically been concern about the latter problem, but it is mixing of auditing and consulting that concerns the SEC at the present time.

Financial planners routinely run into conflicts between the interests of their clients and the structure of fees for their services. There is an interesting juxtaposition in the field between fee only planners and planners that sell product. A fee only planner charges for their advice, but receives no commission from the client's implementation of that advice. Most planners are not fee only, but rather do not overtly charge for their advice, but are remuneration through a commission on the implementation of that advice. This creates an interesting dilemma—does my advice purely service the needs of the client or do I shade my advice depending on the structure of a fee schedule?

There are numerous examples of potential unethical practices in money management and investment banking. For example, money managers who trade personally in the securities their firms hold in portfolio. A manager with large holdings in a security can easily influence the price of that security as they buy and sell; therefore why not enter the market for a personal transaction before placing the firm's transaction. Investment bankers have ample opportunities to engage in practices that are either clearly a conflict of interest, and often illegal, or border on a conflict of interest. Free riding and withholding securities from the public in an initial public offering is illegal, but the temptation to compromise this rule is powerful when the issue is "hot"; that is everyone knows the price will increase once the security begins to trade in the secondary market. In December 2000 the SEC commenced an investigation against three prominent investment banking firms for selectively providing shares of "hot" IPOs to certain clients. The investigation centers on a "quid pro quo" arrangement where the client is charged higher fees for other services in exchange for IPO shares that will surely rise in value.

Another unethical practice that occurs in the financial services industry would be scalping securities: for example an investment advisor who buys a security before recommending it, then selling out after the price has risen based on the recommendation. The most prominent case occurred in the 1980s involving the Wall Street Journal's "Heard on the Street" column. This column is widely read and carefully followed by investors. The articles are very specific and often list companies and recommendations. The author was accused of tipping off certain individuals about the contents of article before they were published.

Cornering the market is obviously unethical and often illegal, especially when it is in direct violation of government regulations, as was the well-publicized case against Salomon Brothers in 1991. Salomon was one of the major primary dealers in U.S. government securities. These dealers bid in the auctions for Treasury bills, notes and bonds. The government has regulations concerning the percentage of successful bids that might go to individual firms, but firms might also bid for their customers. In one auction in early 1991 Salomon received over 80 percent of the offering under the pretense that a sizeable amount of the bids were for customers. In the subsequent investigation charged with illegal activity, but there was also evidence to suggest that Salomon had used agreements with customers that technically might not have been illegal, but surely bordered on the unethical given the intent of the government rules.

Companies can get involved in activities such as: illegal dividend payments, where "dividend payments come out of capital surplus or that make the company insolvent" (Downes, p. 174); incestuous share dealing- buying and selling of shares in each other's companies to create a tax or other financial advantage compensation design (Downes, p. 175), where they set up alternative forms of payment to allow agents to avoid rebating violations; discrimination in hiring and promoting; misrepresentation to new hires; invasion of privacy; and dubious claim settlement policies.

In insurance sales, there is needless replacement, and defective illustrations, which have been the basis of billion dollar lawsuits against Prudential, New York Life and Metropolitan Life among others. Brokers and agents get involved in churning accounts that benefit the agents at the expense of the clients. For broker/dealers there is insistence on suitability rules, which demands you know and act in behalf of the best interests of the client you are selling to. There is the prohibition for financial planners and for those with control over clients' monies, either as trustees or brokers or advisers against commingling those funds with the financial service agents.

For those on the exchanges there is insider trading, which is as the name implies, involves trading on the basis of inside information, which is viewed as unfair to other traders who do not have the information. It makes for an unequal playing field. There is free riding, in the form of withholding a new securities issue to resell later at a higher price, or in the form of buying and selling in rapid order without putting up money for the sale.

In arbitrage there is Greenmail, which is "payment by a takeover target to a potential acquirer, usually to buy back acquired shares at a premium. In exchange, the acquirer agrees not to pursue the takeover bid further" (Downes, p. 164). Gun Jumping involves trading securities based on information before it becomes public, or soliciting buy orders in an underwriting before the SEC registration is complete (Downes, p. 165).

Finally, there are prohibitions against schemes such as pyramiding that build on non-existing values, such as a Ponzi Scheme, rigging the market, manipulation, or running ahead that is, an analyst buying a stock before making the recommendation to buy to his or her client (Downes, p. 352).

Most of these unethical practices have in common, if not downright deception, the use of one's customers or clients for the benefit of the financial service professional. There is neither time nor room to deal with all of these issues, but this litany should help us begin to understand the tremendous range of possible conflicts of interest and out right possibilities of fraud in financial interaction. What can be done to avoid such problems?

11. BASIC ETHICAL PRINCIPLES

We have just provided a list of only some of the types of ethical misbehavior to occur in the financial services industry. Given the huge diversity of issues what is the practical way to approach them? First, it would seem useful to come up with some general principles to follow. Second, it would be helpful to examine the various kinds of regulation governing financial services. Finally, it would seem helpful to examine how to make the environment more susceptible to ethical behavior.

Our experience show there are two valuable and overarching ethical principles that can be applied to the majority of issues in financial services: (1) avoid deception and fraud, and (2) honor your commitments. What follows will be a brief discussion of how these two principles can be used to resolve a number of the ethical issues financial service professionals face.

12. THE AVOIDANCE OF DECEPTION AND FRAUD

Economists have developed the notion of an ideal market exchange as a transaction in which two autonomous individuals, with full information, agree to transfer goods. Ideally there is perfect information about the worth of what is being given and received in return. Such an exchange, freely entered into with full information, should maximize satisfaction on both sides. Not only is there satisfaction on both sides, the expansion of such market behavior to all—agreements of exchange made freely and honored, leads to the overall improvement of each traders' lot and benefits the entire society.

When the conditions of an ideal trade, which includes the freedom of the participants, and full knowledge of the pertinent details of the product, are met we have what is often called informed consent. Consent cannot be presumed if one is either forced into an exchange or lacks adequate knowledge of the product one is bargaining for.

However real financial markets are not ideal. In real financial markets consumers are often closer to ignorance than perfect knowledge. That makes them vulnerable to the unethical machinations, which if they were to become widespread, would lead to the general demise of the health of the financial market itself.

Clearly deception undermines the “ideal exchange model.” Deception leads to the deceived party getting something different and usually less valuable than they expected. The mutual satisfaction disappears. A financial system fraught with deception and fraud where one could not rely on others to honor their commitments would be an inherently unstable as well as an economically inefficient society. Hence, the acceptance of practices that utilize deception and fraud along with not honoring one’s word would lead to undermining the market.

Empirical observations provide us with multiple examples of such failures. Many economics founder because of graft and corruption, bribery, extortion, and failure to abide by one’s word. In fact, it is this exact environment that permeates Russia and stifles its successful transition into a modern economic state. The reason for such failure is clear. Any rational person would be foolish to deal with a country, company or person whose is deceptive and unreliable. Rational and ethical financial dealing requires people be able to trust those with whom they are dealing to be honest and abide by their commitments, even if abiding by those commitments is disadvantageous to them.

Still, because of the temptation to pursue one’s interest at the expense of another, financial markets are full of examples of dishonest dealings. An agent tells a client that an insurance policy is a savings plan in order to make the sale and obtain the commission. A broker tells the client for whom a low risk investment is suitable, that a high-risk investment will meet the client’s needs in order to make the sale. A financial officer gives the credit manager at a bank an inaccurate picture of the receivables of the company to secure a loan he assumes the bank would not approve if it had the true picture. All of these misrepresentations at the expense of the client (or at least without the informed consent of the client) in order to benefit the agent are essentially situations where one person gets used for the benefit of another, by being lead to believe something other than the truth. That is the essence of lying, using another to benefit oneself.

But some of the most interesting cases of unethical behavior in the world of finance are not those of outright misrepresentation. A more subtle way of circumventing ideal exchange is through failure to disclose pertinent information. Often agents defend failure to disclose by saying, “Not disclosing isn’t lying, it’s just not telling.” But such a rationalization misses the point. Any action of deliberately withholding information to get another to act contrary to the way she would if she had that information has the same deceptive structure and consequence as the overt lie. Such action doesn’t allow for informed choice.

However, deciding how much to disclose is not easy. Effective salespersons are always reluctant to put negative thoughts in a buyer’s mind. Pointing out the possible unsuitable features of a stock, its risk, or a variable annuity, its lower return on investment when tied to a life insurance policy, jeopardizes the sale. Aggressive intermediaries are reluctant to disclose downsides of their products. Should one disclose the downside of a product and if so how much?

The characterization of lying given above shows an approach that is helpful in determining how much to disclose. “Whenever a person is tempted not to disclose some information, that person should ask why he is not disclosing." If an agent is withholding information because of fear of losing the sale if the client knows the whole story, the agent is manipulating that client. When stock brokers, financial planners or insurance agents claim that their customers don't need all the information that is given to them, they are often rationalizing and some care needs to be taken to determine if that is really the case.

Of course, the factor that makes the issue of disclosure critical is the asymmetry of knowledge. As we have seen, in financial markets clients are often closer to ignorance than perfect knowledge and hence are entitled to enough disclosure to give informed consent. Given the complexity of financial products the seller or financial advisor usually has far greater understanding of the financial instrument than the buyer, especially when the buyer is an individual rather than an institution. Where there is asymmetry of knowledge there is a dependency relationship where the person with less knowledge is vulnerable to the person with more knowledge. In an ethical world such a vulnerable person is entitled to disclosure that will allow informed consent.

Such dependency relationships reflect a need for a special ethical approach that permeates the world of financial markets, the world of fiduciary relationships and/or agent/principle relationships, where the client depends on the expertise, honesty and good will of the agent, broker or adviser. Such a dependency relationship puts an added responsibility on the fiduciary or agent. Fiduciaries and Agents have by virtue of their relationship with their clients an ethical responsibility to look out for the best interest of their client. Technically, a Fiduciary is "a person, company, or association holding assets in trust for a beneficiary. The fiduciary is charged with the responsibility of investing the money wisely for the beneficiary's benefit" An agent is "an individual authorized by another person, called the principal, to act in the latter's behalf in transactions involving a third party." (Downes, p. 12) Thus, beyond being honest, the agent or trustee has an ethical obligation to look out for the client's best interest.

Any lying or failure to disclose that harms the principal, obviously does not look out for the client's best interest, and consequently violates the agent's ethical responsibilities. But there is the responsibility to look out for the client's best interests.

Still, the responsibility to look out for a client's interests comes because the agent or fiduciary has taken it upon herself to play a certain role in the financial services industry. Hence the responsibility arises because one has made a commitment as an agent, a broker, an accountant, a banker or a planner.

The financial intermediary is more than a mere salesperson. There are specific roles that need to be played in the financial markets and those roles carry specific responsibilities. In committing to those roles the financial service professional commits to those consequent responsibilities. A banker has different responsibilities from an accountant, who has different responsibilities from a broker or a mutual fund manager. But to the extent they took on those jobs, they committed to the responsibilities of those jobs.

13. TYPES OF ROLES IN FINANCIAL MARKETS

A number of roles have evolved to make markets more efficient. We need the creators of products and marketers of the products as well as the intermediaries. We have brokers, agents and dealers whose role is to sell. We need accountants to keep track of the exchanges and their worth. We also need accountants to give a true picture of the financial status of companies. We need auditors to attest to the accuracy or the truth of the financial statements of the companies being audited. While a broker's and agent's primary role is to make financial instruments or products available to consumers, given the complexity of the financial products available today, they often need to take on the role of an advisor. Bankers play multiple roles in the financial system. They give advice to savers, make decisions on loans, and act as fiduciaries in the trust function. An emergent role in the financial services system is that of a mutual fund manager. Finally, CEO's of financial institutions have a role to maximize profit for their shareholders, and some would argue, balance that over against the interests of all the other stakeholders.

14. REGULATORY PROCEDURES

Given such a diversity of roles, it is clear that device is necessary to spell out the obligations that arise from the assumption of such roles. There are two means of regulating, either self-policing or through state or federal laws. People in groups that regulate themselves view themselves as professionals, and develop codes of ethics that spell out the responsibilities those professionals have to their clients.

15. PROFESSIONALISM

Recognizing the importance of being a person of one's word, numerous people in the financial services industry have encouraged the development of a professional attitude among participants in the industry. If we look at the older paradigms of professions such as the medical, legal and teaching profession, we see that what is characteristic of those professions is the reliance of the patient, client or student on the expertise of the doctor, lawyer or teacher as well as the respective professional's concern for the well-being of the patient, client or student. In the financial market, where profit seeking is so prominent, and where the principle of enlightened self-interest is such a motivating factor, and products and instruments are so complicated, it becomes necessary to insist in some circumstances that people put their lives and or fortunes in other people's hands. Having client's welfare in their hands, makes it imperative that professionals look out for the best interest of those clients, even at the expense of the professional who has the expertise.

Insurance agents, financial planners, estate planners, brokers, dealers, accountants, mutual fund managers, valuation specialists, bankers, and all other financial services personnel, are experts who have others dependent upon them for their well-being. They need to look upon themselves as professionals, and upon the requirement to look out for the best interest of their client's, (or of the public, as in the case of the accountant/auditor) as an ethical requirement. In short, while sales people sell, financial service professionals, even in selling, provide a service for their clients and it is incumbent upon them that service is in the client's best interests.

Thus, most professional codes of ethics require that transactions be carried out with integrity, fairness, competence, objectivity, professionalism, diligence and respect for clients' confidences. Those are characteristics usually demanded of professionals by the financial services industry's many codes of ethics, which govern the behavior of financial planners, accountants, tax attorneys, bankers, valuation specialists and others. In short, the codes of the professional organizations provide an excellent example of sets of ethical rules governing individual behavior.

16. THE LEGAL ENVIRONMENT

We could argue that self-regulation required by professional codes will lead to ethical business, and indeed it will have some effect. But the call for professionalism in the financial services marketplace with its shift of attitude toward an insistence on ethics has not taken place by itself. Human nature being what it is there will always be the necessity of government regulation, in short laws. Laws tend to codify common morality or popular custom and add the extra incentive of stipulated punishment for misbehavior. When a law based on an ethical rule is stipulated and enforced a penalty is imposed on the violator. In this way society can legislate the most important aspects of morality.

There is a framework for indicating acceptable behavior within the financial system. Unfortunately it is fragmented, consisting of legal statutes, voluntary compliance standards, self-regulated associations, regulatory standards, and codes of ethics. Financial markets and institutions went through difficult times in the late 1920s and early 1930s. Markets collapsed, fortunes were lost and public confidence was eroded. Much of the blame was placed on internal abuses, including rampant speculation, unfounded optimism supported by brokers and dealers, and a general disregard for common sense and prudence. The 1933 and 1934 Security Acts were the first serious attempt at bringing order to the financial markets. The 1933 Act applied to the primary market; that is, the markets responsible for raising capital; the 1934 Act attempted to regulate the secondary market; that is, the trading of existing securities. Legislation has evolved since the 1930s in an attempt to strengthen the integrity of market transactions and to force full disclosure in all transactions. The initial responsibility for enforcement falls on the Securities and Exchange Commission, and the regulators of the banking and insurance industries.

But by the late 1930s the intent of the 1933 and 1934 legislation was being channeled into self-regulation by the various players in the market The New York Stock Exchange took a lead in this area, lobbying Congress to allow internal standards and enforcement to meet the goals of the 1933 and 1934 Securities Acts. The New York Stock Exchange is member owned and managed, including what is referred to as "Member Firm Regulation."

The Exchange believes that self-regulation is good business and that effective supervision is essential to the successful operation of every broker/dealer. This system of self-regulation, which Congress endorsed, begins with broker/dealer firms and places heavy reliance of their adherence to rules of conduct and the exercise of effective supervision and control over all operations and personnel. The Exchange plays a role in the process as the SEC appointed Designated Examining Authority for most of its member firms. The Exchange maintains an extensive system for monitoring and regulating the activities of members. Finally, it has the responsibility to investigate and prosecute violators of Exchange rules and the Securities and Exchange Act of 1934 and the rules there under.

All other exchanges have the same member firm system of self-regulation. In 1937, Congress passed the Maloney Act, providing for the establishment of national securities associations to supervise the over-the-counter securities market. The OTC or dealer markets are primarily regulated by the NASD Regulation, Inc. (NASDR), which was established in 1996 as a separate, independent subsidiary of the NASD. NASDR was created as a part of an unprecedented restructuring of NASD, a major feature of which was to separate the regulation of the broker/dealer professional from the operation of the NASDAQ Stock Market. Up until 1996 the regulatory arm of the OTC markets was within the general organizational structure of the NASD and the NASDAQ market. The new structure is a positive step in self-regulation. A board composed of a 50/50 mix of public representation and industry professionals provides the governance of NASDR. This is another interesting innovation on the part of NASD.

During the last decade banks have become prominent in the sale and marketing of securities. This has created new challenges for regulators and new ethical issues. The prime investment or savings products banks have traditionally sold are deposit instruments, the majority of which are insured by the Federal Deposit Insurance Corporation (FDIC). As banks sell non-deposit products the challenge is to make certain that customers understand to which products FDIC insurance applies. Bank regulators have been promulgating additional rules and regulations to augment current broker/dealer rules when the transaction occurs through a bank.

There is plenty of evidence of regulator and internal control over the behavior of individuals responsible for the marketing and sales of securities and insurance. Most organizations within their self-regulatory structures have attempted to focus on "codes of conduct." The American Institute of Certified Public Accountants, The Institute of Management Accountants, The American Bankers Association, The Association for Investment Management and Research, The Certified Financial Planner Board of Standards, the International Association for Financial Planning, The American Institute for Chartered Property Casualty Underwriters, The Society of Financial Service Professionals, formerly the American Society of Chartered Life Underwriters, and many other professional groups in the financial service industry have codes of ethics, which lay out principles and rules of proper behavior.

What is interesting is the attempt to blend codes and regulations together. There are numerous examples. Arthur Levitt of the SEC recently encouraged the AICPA to strengthen its code governing conflicts of interest. One of the industry groups that is especially interesting in the mutual fund managers group. The Investment Company Institute, the national association of the U.S. investment company industry, has published "An Investment Company Director's Guide to Oversight of Codes of Ethics and Personnel Investing." The 1940 Investment Company Act reflects congressional recognition of the delicate fiduciary nature of an investment advisory relationship as well as intent to address any potential conflicts of interest that might inhibit an investment advisor's ability to render disinterested advice to its clients.

Congress, the SEC, and the mutual fund industry recognized the need to reconcile these fiduciary obligations with personal investing practices. The SEC's Rule 17j-1, requires that all investment companies and their advisers adopt codes of ethics and procedures designed to detect and prevent inappropriate personal investing. This is a very positive sign in the area of money management since the mutual fund industry has become prominent and highly visible in the financial system landscape, and for them to address these complex issues through a formalized code of ethics is encouraging.

17. INSTITUTIONAL BARRIERS TO ETHICAL BEHAVIOR IN THE FINANCIAL SERVICES

We have seen that there are unethical practices and that the self-regulating of the various professions as well as the laws have been utilized to improve ethical behavior in the financial services industry. But is there anything else that can be done?

First, there must be recognition of the unethical activities taking place. Then it is imperative that financial services professionals commit to, as most of their codes insist they do, putting the best interests of their clients first, and develop a strong enough character to withstand temptation. But beyond that there are other practical ways to encourage or enable ethical behavior.

One of the most common procedures being developed is the separation of the sales function from the advisor function. Fee only planners are an example of this model. A wall between the activity of selling and advising would go a long way in cleaning up powerful temptations facing brokers and agents, but the resistance from the agents and brokers is strong, both because of the tradition of commission for sales and the high remuneration tied to those sales.

What is also critical for encouraging ethical behavior is to reduce, as much as possible, the pressures created by the corporate culture of the market place. A market place that measures success almost exclusively by profit creates pressure on companies and their managers to succeed whatever it takes. Their companies, who are in turn forced by the demands of profitability, to act in ways they see as unethical, often force financial service professionals. For example, captive agents in insurance are asked to sell Variable Annuities they think are unsuitable. The companies produce the annuities to stay competitive. The competitive forces pressure managers, and agents are pressured to go along with their managers. Basic ethical attitudes must be compromised in order to do one's job.

What underlies this is the fact that the view that business should be concerned with profits no matter what the cost filters through the organization to the financial service professionals. Such as view needs to be replaced by a view that business should be compatible with the other values of society. The financial market system needs to concur that the business environment should not be an environment where there is a split between the personal ethical attitudes and the attitudes governing one's business life. Rather, the corporate culture, the business milieu should be one that supports personal "integrity" along with profitability.

Most of the professional codes in financial services require integrity. Usually we think of the person of "integrity" as one who is truthful, and that is certainly one meaning. But there is a fuller meaning of "integrity" where integrity means quality whereby one's life is unified, where there is a sort of "wholeness." Such wholeness requires a culture where people can work in an environment that doesn't cause them to violate their "conscience," and which promotes their flourishing. A milieu such as Solomon Brothers pictured in *Liar's Poker* must give way to a view of enlightened self-interest concerned with the best interests of those the corporation serves.

In short a new perspective is needed. Business culture needs to be seen as a place where there is a sense of responsibility for the creation of goods and services. Financial service agents need to view themselves as agents who bring value to their clients' lives. An agent who is told to forget about the good of the client, either straight-out or subtly, cannot justify his behavior by telling himself he is helping the client. He knows he is simply lining his and the manager's pockets at the expense of the client. A professional will find such a manager's sales pushes morally repugnant and a threat to his own integrity.

For early ethicists, such as Plato and Aristotle, individual human flourishing was the main concern of ethics and setting up of a culture or environment where such flourishing was possible was the main task of societal regulation. From their perspective human beings as part of nature like everything else, and just as plants cannot flourish unless they have an environment of rich soil, so human beings cannot flourish unless their environment is rich soil. Honesty and trust and cooperation and caring are part of a rich robust human life. To live among people who lie, are untrustworthy and who do not care for one another is to live in a sort of human hell. To enter such an environment daily has a debilitating effect, and if one capitulates to that environment, one necessarily diminishes oneself.

Managers in the financial services industry and elsewhere, whose *sole* driving force is maximizing profits, are creating a business climate, in the name of "profit maximization" that will force employees to sacrifice some of their integrity. The growing pressure for businesses to be ethical in the sense of creating value is just the opposite. It is a pressure to create a business climate or culture where the honest, caring, right thing is the thing expected. And, there are those who argue, such an environment will coincidentally lead to more profit.

Ethics has become important in the culture of the financial services market A strong view that the purpose of business activities in general and financial services in particular is the creation of value for the consumer, will make it possible that ethics in the financial services industry will not only exist, but flourish.

NOTE

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CHAPTER 12

THE CORRUPTION OF FINANCIAL MARKETS: SYSTEMIC INEVITABILITY OR ABERRATION?*

> "Some turn every quality or art into a means of getting wealth; this they conceive to be the end, and to the promotion of the end they think all things must contribute."
>
> Aristotle, *Politics*, Bk. 1, Ch. 9, 1258al3–14

A story is told about Protagoras, the Sophist, who took money for teaching— a practice Socrates found inappropriate.

> A student came to Protagoras to learn the law. Protagoras offered the following arrangement: The student would pay Protagoras when the student had won his first case in the courts. As soon as the student agreed, Protagoras took the student to court suing for payment on the following grounds: If Protagoras as the plantiff won the case, the student would have to pay Protagoras. If Protagoras lost the case, the student would have won his first case and would owe Protagoras the money on the basis of the agreement. Either way, Protagoras should be paid.
>
> The student, being a quick read, argued the contrary. If the student won the case, he would not have to pay Protagoras by the ruling of the court. If he lost the case, he still would not have won his first case, and would not have to pay Protagoras, on the basis of the contract.

The student's response, notwithstanding, the Protagoras story is the story of how to abuse the law to make a quick buck. It illustrates why Socrates was so opposed to teachers' taking money. The desire to make money gets in the way of their chief goal, which is to discover and profess the truth. The story also serves as an object lesson in what has gone wrong in corporate America and elsewhere in recent years. In the desire to make money, the drive for profit at all costs has superceded companies' legitimate goals.

Enron, WorldCom, Tycho, Adelphia, Cendant, Rite Aid, Sunbeam, Waste Management, Global Crossing, Health South, Andersen, Ernst &Young, KPMG, Deloitte & Touche, PriceWaterhouse Coopers, J.P. Morgan, Merrill Lynch, Morgan Stanley, Bear Sterns SSB: These are the names of companies, accounting firms and investment firms, all of whom have been implicated in some ethically questionable activities in the past few years, activities that have resulted in fines and/or criminal convictions. We could easily name others. What's more, most of the unethical behavior of these companies involved some aspect of finance from manipulating special purpose entities to show growth, to cooking books, to instituting questionable tax dodges, to allowing investment decisions to color the objectivity of investment research and advice.

Being a professor of business ethics in such a climate means facing the following type questions. Has business become hopelessly corrupt? Have things gotten worse than they were in the past?

While it is difficult to determine whether things are worse, I am tempted to agree with the French saying, "Plus ça change, plus c'est la même chose." (The more things change the more they remain the same.) For example, if we go back to the beginning of the twentieth century we can observe behavior on the part of the robber barons that lead to government regulation starting with the Armstrong commission in 1910, and culminating with the Securities Act of 1933 and the Securities Exchange act of 1934—behavior eerily similar to some of the questionable behavior going on today. My guess is that human beings are basically the same throughout history, so that while circumstances can and have changed radically, human behavior and its ethical vulnerabilities remain constant. Still, there seems to be an alarming increase in the number of instances of bad behavior we have become aware of since the beginning of the new millennium? How account for that?

Partly the increase is just the result of more people engaging in financial markets. Then, too, the increase in misbehavior might be one of perception, brought about by increased news coverage. It might also partly be the result of more complex financial instruments being developed that allow exploiters to take advantage of unsophisticated clients and investors. Finally, there are those who claim that it is due to a moral decline and loss of moral sensibility.

I would argue that a loss of moral sensibility is unlikely. It might be that deplorable behavior either does or at least seems to occur more frequently, but moral standards remain. The fact is we live in a society where people still get upset about unethical behavior. Otherwise there would not be so much breast-beating and soul-searching going on about the practices at companies such as the Enrons, Andersons, WorldComs, Tycos, Health Souths, Morgan Stanleys, Parmalats, and Adelphias of the world. The fact that people are scandalized by these issues shows that ethics permeates their attitudes. Scandalous behavior is publicized precisely because people think such behavior is deplorable. Judging from public reaction, the general consensus seems to be that people in those companies have done something wrong.

Further, since no news is good news, we will seldom hear about the people and companies that do live ethically. It seems highly likely that most people in most companies act ethically most of the time, or the system, which depends on trust and living in accord with rules, wouldn't work. Trust implies the existence of moral sensibility.

How then account for so much recent unethical behavior? Are people worse or is it just that good people are getting sucked into a corrupt system? I think the answer is it a combination of both. I think Linda Trevino is correct in asserting that:

> Unethical behavior is nothing new and people are probably not less ethical than they used to be. But the environment has become quite complex and is radically changing, providing all sorts of ethical challenges and opportunities to express greed.[1]

So, while people are probably not worse, the radical changes in the structures of the financial markets have provided occasions of temptation and opportunities to express greed without fear of sanction. The increasing complexity allows for transactions that are unregulated and little understood, which are legitimated by the phrase, “That’s just business.”

Finally, along with the complexity and change there has been a slow evolution of an attitude toward the economic financial system and its justification that lets us rationalize the violation of some ethical standards and to use a felicitous phrase of Patrick Moynihan, “define deviancy down.” However a caveat is in order. While people can blame the evolution of the system for rationalizing behavior they wouldn’t have thought to countenance in times past, those individuals and their society are culpable for succumbing to the systems temptations while unreflectively allowing the system to flourish without reform, without investigation of its rationalizations, and without critique of its justifications.

Let’s look briefly at the evolution of the permissive attitude. It is a truism that our economic system and the financial markets within it are based on the pursuit of self-interest. Adam Smith, considered by many to be the father of free market capitalism emphasized the importance of coming to grips with the fact that self-interest drives people. Over two hundred years ago, he pointed out that …

> “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.”[2]

Given the ethical attitudes existent in Smith’s times such a pursuit of self-interest had to be justified. Smith argued that self-interested pursuits were acceptable because, if everyone pursued their own interest, society, as if led by an invisible hand, would be better off. Smith’s invisible hand argument legitimated and infused the system of free market capitalism, helping answer ethical objections that warned against the pursuit of self-interest.

However, note that in his time Smith, who was first and foremost a moral philosopher, added a caveat. Such self-interested pursuits need to be constrained by justice, lest they degenerate into selfishness, which is the pursuit of unwarranted self-interest at the expense of another.

> Every man, *so long as he does not violate the laws of justice*, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men.[3]

However, as capitalism developed, Smith’s caveat seemed to be forgotten and the system underwent a subtle change noted by R.H. Tawney, writing in the early part of the twentieth century.[4]

> What is significant is not the strength of the motive of economic self-interest, which is the commonplace of all ages and demands no explanation. It is the change of moral standards that turned a natural frailty into an ornament of spirit, and canonized as the economic virtues *habits* which in earlier ages had been denounced as vices.[5]

Tawney noted an erosion of ethical standards. Habits, formerly looked upon as vices, like the single minded pursuit of self-interest, if not viewed now as virtues were at least not condemned. Consequently, rather than being guarded against, the pursuit of self interest was encouraged, at least within the market system. Rather than being looked upon as a situation of temptation, self-interest was looked upon as an opportunity. This allowed the system to evolve into one that promoted the pursuit of self-interest without any concern for constraining it. But such a turn creates a significant amount of pressure on ethical behavior. The world of business as we know it became, according to some, a world permeated by a new driving force that Max Weber identified as "The Spirit of Capitalism," which, according to Weber, has one main rule.

> "Capitalism (read business) is identical with the pursuit of [profit] and forever *renewed* profit by means of continuous, *rational*, capitalistic enterprise."[6]

What was rational was continuously maximizing self-interest. Such a spirit substitutes the pursuit of profit as the primary goal of business for what Smith took to be the primary goal, the production of goods for consumers. I would argue that Weber's prediction has come to pass. The capitalist spirit as defined by Weber, "the forever renewed pursuit of profit," to the exclusion of all other concerns appears, at least in some quarters, to have taken over business today. It gives us the rational self-interested maximizer, which is used as the model of behavior in economic calculation. We are all familiar with the pressure to meet quarterly and year end earnings expectations. We are familiar with companies putting incredible pressure on their employees to "make the numbers" even if it means looking away at some of the methods used. Andy Fastow was a golden boy at Enron because he made the numbers look better and better, never mind how. Companies encouraged their distributors to push new financial products in order to make a profit with little regard for the needs of the clients. They persuaded their accountants to smooth earnings to meet Wall Street expectations. Earnings were not reported they were "managed" for the sake of profit.

Such a spirit is exemplified in the speech of Gordon Gecco in the movie Wall Street.

> Greed is Good. The point is, ladies and gentlemen, that greed, for lack of a better word, is good. Greed is right. Greed works. Greed clarifies, cuts through, and captures the essence of the evolutionary spirit. Greed in all its forms. Greed for life, for love, knowledge has marked the upward surge of mankind.[7]

One might object, that Wall Street is just a movie, but to paraphrase Oscar Wilde it is not always that art imitates nature. At times nature imitates art. Any number of people, disingenuously or not have repeated Gecco's claim even attributing it to Adam Smith, (a faulty attribution.) so that a spirit has evolved that is expressed in Gecco's eulogizing of Greed.[8]

In too many cases, people are driven by beliefs such as Gecco's even if they deny it. Greed is not good, but if it is legitimated it can become, as Alan Greenspan described it, "infectious."

> An infectious greed seemed to grip much of our business community … . It is not that humans have become any more greedy than in generations past. It is that the avenues to express greed have grown so enormously.[9]

Our thesis is that one way to explain the exceptional number of business ethics scandals is that financial markets have become corrupted by greed, a greed that leads to exorbitant risk taking (plain old gambling) along with deceit in all its forms, from failures to disclose, to misrepresentation and up to downright fraud.

We want to do three things in the remainder of this paper: (1) elaborate on the notion of greed showing why greed is not good but corrupting; (2) illustrate how greed has led to the manipulation of financial markets and the corporations dependent on those markets; and (3) give some cursory suggestions about what might help stem such greed.

Greed is defined as an "inordinate desire for wealth."[10] The key to the definition is the notion of "inordinate." One can get clear about what counts as "inordinate" if we look to the philosophy of Aristotle. Something is inordinate (disordered) when it is directed to something other than its proper end. Obviously to talk of proper ends implies that there is a proper order to things, what Aristotle would call a telos, which means a final end or ends—a point or purpose. We could note that for Aristotle, the inordinate is the irrational, so it would follow that to the extent that the self-interested maximizer is driven by greed his behavior is irrational.

Though Aristotle's views on finance are usually dismissed as too reactionary (He opposes interest for money) an analysis of his views on greed can shed light on what we have seen happen in financial markets in the last decade of the twentieth century and the first decade of the twenty first century.[11]

In speaking of finances and the use of money, (financial markets) Aristotle identifies one of the major sources of corruption as the practice of accumulating money or wealth for the sake of accumulation. There are two types of accumulators of wealth. Those who accumulate wealth in order to live better. Such accumulation is fine. But there is another type of accumulator, those who accumulate wealth for its own sake. They turn "every quality or art into a means of getting wealth. This they conceive to be the end, and to the promotion of that end they think all things must contribute."[12]

Such accumulation of wealth for the sake of accumulation, is fraught with problems, the chief of which that those who accumulate wealth for its own sake, "get intent upon living only, and not upon living well." To be concerned with living without regard for living well is to convolute one's priorities—it is "inordinate." For Aristotle, the accumulation of wealth for its own sake is irrational (inordinate) because it is a desire without an end, without a purpose, rational being here identified with being disposed toward a proper end. Since for Aristotle, to do what is irrational is tantamount to doing something improper and hence unethical, it follows that accumulation for its own sake is a vice. Further, if greed is an inordinate desire for wealth, this accumulative desire is exactly what we call greed since it is a desire out of order. Hence, what Aristotle calls the accumulation of wealth for its own sake is a manifestation of what we call greed.[13]

It is important to look at the effects of this inordinate disposition. According to Aristotle, when one accumulates wealth for its own sake, two things happen. First, pursuing wealth for its own sake has the paradoxical effect of destroying *real* wealth.

Aristotle recalls the story of Kind Midas, asking "How can that be wealth of which a man might have a great abundance and yet perish with hunger, like Midas in the fable, whose insatiable prayer turned everything that was set before him into gold?"

When Midas' touch turned all into gold, he realized the paucity of his vision and dreams realizing he had missed out on the really important things in life. Happiness is impossible for an accumulator of wealth because wealth itself is never sufficient to satisfy a person. Rational wealth accumulation must be for the sake of other goals, which set the limits on how much wealth is necessary to achieve such goals. In short, wealth is and should only be an instrumental good, and as we see with Midas, its pursuit is detrimental to our happiness if it becomes an all consuming end.

The second consequence of accumulating wealth for its own sake, and perhaps the more important characteristic that shows its inordinacy is that the "accumulator" loses any sense of limits. Ordinarily we guide and check our behavior by asking why we are doing what we are doing. What's the point of our doing it? But with accumulation for its own sake, there is no point other than mere accumulation. Whatever is necessary for the accumulation of wealth is legitimated by the goal of accumulation. The only limits put on accumulation for the sake of accumulation will be those imposed by some external law. An ethical law puts ethical concerns such as justice and need and welfare into play, checking accumulation, as Smith suggested, when the accumulation threatens to go beyond those limits. But accumulation for the sake of accumulation as the only driving law destroys the spirit of ethical laws.

It is hardly a coincidence that so many recent corporate scandals in finance have occurred either by using unregulated markets such as over the counter trades or instruments such as unregulated SWAPS. Such activity skirts the letter of the law and totally violates the spirit. For example a use of GAAP to hide income violates the purpose of audits and deceives the user of financial statements by not giving an adequate picture of the financial health of a company.

To help us make the point that the deliberate refocusing from the goals of production to the goal of financial growth for its own sake has been an overriding cause of many of the corporate scandals of the past few years, we will examine some examples of recent ethical lapses in financial markets. In one example we will show that the principals at Enron and Andersen are prime examples of those who fell into the trap of forgetting the primary focus of their business—to provide some good or service for others—and became mere cash accumulators.

For a moment let's look more closely at how this accumulative spirit worked itself out at Enron. Just prior to its implosion Enron had only one goal … to be the largest company in the world. But why? What's the point of being the largest? For what end? When Enron set that goal it had already begun to lose its way. It had lost its vision. We see how unclear Enron's vision was when we read the self description found on its home page.

> "It's difficult to define Enron in a sentence, but the closest we come is this: we make commodity markets so that we can deliver physical commodities to our customers at a predictable price. It's difficult, too, to talk about Enron without using the word 'innovative.' Most of the things we do have never been done before."[14]

Wall Street Journal columnist Peggy Noonan was hired by Enron to help them write up a self-description. She resigned because she faced two intractable problems in the company—they weren't clear about what they were doing and they were full of hubris.

> One was that the guys at the top, and in the middle, seemed unable to communicate to me exactly what it was the company was doing to make money. So I didn't absorb the information and make it understandable to others. The other was that I think I sensed a sort of corporate monomania at the top—if you can't understand what we're doing then maybe you're not too bright.
>
> But the key part was that I couldn't help them explain their mission because I didn't fully understand what their mission was. I understand what the Kenneth Cole shoe company does. It makes shoes and sells them in stores. Firestone makes tires. I couldn't figure out how Enron was making its money, what exactly it was selling, and every time I asked I got a kind of gobbledygook answer or a cryptic one, like "The future!"[15]

Leaving the hubris issue aside, we can concentrate on the lack of vision issue. While becoming a commodity market-maker (which was not its original function) is laudable, Enron even forgot that being a commodity market-maker was its new primary function and concentrated on becoming the biggest company in the world. Forgetting its major purpose, it appears it took on projects simply to accumulate wealth—for the company and the executives, even forgetting its obligations to its shareholders.

But we can ask again, what's wrong with accumulating wealth? Aren't all businesses striving to maximize profits? Isn't that what the free-market economy is about? Yes and no. While accumulating wealth is a goal, a company begs for trouble when that accumulation becomes the primary goal because it loses any compass it can use to check its direction. As Aristotle pointed out, when money accumulation is the primary goal, there is no overriding principle or guide to tell you of any limits. There is no answer to the question, how much is enough? The sole consideration is what's legal, and energy is spent trying to find loopholes to allow the making of more money.

The same malaise afflicted Arthur Andersen, Enron's auditor. As Enron's auditor, Arthur Andersen had a clear mission, to attest that the financial statements they were auditing reflected what was really going on in the company. But that mission was shunted aside in the name of fees. Since there was more money in consulting, the consultant tail began to wag the auditing dog.

A further point is worth investigating. The greed factor lead many executives not only to accumulate for the sake of accumulation, but to change the nature of their corporations and turn them into *merely* financial entities. Their corporations became not producers but mere money marketplaces. This did not just happen at Enron. Long before Enron, companies forgot their basic purposes and began using the financial market place to make profits.

For example, let's look briefly at what happened at Banker's Trust, in the late 1980s, a story outlined in a remarkable book by Frank Partnoy entitled, *Infectious Greed*.[16]

Andy Krieger, was a young trader, who having found anomalies in the Black-Scholes model for evaluating options, used currency options to manipulate unregulated currency markets with over the counter transactions. He was so good that Banker's Trust's losses for the year 1987 were offset by $593 million of income from currency trading—about $300 million of which came from Krieger's speculating in options trades. Investment "positions [were] even hidden from investors at Banker's Trust … (but) there was nothing illegal about it."[17]

Krieger's success at Banker's Trust prompted Charles Sanford, the CEO, in order to increase profits, to encourage other traders to speculate with the bank's capital. What began as investment that exploited inefficiencies in the market lead to speculation when the inefficiencies were discovered and fully dried up. The ever increasing drive for profit, lead to this. Charles Sanford had done what his boss Alfred Brittain III, had fearfully predicted, "Charlie you'll turn this bank into a Wall Street trading house."[18]

As Partnoy tells it:

> In just a few years, Chairman Sanford had radically transformed Bankers Trust, as he had promised. But the transformation had its price. Shareholders didn't do nearly as well as employees. And within a few months, this short-term, product-oriented focus would nearly destroy the bank.
>
> Bankers Trust had proved that technology and financial innovation could generate substantial profit for banks, just as they enabled companies to take on new risks in fantastic ways. From the equity-derivative deal that went European-investor-to-Canadian-bank-to-Bankers-Trust-to Japanese-insurer, to Gibson's squared swap, to P&G's complex three-billion-dollar bet, the possibilities using derivatives seemed endless.
>
> Brian Walsh, head of derivatives at Banker's Trust, would later admit that Bankers Trust had inappropriately emphasized complex, high-margin products over the needs of its customers: "What happened that I'm not happy about is that we fell in love with a product instead of trying to understand the client."[19]

However, there was a hitch. Krieger's profits were overstated by $80 million. Krieger miffed by a smallish bonus had already left Banker's Trust by the time this was discovered and the accountants fudged the shortfall by reducing its compensation expenses by $80 million. It was an accounting trick that was later uncovered, but it presaged the kind of accounting slight of hand that would become popular in the ensuing years. *Fortune* magazine published an article entitled "How Banker's Trust Lied About $80 Million," but there was no response from government agencies. One spokesman for Chase Manhattan, though, caught the overall flaw and in a critique of Banker's Trust, state, "The majority of our business is customer driven. We don't take the same large bets that other banks take."[20]

Betting Banks. That is not the purpose of a bank in the economic system. Nevertheless, Banker's Trust was just one example among many companies that forgot what its main purpose was, it became a speculator/trader with client's money rather than a bank. Furthermore, its practices also infected its clients. There is more to the story.

Consider Banker's Trust's advice to Gibson Greeting. In order to help Gibson's out with debt, it persuaded Gibson to do interest rate SWAPS and leverage its debt. In its first transactions Bankers Trust offered to help Gibson's treasurer, Jim Johnsen close out Gibson's position with a $260,000 profit. Johnsen jumped at the deal, though in a lawsuit later it was claimed Gibson should have gotten $750,000. The difference went to Banker's Trust. (Aren't banks supposed to look out for the interests of their clients?)

But Johnsen was hooked. He saw a new profit avenue for Gibson and began to do more swaps. However, the SWAPS began to turn against Gibson. In 1992 Gibson faced a loss from these deals of $975,000, so to cover the losses they got involved in even riskier deals. In its attempt to survive, Gibson, turned from a company generating profit as a greeting card producer into a market speculator gambling with shareholder's money. Unfortunately Gibson ended up losing.

> Gibson's swap smorgasbord included the most sophisticated derivatives anyone had invented, and they all were hidden from regulators and shareholders. In its 1993 annual report, Gibson disclosed $96 million of swaps outstanding, without any detail as to their risks.
>
> These swaps were incredibly profitable for Bankers Trust. From late 1991 to early 1994, the more Gibson lost the more it traded, and the more Bankers Trust made. In all, Bankers Trust made about $13 million from the swaps with Gibson, all of which supposedly began as an effort to find a low-cost hedge for a simple fixed-rate debt.[21]

In this single case we see two companies, Bankers Trust and Gibson Greetings, both of whom forgot their central purpose and the activities that should have been their main stock in trade. Bankers Trust should have looked out for its client Gibson and provided them with appropriate risk managed financial instruments to solve their debt problem. Gibson, should not have gotten greedy and looked to make a profit from speculative investments with stock holders' money rather than by making profits through the production of greeting cards.

One last example that can help us make this point about losing one's goals to accumulate money would be General Electric. GE became two companies, GE Industrial and GE Capital.

> GE Capital was created during the Great Depression, with the modest aim of helping consumers finance their appliance purchases. But by 2002, GE Capital essentially had become a bank. It had more assets than all but two U.S. banking conglomerates, six times more than its assets in 1990.
>
> In its 2001 annual report—issued in 2002—General Electric comforted its investors by stating, "As a matter of policy, neither GE nor GECS engages in derivatives trading, derivatives market-making, or other speculative activities." But in a footnote, General Electric noted that, because of changes in the way it accounted for its derivatives operations, it had reduced its earnings by $502 million, and reduced shareholder equity by $1.3 billion. These numbers were roughly the same as the restatement Enron had made in 2001, yet investors didn't seem to care.[22]

It is clear, from these examples, that, besides financial market intermediaries such as banks and financial services companies, non-financial corporations have given up their productive goals to become money marketers. They followed the same path as Enron, which ceased describing itself as an energy provider and described itself as a "commodity market maker." As a matter of fact, "Morgan Stanley estimated that one-third of financial activity in 2000 occurred at non-financial companies, such as Enron and General Electric. Even companies such as Ford received more than a sixth of their revenue from financial activities."

Let's summarize what happened. Companies needed loans and they needed risk management.

> Every business, large or small, must have sources of financing for managing and expanding its operations … (There has been) an explosion in the innovative and creative uses of financing instruments that can often combine a variety of embedded features … .
>
> Regardless of the types of features used, *the main objective* of issuers (is) to obtain financing at the lowest possible cost.[23]

Businesses, to achieve the most profitable loans and such, turned to exotic financial instruments. But their role as issuers and securers of low cost low risk financing turned into a role as investors and morphed into speculation that forgot the manage the risks of these instruments. What's more the companies providing the financial advise and services forgot what their proper role was and used their clients' fees to bolster their own profits.

A number of corporations, in using options, hedges, swaps and derivatives as tools for risk management and sources of financing, found that at times those tools brought in more revenue than anticipated. So those corporations began to engage in pure financial speculation and turned away from their primary mode of making profit—production of the goods the corporation was originally designed to create. They began to increase profits not from their major productive enterprises but from the gaming of the financial markets system. What is more, their engagement in such speculation was aided and abetted by the banks and other intermediaries who used their clients to increase their own profits.

It is noteworthy, then, that many of the ethical scandals that have occurred in the past decade have been scandals that involved companies whose main purpose was to produce goods engaging in speculative behavior in financial markets. Ronald Coase, had in the 1950s posed the question, markets or companies? You can buy and sell things or you can produce them. Many firms in the 1990s got into the business of buying and selling when their strength and purpose was to produce. Rather than making a profit on the production of a good or service, it seemed easier to make a profit by gaming the financial system. Hence it became popular to accumulate more and more wealth and money and less important to produce fine products. The corruption had set in.

Doesn't this type of speculation reflect the spirit that Weber identified? "[T]he pursuit of [profit] and forever *renewed* profit by means of continuous, *rational*, capitalistic enterprise."[24] Having such a view of capitalism in mind, Weber predicts that " … in a wholly capitalistic order of society, an individual capitalistic enterprise which did not *take advantage of* its opportunities for profit-making would be doomed to extinction."[25]

In that spirit, isn't it rational to expect companies who find that they can make more profits by delving in money markets to set aside their primary modes of production for profit making in favor of delving in markets. Didn't Gilbert Greetings, Banker's Trust, Enron, Andersen, and even General Electric just take advantage of opportunities for profit making, no matter how? In our examples, from Bankers Trust to Enron it would seem that the order of the day was to "take advantage of the opportunities for profit-making."

The last decade of the twentieth century and the early years of the twenty first century are full of examples of behavior that eroded the trust of the public, and turned the ordinary bias against business into a backlash of suspicion and condemnation. We would claim that Aristotle's view of accumulation of wealth for its own sake correctly identifies the corrupting influence as greed. As we saw, a culture that turns the pursuit of money, an instrumental good, into the ultimate goal of human beings is ethically corrupt. That is the moral of the story of King Midas.

A caveat is necessary at this point. What we have said does not mean we can do without financial markets and self-interested incentives. It is important to note that the invention of money and the conversion of it into a commodity itself, to be used for the purchase of a multitude of other goods, was a boon to the human race, and properly utilized and constrained, financial markets, which facilitate the exchange of money, have an abidingly important and positive contribution to make to society.

What is more there is a need in financial markets for traders and speculators. They are necessary conditions for markets to be both efficient and liquid. Nevertheless, the role of trader and speculator is a different role than the roles of the banks, accountants, investment advisers and rating agencies who should serve as the gatekeepers of the financial markets. It is those gatekeeper industries that have betrayed their proper ends for the sake of accumulating profit.

Financial markets are the bedrock of the financial system. Their purpose is to allocate savings efficiently to parties who use funds for investment in real assets or financial assets. An optimal allocation function will channel savings to the most productive use of those savings. Efficiency of allocation is critical to assure adequate capital formation and economic growth in a modern economy.

In the late 1980s and early 1990s, with Banker's Trust, First Boston and Long Term Capital Investments, financial wizards were brought on board to exploit inefficiencies in the markets and in the sophisticated financial instruments. The Krieger's of the world were successful in exploiting those inefficiencies. Still, where disequilibrium exists, eventual adjustment to a new equilibrium is guaranteed.

Efficiency will occur more readily if the number of buyers and sellers is large; both parties to a transaction easily obtain information; and transaction costs are kept to a minimum. One could even argue that this system efficiency is exactly what led to the uncovering of the practices of Enron and others. Disequilibriums existed and the inevitable equilibrium was postponed because information as to the worth of Enron and such companies and its financial instruments was not easily obtainable. But they were ultimately discovered in the long run. Nevertheless, greed leads to gaming the system in such a way as to exploit and perpetuate its inefficiencies postponing the inevitable equilibrium. So even if the equilibrium is achieved in the long run and the market corrects itself, as Keynes says, in the long run we are all dead. In the short run, people get hurt and exploited by gaming the system.

In a large system individuals get reduced to ciphers, and their individual wants and desires, and the harms or benefits done to them individually, play little or no role in assuring the development of equilibrium and efficiency. Given the ends of efficiency and equilibrium, individual propensities are necessarily sacrificed. Is such sacrifice justified? Since individuals get harmed, we have a vested interest in seeing that the efficiency of the market is reached as quickly as possible and its inefficiencies exploited as little as possible. That would assure that such efficiency will provide benefits for society in general, the greatest good for the greatest number. For the system to be justified it must provide a rising tide that lifts all boats, and do it expeditiously with some semblance of fairness.

There are of course legitimate uses and purposes for hedges, SPEs, derivatives, and Swaps, such as to handle risk management. But those purposes are forgotten when accumulation for its own sake is pursued and rewarded. What has happened over and over again is that the markets have been manipulated and financial instruments have been misused. As Partnoy points out, "Treasurers of industrial companies had begun operating as profit centers." Traders were left unsupervised and "shareholders were ignorant of the treasurers' activities."[26]

Is it the case then that this kind of behavior is inevitable? We would hope not. Following the lead of Cornelius Castoriadis, we note that our form(s) of life are our own creations. Since they are to a large extent nomos (rules or conventions) and not phusis (nature) they can be changed through human action, (politics) and reflections (philosophy). Still, even if it is not inevitable, the switch to markets rather than production seems to have a hold on the entrepreneurial imagination.

It is important to note that social, political, and legal responses to the scandals show another spirit has arisen as a counter force—a thirst for fairness and justice. Fraud, misrepresentation, failure to disclose, taking advantage of the vulnerable, unfair practices, insider trading, excessive executive compensation and other questionable practices are roundly condemned in all sectors.

In the new spirit, companies have to remember what they are really about and what they came into existence to do, and that is primarily to create products that people value—not to make a profit. Profit is like the engine that makes the train go, but it is not the destination of the train. So a business' destination, the satisfaction of a consumer, should not be confused with a business' engine, the self-interested pursuit of profit. A business's main concern should be to fulfill its mission. Each company should have a vision about what value it creates for its consumers. Indeed in their 1994 book *Built to Last: Successful Habits of Visionary Companies*, James C. Collins and Jerry I. Poras, point out that a "visionary company almost religiously preserves its core ideology." In short, it remembers what it was about.

As an aside, without becoming too esoteric and lyrical, I want to suggest that when a company becomes a mere cash accumulator, it is the corporate equivalent of an individual losing one's soul. I use the word soul here, in a modified Aristotelian sense, to mean the animating principle of a body. For Aristotle the soul is the purpose that gives the body definition and life. Goals, visions, projects, and purposes are what animate us. They define what we are and they vitalize us. It is similar for a corporation.

It might not be accidental that the word "corporation" comes from *corpus*, the Latin word for body. But for a corporation to be vital, it must live. It is the corporation's vision that gives it life, animates it, and drives it. When a corporation's vision is set aside—when a corporation becomes a mere money accumulator—it loses its direction and definition and becomes corrupt, just as a living body degenerates when it loses its life force.

To summarize, we have argued that if one looks at why companies get in ethical trouble today one factor that stands out more than most is that the company has forgotten what it was about. Enron simply wanted to be the leading company, but didn't specify at what they would lead. Accounting firms forgot their primary focus was auditing and got trapped into being consultants. Commercial banks became traders. Of course, they did this because they "followed the money." They became greedy. They were overcome by a desire to accumulate money for its own sake, forgetting like King Midas, that gold or money is worthless if it is the only good, and not used to attain other more important goods.

If this spirit of accumulation has absorbed the corporate world, is there a way to reign in the system, to allow justice to put constraints on the pursuit of profit for its own sake. In the light of what we have discussed, we suggest some practical steps to follow.

One of the main areas of misbehavior occurred in the unregulated markets of over the counter trades and derivatives. Secrecy goes against the basic requirements of an efficient market transaction, where both people engaged in the transaction give informed consent. For an efficient market to work, one needs transparency, yet the Kreiger's of the world benefit most when what they are doing is kept secret. In complex financial matters, where disclosure is not necessary, there is too much room for manipulation. So more transparency is essential, and if transparency is not forthcoming investors ought to follow the way of the Warren Buffet's of the world, who though they are the most sophisticated of investors, do not engage in areas where they are not clear what they are doing.

Second, it might be that some regulations need to exist that spell out the proper function of some of the services. Since a large number of the scandals occurred in areas where there was no regulation, little regulation or faulty regulation, it seems one of the side effects of the de-regulation, in the Gramm-Leach-Bliley act, was to allow companies to stray from their primary function. For example, it allowed banks to sell insurance and insurance companies to act as banks, etc. Nevertheless, more regulation will not help unless it is couched in standards rather than rules. Rules encourage inventive ways to circumvent the letter of the law. Standards require taking into account the spirit of the law rather than the letter. Rather than the thousands of GAAP regulations, why not a standard to provide readable and informative financial documents that tell legitimate users the state of the company?

A third possible way to reform the system would be to eliminate what Partnoy calls the "oligopoly lock of gatekeepers." We have investment advisers, accountants, and rating agencies, all of whom are designated by regulations as necessary bodies charged with keeping the markets transparent and the consumer informed. Yet they have all failed miserably. Since their functions are required by law, the forces antithetical to inefficiency will not be able to run them out of office. Ratings and audited statements, too often, are non-informative. Why then require them? The existence of designated gatekeepers gives the unsuspecting public the impression that most of the information they have is useful and the instruments they utilize are salutary. The absence of such sanctioned gatekeepers would put a premium on and create a market for those who can warrant their information. The roles the gatekeepers fulfill are necessary. Dependence on them is necessary. But the fact that they are not subject to competitive pressures lets them fail in performing their proper function.

To sum up, given the division of labor, the system functions best when corporations and professions perform the functions they were designed for and develop those that are necessary for the success of the markets. The financial systems of the world and the gatekeepers of those systems all have an important role to play in keeping a health economy running. When they abandon that role, for the sake of accumulating wealth for its own sake, they abandon their responsibility to help maintain a system that should bring about the common good.

NOTES

* "The Corruption of Financial Markets: Systemic Inevitability or Aberration?" *Business and Professional Ethics Journal*, Volume 23, Nos. 1 and 2, pp. 1–23.

1 Linda Klebe Trevino and Michael E. Brown. 2004. "Managing to Be Ethical: Debunking Five Business Ethics Myths." *Academy of Management Executive*, vol. 18, no.2, pp. 69–81.

2 Adam Smith, *An Enquiry into the Nature and Causes of The Wealth of Nations*, I, ii, 2, herinafter referred to as WN.

3 Smith, *WN*, IV, ix, 51.

4 Richard Henry Tawney, *Religion and the Rise of Capitalism*, New York: Harcourt, Brace and Company, 1920.

5 Tawney, p. 2. For example, the acquisitiveness that capitalism requires is closely related to covetousness, which was categorized as a vice in the Judeo-Christian tradition.

6 Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, Hereinafter referred to as *PE&S of C*, p. 17.

7 From *Wall Street*, The Movie.

8 Cf. Kenneth Lux, *Adam Smith's Mistake: How a Moral Philosopher Invented Economics and Ended Morality* (Boston: Shambhala Publications, Inc., 1990).

9 Alan Greenspan, testimony to the Senate Banking Committee, July 16, 2002. That claim echoes the title of a most insightful book, by Frank Partnoy, *Infectious Greed: How Deceit and Risk Corrupted the Financial Market.* (New York: Henry Holt and Company, 2003).

10 Cf. Merriam-Webster Dictionary?

11 It might seem odd to examine the position of Aristotle to find out about what's going on in financial markets, because he seems to be one of the originators of society's mistrust of those markets. We are familiar with the claim, "The unfettered love of money is the root of all evil." Such a claim, which morphed into "Money is the root of all evil," exaggerated as it is, reflects an ethical bias against and suspicion of money and money markets, and, by extension, finance and financial services that permeates much, if not most, of Western culture's thinking. That philosophical culture was promoted by Aristotle's,[11] defining the very notion of liberal as being free from concerns about money. In fact, Aristotle claims that while it is all right to *study* wealth getting, "to be engaged in it practically is illiberal and irksome." What is more, besides Aristotle, major religions, such as Christianity and Islam, at one or another point in their histories, followed his lead and maintained prohibitions against usury, that is, the loaning of money at interest. Consequently from some perspectives of western culture, the notion mat there could be ethics in financial services is at least problematic if not downright oxymoronic.

But even it we think Aristotle mistaken, it is important to understand why he thought what he did, and why it is all right to study wealth getting, but "to be engaged in it practically is illiberal and irksome." Why is it illiberal and irksome? Let's unpack what I think is one of Aristotle's most puzzling passages. He maintains that

> Wealth getting that results from exchange is justly censured; for it is unnatural, and a mode by which men gain from one another. The most hated sort of wealth getting, and with the greatest reason, is usury, which makes a gain out of money itself, and not from the natural object of it. For money was intended to be used in exchange, but not to increase at interest. (Aristotle, *Politics* Bk, l. Ch. 11,1258b10–11 and *Politics*, Bk. 1, Ch. 10, 1258b 1)

From one perspective, this view looks downright silly. Usury? Who can be opposed to usury? We might excuse such views on the grounds that Aristotle do not understand the time value of money, and did not foresee how markets for money would become an invaluable if not indispensable condition of and addition to human prosperity. His distinction between the natural and the conventional, and his biological model of generation, did not allow him to see how money could give rise to more money. Hence, he could not appreciate how financial markets would become a necessary ingredient to a flourishing developing economy, and that engaging in activities that help those markets to be efficient can be an honorable profession.

There is a rich kernel of truth in what Aristotle says, and his analysis can shed an enormous amount of light on what has gone wrong in the ethics of financial markets today.

Let's look at the first statement.

"Wealth getting that results from exchange is justly censured; for it is unnatural, and a mode by which men gain from one another."

One can argue that for Aristotle the nature of something is the "what for" of that thing. One is reminded of Wittgenstein's the meaning is the use. I would suggest that while one way to read "nature" is as phusis—having to do with natural biological ends—, the natural can also be read to mean the final cause, the end or purpose. If we read it that way, and consider what is involved in an ideal exchange, what the purpose of an ideal exchange is, it can be seen that when such an exchange results in one party getting wealthier man he or she should, something unnatural in the sense of contrary to the end of efficient exchange, has occurred. Take Adam Smith's characterization of exchange. I trade with you so that you get what you want, and I trade what I want. We freely exchange. But if I get wealthy from the exchange it is because I have gained more than I should from you. That is not an efficient market. So when getting wealthy, means getting more than I should, from an exchange, it is unnatural because it violates the purpose or spirit of the social convention of exchange, in this case, even conventions have natures or purposes, which dictate which behaviors are natural or unnatural.

The problematic part of Aristotle is his claim that usury is the most hated sort of wealth getting. His reasons are not too persuasive. Money indeed was intended to be used in exchange, but that doesn't prohibit it from being used for other ends. A simple (simplistic) reading of Aristotle, such as that of Bent ham, might exploit the inanimate animate distinction, and assert that since money can't produce or reproduce it is not a growing entity. Hence it has no nature except as an instrument of exchange. What's wrong with usury for Aristotle is that usury involves the use of people as a means to an end, the making of money.

As Bentham and others have pointed out, Aristotle failed to see that the things money can be used to buy, can themselves reproduce, and consequently return more money to a person at the time of sale. Aristotle's mistake was that he did not or would not view money as a commodity to be bought and sold, as something having its own use. Hence, he did not approve of using money for the sake of making more money. For him money was something to be consumed, that is, used up for other things. See footnote 12.

12 Aristotle, *Politics*, Bk. 1, Ch. 9, 1258al3–14.

13 Aristotle was correct in insisting that money was to be used, and accumulating it for its own sake was to distort its natural purposes. (It is useful to note that Locke launches a lengthy argument in defense of the accumulation of money. He does that to counter the claim that whatever is held in superabundance is owed by natural right to those in need.)

[14] Enron Web page, www.enron.com.
[15] Peggy Noonan, "An Empire Built on Ifs," *Wall Street Journal Editorial Page*, January 25, 2002.
[16] Frank Partnoy, *Infectious Greed* (New York, Henry Holt and Co., 2003).
[17] *Infectious Greed*, p. 19, ft nt. 24.
[18] *Infectious Greed*, p. 37.
[19] *Infectious Greed*, p. 60.
[20] Charles W. Stevens, "Stable 1st Quarter Currency Rates Hurt Most Big Bank Foreign Exchange Profit," *Wall Street Journal*, April 27, 1988 as quoted in Partnoy, p. 31.
[21] *Infectious Greed*, p. 53.
[22] *Infectious Greed*, p. 380.
[23] *Guide to Financial Instruments*, 3rd edition, Coopers and Lybrand, LLP., (Date unknown), p. 30.
[24] Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, translated by Talcott Parsons, Anthony Giddens, Boston: Unwin Hyman, 1930, p. 17.
[25] Weber, *The Protestant Ethic and the Spirit of Capitalism*, p. 17.
[26] *Infectious Greed*, p. *184.*

CHAPTER 13

SHOULD MUTUAL FUND MANAGERS BE BANNED FROM PERSONAL TRADING?*

On May 9, 1994, the mutual funds industry's special Advisory Group on Personal Investing issued a report with a set of recommendations governing the personal investing activities of portfolio managers and other "access persons." The report was presented to the Securities and Exchange Commission (SEC) to forestall the possibility of new SEC regulations that would limit the personal trading of managers of mutual funds. Further regulation would be aimed at preventing potential conflicts of interest. The report involved specific recommendations, which included:

- bans on purchasing securities in an initial public offering (IPO) and on profiteering from short-term trading activities;
- strict limits on acquiring securities in private placements and on accepting gifts;
- mandatory blackout periods for personal trading in securities a fund is trading;
- preapproval to serve as directors of publicly traded companies; and
- six specific compliance procedures.

The report also encouraged close regular oversight by funds' boards of directors, disclosure to investors about fund managers' personal investing, and continued vigorous oversight and enforcement by the SEC.[1]

The report was issued by a special advisory group set up by the Investment Company Institute (ICI) to examine the personal investing practices of mutual fund personnel. The advisory group was set up by the ICI in response to inquiries from Edward Markey, the chairman of the House Subcommittee on Telecommunications and Finance, addressed to Arthur Levitt of the SEC. Markey's concern was triggered by a story in the *Washington Post*, which reported the activities that led to the firing of John Kaweske of Invesco Funds Group of Denver. Although Kaweske was fired for violating rules governing reporting of personal trade, his firing brought about a host of inquiries about other practices of "access" persons in the mutual funds industry from "front-running" to private trading.

In response to Markey's inquiries the Investment Company Institute reviewed Rule 17J-1 under the Investment Company Act and Section 204A of the Investment Advisers Act. Rule 17J-1 requires codes of ethics and compliance procedures. The inquiry was meant to determine whether current law and rules are strong enough to protect the investment public from the possible conflicts of interest that might arise if and when a fund manager gets involved in various private investment activities.

Rule 17J-1, among other things, "prohibits portfolio managers from engaging in deceitful, fraudulent or manipulative trading with respect to securities held or to be acquired by the fund." It also requires the adoption of codes of ethics by mutual fund companies, filing of reports of personal transactions, and maintaining extensive records of the implementation of procedures.[2] The rule was designed to forestall potential conflicts of interest and manipulation such as that in front-running, that is, privately buying stock one knows the fund is going to purchase prior to the fund's purchase, with the expectation that the fund's activity will raise the stock's value in the short run.

The advisory group issued its recommendations on May 9, 1994. In an executive summary the advisory group claimed further regulation was probably unnecessary because the SEC regularly inspects investment companies, their advisors, and principal underwriters in the light of their codes of ethics, and relatively few enforcement actions have been necessary because of the effectiveness of those codes of ethics. (Since the codes of ethics are not public, it is difficult for the outsider to assess the claim "that investment companies have crafted their codes carefully to address potential conflicts most effectively in light of their particular circumstances.")[3]

The absence of much enforcement action against mutual fund managers led the advisory group to conclude that the industry is well enough regulated and to reject the suggestion of some, such as William Berger, that a ban on personal investing be instituted. The report argued against a complete ban on personal trading, but the advisory group did recommend a "series of additional measures to obviate conflicts, prevent and detect abusive practices, and preserve the confidence of investors."[4] The purpose of this chapter is to play devil's advocate and ask whether the advisory group's recommendations went far enough, especially with respect to banning personal trading.

The additional measures to obviate conflicts of interest that the advisory board recommended fell into six categories. We will examine each briefly.

- The first category issued a statement of general principles calling for investors to put the interest of shareholders first, follow the code of ethics, and avoid conflicts of interest and taking advantage of one's position.
- The second category of recommendation suggested that each individual code be tailored to the specific workings of each fund.
- The third category of recommendation asked that "codes include, at a minimum, substantive restrictions to guard against the most likely conflicts of interest, including: (1) prohibitions of investment personnel from acquiring any securities in an initial public offering (IPO); (2) requirements of prior approval, and disclosure of any acquisition of securities by investment personnel in a private placement as well as independent review of such securities if they are to be purchased by the fund; (3) blackout periods; (4) a ban on short-term trading profits in investments the fund is involved with; (5) a ban on substantial gifts;

and (6) prohibition from serving on the boards of directors of publicly traded companies unless there is approval and initiation of "Chinese Wall" or other procedures.

- The fourth category of recommendation suggested that companies adopt certain compliance procedures; namely, preclearance, recording securities transactions, posttrade monitoring, disclosing personal holdings, and certifying compliance with codes of ethics. It was recommended that each company prepare an annual report that lists existing procedures, identifies past year violations and recommended changes in existing restrictions. The report also recommended that the National Association of Securities Dealers, Inc. adopt a rule requiring all broker-dealers to notify a registered investment advisor when any of its employees opens a brokerage account.
- The fifth category of recommendation suggested that investment company prospectuses disclose whether the company permits personnel to engage in personal trading.
- The sixth and final category of recommendation suggested that the SEC continue vigorous oversight and enforcement in this area.

What emerges from the report is a picture of a basically honest, well-regulated industry with little or no problems, whose members have integrity for the most part and which does not need further regulation because it is already regulated enough.

Do the recommendations go far enough? After all, up until now the industry seemed to be doing decently, but the stories of Kaweske and others raise the question of whether the present system is still working. One certainly does not want to challenge the maxim, "If it ain't broke don't fix it." But the Kaweske case might be the indicator that the system is beginning to break down. We might do well, then, to be a bit less sanguine about whether the system works as well as the report indicates.

Our critique begins by asking whether the reasons given for not banning personal trading are adequate. There are other questions to be asked of the report. For example, why are there no uniform, public codes, and why, for example, do only, sixty-five of the ninety-six companies' codes specify restrictions for "access persons," or why do only sixty-three have blackout periods? Why do only fifteen companies expressly discourage or prohibit short-term trading, or why do only thirty-seven have restrictions on gifts? It seems that in some cases a large minority or even a majority of investment companies do not follow the guidelines for ethics codes set down by the institute. A further question could be asked about why the recommendations do not address the problem of conflicts that arise with the taking of payment for consulting, and why blackout periods apply to portfolio managers and not to other access persons? Each of these deserves thorough treatment. However, in this chapter we will limit our concerns to whether the report went far enough with its recommendations about personal trading by fund managers. But given the constraints of space, I will address only the issue of whether there should be an industry-wide ban on personal investing. Such an analysis might be useful in showing the mindset of the industry, a mindset that might not be critical enough of the possible abuses that might arise from the conflicts of interest that can result from engaging in personal trading.

1. SHOULD PERSONAL INVESTING BE BANNED?

The reasons for not banning personal investing appear in Section III of the Report, under the title of "Consideration of a Ban on Personal Investing." As, the report says, "The advisory group … carefully considered one option—a ban on personal investing by portfolio managers."[5] Although the ban was rejected by the advisory group, it "merits special discussion."

The discussion begins by examining the rationales of "some commentators" who have suggested a "complete" ban.

- First, personal investing activities might give rise to the possibility of an impropriety, even when the transactions themselves are entirely appropriate and beyond reproach.
- Second, it has been argued that portfolio managers should be confined to participating personally in the markets in exactly the same manner as the fund share holders whom they serve—in essence, by requiring them to "eat their own cooking."
- Finally, "a complete ban would eliminate the possibility of time and attention being devoted by portfolio managers to their personal investments, at the expense of time that should be devoted to management of fund assets."[6]

The fact that these are the only rationales addressed lead one to believe that the defenders of the status quo answered the objections of those in disagreement with them by adopting a technique known in logic as creating a straw man; that is, setting up arguments and rationales that are easily refuted. At least the last two rationales are straw man arguments. These last two arguments are so bad that they give no defense for a ban. If there are no other reasons for a ban, then a ban is indefensible.

Consider the last two reasons for a moment. The third reason, that personal investing would take away time from investing for one's clients, is just silly. It only works as an argument if one assumes that the investors *should* spend every waking hour on their jobs. While taking time from one's job to devote it to private affairs is clearly wrong, it is perfectly possible to do one's job conscientiously and still have time left over to engage in "extracurricular" activities.

As to the second argument, to ban personal investing because fund managers should "eat their own cooking" is simply a non sequitur. To the claim that one should eat one's own cooking, one answers, "one person's meat is another person's poison." A chef with a heart condition who makes rich heavy pastries is not precluded from making the pastries, only from eating them. Hence, someone working in a high risk fund who needs to be conservative should not "have to eat his own cooking." It might be perfectly good cooking, just not good for him.

Given that the second and third arguments for a ban on personal trading are admittedly bad, there is only one serious argument for a ban on personal investing examined in the report. That is the argument that claims that personal investing activities give rise to the possibility of an impropriety. This argument seems to have merit. Even if personal investing does not give rise to impropriety, it surely might lead to what Chairman Levitt calls "the perception of a conflict of interest," which can undermine consumer confidence; and it certainly can lead to a temptation, a consideration no one raises in the report.

How then does the report dispose of this argument that personal investing might lead to impropriety or the perception of a conflict of interest? As far as we can tell, the report does not address this argument directly; rather, it shifts gears and asks "whether to bar altogether personal trading by fund insiders." It might address the question obliquely, for the report asks, "What purpose does it serve? How does it benefit shareholders?" But the answer to those questions depends on what you are banning. Should long-term personal investment be banned? Should short-term speculative trading be banned? If the purpose of the ban is to preclude conflicts of interest and appearance of impropriety, then banning long-term personal investment seems unnecessary. Indeed, one can ask the question the report asks, "How will that benefit shareholders?" If however, one talks of banning short-term speculative trading, the answer to how that will benefit shareholders is that it will keep the fund managers faithful to the interests of the shareholders, because the temptation to set aside the shareholders' interests, which are in conflict with their own, is not likely to arise, except in the context of short-term speculative trading. If long-term investment will not cause conflicts of interest or perceptions of impropriety, then there is probably no reason to ban it. But what of short-term speculative investment? Is there a reason to ban it?

The report, then, baits and switches. Having promised a careful analysis of the purpose of a ban and what benefit a ban would have for shareholders, the advisory group doesn't consider all the options. It considers only the option of a "complete" ban, or whether to "ban altogether," and brings up reasons why that would be unwise. By considering only a "complete" ban, the advisory group sets up a false dichotomy. For example, I can assert that you either love me or you hate me. Since you don't love me you must hate me. But there are clearly middle grounds here. It is relatively easy to show how unwise a complete ban would be, but this leaves unexamined the question of whether there should be some activity banned.

But there are in the business community ample examples of accounts of why there should be partial bans, or bans against specific kinds of personal investing. By way of a foil to the advisory group's report, I wish to present a section from a code of ethics of a prominent bank on the east coast of the United States. It does not have a complete ban on personal trading, but it does give reasons for not engaging in certain kinds of activities. By way of illustration, it has a guideline against accepting gifts, in its section covering the rule, "Carefully Avoid Conflicts of Interest." "Bank X's general rule against accepting gifts is to prevent corruption or breach of trust." Here the purpose is stated clearly. The purpose of this ban (not a complete ban) is to help keep its employees trustworthy and to keep them out of temptation. Could not the advisory board have said that defenders of a ban on personal trading see the purpose of the ban to "prevent corruption or breach of trust?" That is the reason that is usually operative in conflict of interest situations. It is why baseball has a rule against gambling, and banned Pete Rose for life. A hard question for the advisory group would be, why are mutual fund personnel less susceptible to corruption, than, say, baseball players?

Bank X's code covering Speculative Investments is equally straightforward and direct: Bank X encourages its employees to invest wisely. However, employees' short-term speculative investments are risks to the employee and to Bank X. Short-term investment transactions, especially those involving Bank X's or a customer's stock, invite insider trading questions. The possibility of significant losses from speculative investments might give rise to unusual pressures, requiring management to give special attention to the employee and the problems. For these reasons, Bank X discourages its employees from entering into speculative transactions such as short sales, purchases of securities on margin, and trading in options, futures and currency transactions—even when the employee has the skill to judge and the financial means to handle the risks. Bank X most strongly discourages flagrant speculation, such as excessive gambling. Any of the above activities might be considered when Bank X evaluates an employee's performance.[7]

Bank X has a straightforward answer to the question of the advisory committee, "What purpose would a (not a complete) ban on trading serve? It would avoid risks of conflicts of interest and risks of insider trading. It would avoid the possibility of significant losses that "may give rise to unusual pressures." In short, it avoids what medievalists would have called "occasions of sin."

So the purposes for a ban, not a complete one, seem relatively straightforward. But the advisory group does not deal with them straightforwardly. It does admit that "for some investment companies, a ban on personal investing indeed might recommend itself as a clear standard to follow."[8] But why would it recommend itself for one company and not another? What are the relevant differences? The only reason given in the report is that "such a ban may be relatively easy to implement and administer and less burdensome and costly than the alternatives." But that was not the reason for the ban given by Bank X. Could some investment company give Bank X's reasons? Furthermore, why would the alternatives to a ban be burdensome and costly, if not for the fact that short-term speculation leads to all sorts of possible conflicts of interest and temptations that need to be checked by complicated monitoring procedures such as those developed in the compliance areas of the codes of ethics.

The advisory group, then, condescendingly allows that "Any investment company is, and should be, at liberty to adopt such a standard if it sees fit." On what grounds? If such a standard is not reasonable, then why should a company be at liberty to adopt it, for its adoption would unfairly limit the freedom of its personnel. A company should have good reasons. What are they? "Nevertheless," the report continues, "it is unnecessary, and it would be unfair and contrary to the interests of shareholders, to impose such a ban on investment companies at large." (One wonders why it would be fair in the case of one company and not in another. The only way to decide that is to take the analysis of the reasons for the ban seriously, something the report does not do.)

It appears that the report has avoided analyzing the substantial reasons for a ban against short-term speculative trading. It makes the assertion that "It is unnecessary, unfair, and contrary to the interests of shareholders to impose such a ban (complete) on investment companies at large."

2. ARGUMENTS AGAINST A (COMPLETE) BAN

Still, the advisory group does develop a positive defense of its position. What sort of arguments does it generate in support of the claim that there should be no ban on personal trading?

The first reason is somewhat muddled. Lest it appear that I am caricaturing the argument, I will cite the entire passage.

> First is the importance of one very stark truth about the industry: Investment managers compete fiercely in the marketplace, and their competition is waged first and foremost on the basis of proven performance. Today, there are over 5,200 investment companies registered with the Commission and thousands of other pooled investment vehicles. While there always has been a healthy level of competition in the industry, this is especially so today, when there are so many alternative funds whose performance is widely publicized. No investment management firm will succeed in this environment unless it consistently serves the interests of the customer first. No firm is likely to tolerate a portfolio manager becoming preoccupied with personal investments at the expense of a fund and its shareholders. Nor is a portfolio manager whose personal compensation frequently is linked to the performance of the fund, likely to be motivated to engage in trading activities that benefit him at the expense of fund performance.[9]

I take it that this is the defense of the "unnecessary" aspect of a "complete" ban on personal investing, unnecessary because the competitive nature of the marketplace is such that no firm will tolerate a portfolio manager preoccupied with personal investments. But, as a matter of fact, Invesco did just that with Kawaske. His performance was so good, there were two sets of rules in his company, one for him and one for the others. Further, the competitive nature of the industry is at best irrelevant. The issue isn't someone not doing his job; the issue is the temptation that arises because of conflicting interests that arise from the portfolio manager's outside trading. Further, this argument doesn't address the free rider problem of the manager who rests on the laurels of her fellow managers. Finally, a portfolio manager whose personal compensation is linked to the performance of the fund might very well be motivated to engage in trading at the expense of the fund when that trading will benefit him more than the compensation. A footnote that notes that "most managers don't trade that much" returns to that trivial consideration of banning trading because it eats up too much of the manager's time.

The second argument against a complete ban is that the advisory group is "convinced that the industry can continue to address these concerns in a decisive manner … through the imposition of various restrictions and implementation of related compliance procedures short of a total ban."[10] In an appeal to authority, the report indicates that "those many Commission members and senior officials with whom the Advisory Group met in the course of its work concurred *unanimously* in this judgment." One of the issues addressed by an advisory group of which I was a member was the question of "How extensive should any ban on personal trading be?" There probably should be "unanimous" agreement against a total ban, since that would preclude owning any stock, long or short term, but one must ask whether the report does not trivialize the problem by its constant reference to a total ban? Where was the serious discussion, for example, of a ban on short-term speculative investment? Be that as it may, the second reason turns out not so much a reason in defense of the position, but a reiteration of the conviction that the position is correct.

The third argument claims that an outright prohibition on personal investing would heavily—and unfairly—penalize many portfolio managers. The heaviness would come from "completely foreclosing a trustee from entering into an entire category of personal transactions *unrelated* to the administration of the trust or to the trust assets." But whether and which personal transactions are related is exactly the question.

The unfairness comes from changing the contract, or "to those numerous professionals who entered the industry with one set of rules, only to find those rules radically changed." But there might be good reasons for changing the rules. That is what is at stake.

In this instance the group asks "what legitimate purpose would be served, for example, by precluding the young manager of a money market fund, whose professional activities are limited to markets in short-term, high-quality debt instruments, from investing in growth stocks for his retirement account or in blue-chip stocks as gifts to his minor children?" The answer, of course, is "probably none." But put a slightly different question to the group. "What purpose would be served by precluding the young manager of a fund from investing in short-term, highly speculative stocks?" Here we can recall the purpose given by the bank. It would lead to the avoidance of pressures. Speculations akin to gambling do not "vindicate the reasonable expectations" of the American public.

The fourth reason against a ban is that such a ban would be detrimental to the fund shareholders by driving the highly talented investment professionals away. It is claimed that there would be a talent drain. This might be an empirical question if one could definitively come up with the criteria that make one a highly talented investment professional. What are the criteria for determining who are the highly talented professionals? How much of success is hard work and how much is luck? If they are that talented why are they working for the fund in the first place? Was Kaweske that talented? Some claim his early successes began to fade. What image of the "best" is operating here? Are they not amply enough rewarded for their work? Dare we ask whether the "best" might not turn out to be the greediest? Do we need to keep them? Somewhere along the line, one wants to ask the question that Berger asks, "Don't fund managers make enough money at work?" Must they supplement an already substantial income with short-term speculation? I am put in mind of an accountant friend of mine who wanted the rules against being a broker loosened. Of course, accountants know a lot about certain securities. That's the nature of their job. But we expect them to keep that to themselves, as we expect doctors to keep privileged information they could use to acquire personal wealth to keep that to themselves. But enough. On to the next defense.

This brings us to the final argument against a ban, the argument that "investment company portfolio managers already are subject to more detailed accountability for their personal investing activities than are the employees of other investment companies. Foreclosing these experts from investing would establish significant and needless disincentives to their entering or continuing to serve in the investment company industry." One is always sympathetic to a claim of unfairness when one is asked to live by rules that don't apply to others playing the same or a similar game. Persons at Bank X would often bemoan the fact that their bank is harder on them than other banks are on their employees. But that does not make their bank wrong. It might be the other banks are not stringent enough. Perhaps what needs to come out of this entire investigation is a reexamination of .the question, "Why is the mutual fund industry subject to more detailed accounting than employees of other investment companies?"

It is certainly true that one should not have one's liberties curtailed without good reasons, and in this case a personal ban would curtail liberties. The question, though, is whether the reasons are good enough. The main difficulty with the report is that it did not examine the reasons thoroughly enough, and thereby missed a golden opportunity to examine a number of substantial issues. The purpose of this paper is to prod the industry into a more careful analysis of possible future problems, so that its response can be proactive, rather than reactive.

NOTES

* "Should Mutual Fund Managers Be Banned from Personal Trading?," appearing in *Trust, Responsibility and Control: Ethics in Accounting and Finance*, edited by W. Michael Hoffman, Judith Brown Kamm, Robert Frederick and Edward Petry, Quorum Books, December, 1995.

1 Investment Company Institute, news release, May 9, 1994.
2 "Report of the Advisory Group on Personal Investing," May 9, 1994, p. ii.
3 Ibid., pp. ii–iii.
4 Ibid., p. v.
5 Ibid., p. 19.
6 Ibid.
7 From p. 13 of a code of ethics of an unnamed bank.
8 "Report of the Advisory Group on Personal Investing," May 9, 1994, p. 20.
9 Ibid., pp. 21–22.
10 Ibid., p. 22.

CHAPTER 14

THE RESPONSIBILITIES OF ACCOUNTANTS*

> In the domain of art voluntary error is not so bad as involuntary, but it is worse in the case of prudence as it is in the case of all the virtues or excellences.
>
> Aristotle, *Ethics*, Bk. 6, Ch. 5, 1140b22 I

It has often been pointed out that the practice of accounting is an art, not a science. That is most likely true. Any application of principles to reality is an art. Just as in medicine the doctor takes his knowledge and applies it to the patient, so in accounting the accountant takes his expertise and applies it to financial matters to develop or evaluate financial statements. But being a superb artist does not mean being an ethical one as is clear in the case of the clever thief. We can admire the skill and acumen of the thief while recognizing that what the thief does is unethical. We can admire the financial acumen of an Andy Fastow without approving of what he did.

Aristotle, in his remarkable book, *The Nichomachean Ethics* points out the difference art and ethics by contrasting voluntary error with involuntary error. In art, no matter what you are doing with your art, you can do it well or poorly. In art the question is whether you do what you do aptly or poorly. In ethics we judge whether what you do is ethical or not. In ethics we judge the ultimate purpose of the art.

Thomas Aquinas, the superb medieval commentator on Aristotle, puts the matter this way:

> Reason stands in different relations to the productions of art and to moral acts. In matters of art, reason is directed to a particular end, which is something devised by reason; whereas in moral matters, it is directed to the universal end of all human life.
>
> Since moral failure is a departure from that universal end and artistic failure is a departure from the particular end, failure can occur in two ways in the operation of art. First by a departure from the particular end intended by the artist, a failure proper to the art: e.g., if an artist produce a bad thing, while intending to produce something good, or produce something good, while intending to produce something bad. Secondly, by a departure from the universal end of human life. But this failure is not proper to the artist as an artist, but as a man. Consequently, for the former failure, the artist is blamed as an artist, while for the latter he is blamed as a man.
>
> In moral matters, where we take into consideration the order of reason to the universal end of human life, moral failure are always due to a departure from the order of reason to the universal end of human life.[1]

What this means is that an accountant can be a good accountant in two ways, first in practicing his craft so that he is superb in handling the numbers. But a good accountant in handling the numbers can use that skill to misstate earnings to cover a multitude of problems with a company's books while staying within the law. So the notion of a moral or ethical accountant is not the same as the notion of a good accountant. To be a moral or ethical accountant one must do more than just cleverly apply accounting or auditing principles, one must do that for a worthwhile or noble goal, what Aquinas called the "universal end of human life" or what Aristotle called "living well," the conditions of which he specified in the *Nichomachean Ethics*. These considerations will give us a framework from within which we can evaluate the ethical responsibilities of the accountant. Indeed when we look at the two sets of principles that accountants adhere to, Accounting Principles, be they GAAP or others, and Codes of Ethics, they seem to reflect this duality. If you are clever, you can game the GAAP and violate your ethical responsibilities.

In light of this, how does one determine which are the ethical responsibilities? Our general principle would be that a person to be ethical has a responsibility to fulfill one's role or roles, as long as that role or roles are in conformity with acceptable goals for human life. What we mean by acceptable goals for human life, are societies where there are goods fairly distributed that contribute to the quality of life in a way that allows as many people as possible to live fulfilled, abundant and flourishing lives.

If our economic system has that as an appropriate goal, and helps achieve such a goal, (see Adam Smith and arguments for the beneficence of free market capitalism) and that system has prescribed roles with tasks necessary to be met to bring about such a society, than when one assumes such a role one has a responsibility to fulfill that role to the best of one's ability.

1. THE RESPONSIBILITIES OF THE ACCOUNTING FIRM

What exactly, are the primary responsibilities of accountant/auditors and auditing firm? What function should they fulfill to help the economic system move forward in a way that will benefit individuals and society? What is their purpose in the economy? Given the way financial markets and the economic system have developed, society has carved out a vital role for the accountant and independent auditor, which is absolutely essential for the effective functioning of the economic system. While we will concentrate most on the role of external auditor, much of what we say can and should apply to internal auditors and management accountants. If accounting is the language of business, it is the auditor's job to see the language is used properly so that relevant material is communicated properly. In the system the role of the independent auditor is to be a watchdog, "to see whether the company's estimates are based on formulas that seem reasonable in the light of whatever evidence is available and that choice formulas are applied consistently from year to year."[2]

John Bogle, the founder of The Vanguard Group puts these points succinctly:

> The integrity of financial markets—markets that are active, liquid, and honest, with participants who are fully and fairly informed—is *absolutely central* to the sound functioning of

> any system of democratic capitalism worth its salt … . Only the complete confidence of investors in the integrity of the financial information they received allowed these investment needs to be met at the lowest possible cost of capital.
>
> Sound securities markets require sound financial information. It is as simple as that, Investors require—and have a right to require—complete information about each and every security, information that fairly and honestly represents every significant fact and figure that might be needed to evaluate the worth of a corporation. Not only is accuracy required but also, more than that, a broad sweep of information that provides every appropriate figure that a prudent, probing, sophisticated professional investor might require in the effort to decide whether a security should be purchased, held, or sold. Those are the watchwords of the financial system that has contributed so much to our (economic) growth, progress, and prosperity.
>
> It is unarguable, I think, that the independent oversight of financial figures is central to that disclosure system. Indeed independence is at integrity's very core. And, for more than a century, the responsibility for the independent oversight of corporate financial statements has fallen to (the) public accounting profession. It is the auditor's stamp on a financial statement that gives it its validity, its respect, and its acceptability by investors. And only if the auditor's work is comprehensive, skeptical, inquisitive, and rigorous, can we have confidence that financial statements speak the truth.[3]

Bogle's articulation of the function and responsibility of the auditor is not new. It is simply a reiteration of the classic statement of the auditor's function and responsibility given by Justice Burger's opinion in the 1984 landmark Arthur Young case.[4]

> Corporate financial statements are one of the primary sources of information available to guide the decisions of the investing public. In an effort to control the accuracy of the financial data available to investors in the securities markets, various provisions of the federal securities laws require publicly held companies to file their financial statements with the Securities and Exchange Commission. Commission regulations stipulate that these financial reports must be audited by an independent CPA in accordance with generally accepted auditing standards. *By examining the corporation's books and records, the independent auditor determines whether the financial reports of the corporation have been prepared in accordance with generally accepted accounting principles. The auditor then issues an opinion as to whether the financial statements, taken as a whole, fairly present the financial position and operations of the corporation for the relevant period* [emphasis added].

According to Burger, the responsibility of the auditor is clear—to issue an opinion as to whether the financial statement *fairly* presents the financial position of the corporation. Meeting this responsibility requires an auditor to have as much integrity and honesty as possible. Further, to assure that as accurate a picture as possible has been presented it is essential that that integrity and honesty not be imperiled by the presence of undue influence and conflicts of interest, which means the auditor must have as much independence as possible. In sum, if the market is to function efficiently those who need to make decisions about the company must be able to trust the accountants' pictures so they can make the decisions based on as accurate and reliable information as possible. Obviously such trust is eroded if there is even an appearance of a conflict of interest, particularly in places like financial markets where perception is often reality.

This role is not without its problems. It creates a special responsibility to the public that is unique to the accountant, and it puts the accountant in a different relation to the client who hires him or her from the relationships with clients other professionals have, Justice Burger mentions this in his classic statement of auditor responsibility.

> The auditor, does not have the same relationship to his client that a private attorney who has a role as … a confidential advisor and advocate, a loyal representative whose duty it is to present the client's case in the most favorable possible light.[5]
>
> An independent CPA performs a different role. *By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client.* (Italics mine) The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust. To insulate from disclosure a CPA's interpretations of the client's financial statements would be to ignore the significance of the accountant's role as a disinterested analyst charged with public obligations.[6]

Barker and Hayes note however, that "This unusual arrangement poses an ethical dilemma for public accountants."[7] Baker and Hayes point out that clients usually expect their accountants to perform their professional services in a manner that benefits the client, the accountants are obliged to serve "the interests of third parties who are the beneficiaries of the contractual arrangements between the public accountant and their clients." As we have seen, such an expectation is misguided since as Burger said, the accountant's responsibilities are to the legitimate users of the statements, not necessarily the client.

This creates a difficulty for while the auditors' clients are the ones who pay the fees for the auditor's services, the auditor's primary responsibility is not to look out for the interests of the auditor's employer, the client, but to look out for the interest of a third party, the public. Such a situation of auditors cannot help but create conflicts of interest and ethical conundrums. The auditor is knowledgeable of and monetarily dependent on the client who pays the bill, but primarily responsible to the using public. In sum, accountants are professionals and consequently should behave as professionals, but unlike other professionals, while offering services to their clients, they must evaluate their client's work and make that evaluation public. It is extremely difficult performing a "public watch dog function" over a company with which one has such close ties. It became well known during the Enron fiasco that the Arthur Andersen accounting firm had a dependency relationship with its clients because of its consulting operations, which brought in more revenue than its auditing operations.

So the ultimate responsibility of internal auditors is to develop statements that present the financial situation of the company in a fair way, meaning as much disclosure as necessary to give a reasonable picture of the financial situation to any user having a claim to that knowledge. The function of the external auditor is to affirm that has happened. That should be the standard. It is what is required for an efficient market. It is also a standard the spirit of which has been seriously violated in recent years.

But there has been some question as to whether the auditor's responsibility is to attest to fairness or merely to conformity with GAAP, on the grounds that it is difficult to determine what counts as fair. Common sense can provide some guidance, for there seems to be a sense in which the notion of "fairly" presented means the report that is being audited will give the reasonable person a fairly good picture of the financial status of the entity being pictured. To rest solely on GAAP is not prudent for there are numerous examples of how GAAP principles can be used by artful dodgers to hide the real health or sickness of a company. Obviously one can use *Pro Forma* accounting to be creative in one's accounts. Indeed, one accountant has suggested that accounting is an art, and a truly proficient artist can by the skillful use of GAAP make the same company look to be dizzyingly successful or failing miserably. But such "creative accounting" fails to meet the accountant/auditor's responsibilities. What, then should the standards be?

SEC Commissioner A.A. Sommer, Jr. points out that:

> Judge Henry J. Friendly, surely one of the most knowledgeable of federal judges in financial and accounting matters, said … in effect (in *Continental Vending*) … that the first law for accountants was not compliance with generally accepted accounting principles, but rather full and fair disclosure, fair presentation, and if the principles did not produce this brand of disclosure, accountants could not hide behind the principles but had to go beyond them and make whatever additional disclosures were necessary for full disclosure.[8]

A federal judge in *Herzfeld v. Laventhol* sums up our point:

> Compliance with generally accepted accounting principles is not necessarily sufficient for an accountant to discharge his public obligation. Fair presentation is the touchstone for determining the adequacy of disclosure and financial statements. While adherence to generally accepted accounting principles is a tool to help achieve that end, it is not necessarily a guarantee of fairness.
>
> Too much attention to the question whether the financial statements formally complied with principles, practices and conventions accepted at the time should not be permitted to blind us to the basic question whether the financial statements performed the function of enlightenment, *which is their only reason for existence.*[9]

One can assert, without fear of contradiction, that what did in fact happen was that auditors hid behind the GAAP, and not only hid behind conformity with GAAP or Pro Forma principles, but manipulated them to manage books in ways that were beneficial to the clients and harmful to the public who had a right to know the true financial picture of the company. Consequently auditing firms fell short of fulfilling their ethical responsibilities as auditors.

2. THE SKEPTICAL WATCHDOG

Because of their attest function, accountants/auditors belong to the class of gatekeeper intermediaries in the financial markets who have a "watchdog" responsibility. One of the responsibilities laid out in the Statement of Auditing Standards, No. 53, published in 1988 was a responsibility to detect error, irregularities or fraud. In 1997 SAS 53 was replaced by standard No. 85, which dropped the word "irregularities" in favor of "fraud." Whether the change was for the better is not clear, but a look at both documents can give us an indication of what this "watchdog" responsibility of auditors entails.[10]

These two documents[11] can be particularly useful in evaluating recent behavior of accounting firms such as Arthur Andersen. Did they take their responsibility to detect error irregularities or fraud seriously? For example, there is documented evidence indicating that Sherron Watkins, blew the whistle on Anderson's handling of Special Purpose Entities (SPEs) and found the accounting procedures suspect.[12] Subsequent memos coming out of Anderson indicated uneasiness with the procedures, but nothing was done about it. Did Anderson have a responsibility to act on those perceived irregularities of Enron? An examination of the audit standards indicate clearly that it did. Did Andersen take seriously the irregularities that occurred in the Global Crossing IRU Swaps, where the swaps had no legitimate business use except to bolster earnings statements?

If we look a bit more carefully at these under-publicized standards, we see they do several things. They not only provide guidance for the responsibility to detect errors, irregularities and fraud[13] in an audit, but also describe factors that influence the auditor's ability to detect those irregularities explain how exercising due care requires giving appropriate consideration to the possibilities of those errors, irregularities and/or fraud. Finally the audit standards spell out the auditor's responsibility for communicating those discovered errors, irregularities and/or fraud both within and without the organization whose financial statements are being audited.

According to these standards, an auditor has a responsibility to look for material misstatements or misappropriations of assets or liabilities as well as *to assess the risk* that errors and irregularities might cause the financial statements to contain a material misstatement. Such a risk assessment requires the auditor to design the audit in such a way as to provide "reasonable assurance" of detecting errors, irregularities or fraudulent claims that are material (one large enough to influence a user of the statement to act in a way he or she would not act if there were no misstatement) to the financial statements.

To assess risk the auditor needs to understand "a number of factors from management's characteristics and influence over the control environment, industry conditions and operating characteristics and financial stability."[14]

An auditor might not be able to detect a material irregularity because generally accepted auditing standards do not require the authentication of documents, or there might be collusion and concealment. For example, because of forgery an auditor might not be able to detect a material irregularity or if a high level manager is involved in a cover up it might go undetected because of a lack of a proper internal control structure. Nevertheless, the standards require that "The auditor should exercise (1) due care in planning, performing, and evaluating the results of audit procedures, and (2) the proper degree of professional skepticism to achieve reasonable assurance that material errors or irregularities will be detected."[15] While the auditor is not an insurer and while his report constitute a guarantee of the accuracy of the statements, the auditor does have a responsibility to adopt the proper degree of professional skepticism. "Due professional care requires the auditor to exercise *professional skepticism*." "An audit of financial statements in accordance with generally accepted auditing standards should be planned and performed with an attitude of professional skepticism."

Let's examine this requirement of skepticism.

The Generally Acceptable Auditing Standards define skepticism as:

> … an attitude that includes a questioning mind and a critical assessment of audit evidence. The auditor uses the knowledge, skill, and ability called for by the profession of public accounting to diligently perform, in good faith and with integrity, the gathering and objective evaluation of evidence.[16]

This means that

> The auditor neither assumes that management is dishonest nor assumes unquestioned honesty. Rather, the auditor recognizes that conditions observed and evidential matter obtained, including information from prior audits, need to be objectively evaluated to determine whether the financial statements are free of material misrepresentation.[17]

One can seek in vain for any indication of a skeptical attitude of Andersen the auditor toward Enron the client. If that is the case Andersen failed in its responsibilities, with respect to Enron. Further, in the case of Global Crossing, Andersen was not only not skeptical, it actively encouraged the questionable swaps, which should qualify as an irregularity. Common sense points out what might be a cause of the lack of skepticism. It is difficult to neither assume honesty or dishonesty when dealing with clients who one has known for a long time, or on whom one depends for a large part of one's income stream. But the question of whether skepticism is impossible in the present system is a separate issue. (*Nemo dat quod non habet*. No one can give what they don't have.) The fact is that the standards require such skepticism.

More than requiring skepticism, the standards spell out quite specifically what is necessary to be properly skeptical. The skeptical auditor needs to consider factors that influence audit risk especially the internal control structure.

During planning the auditor should assess risk of material misstatements.

- "The auditor's understanding of the internal control structure should either heighten or mitigate the auditor's concern about the risk of material misstatements."

  The auditor should consider the following questions.
- Are there significant difficult-to-audit transactions?
- Are there significant and unusual related party transactions not in the ordinary course of business?
- Are there a significant number of known and likely misstatements detected in the audit of prior period's financials from the predecessor auditor?

The standards further require the auditor to review information about risk factors and the internal control structure by considering matters such as the following:

- Are there circumstances that might indicate a management predisposition to distort financial statements?
- Are there indications that management has failed to establish policies and procedures to assure reliable accounting estimates, by utilizing unqualified, careless or inexperienced personnel?
- Are there indications of lack of control, such as recurrent crises conditions, disorganized work areas, excessive back orders, shortages, delays or lack of documentation for major transactions?

- Are there indications of a lack of control over computer processing?
- Are there inadequate policies and procedures for security of data or assets?[18]

Finally:

> The auditor needs to consider the effects of these matters on the overall audit strategy. High risk ordinarily demands more experienced personnel and more extensive supervision. "Higher risk will also ordinarily cause the auditor to exercise a heightened degree of professional skepticism in conducting the audit."[19]

The standards also emphasize that auditors need to be able to cope with illegalities and/or questionable acts within an agreed—upon-framework. The accountant might have an obligation to blow the whistle, but that should not be laid upon the accountant without some protections. The auditor "ought to be able to approach the detection and disclosure of illegal or questionable acts by management within a defined and agreed-on-framework.[20] The framework should include a policy on corporate conduct, and a system to monitor compliance with the corporate conduct. The auditor should determine whether the operations of the company comply with the standards of corporate conduct. The auditor should also consider illegal or questionable acts without regard for their materiality.

So much for the responsibilities of the auditor. I will not bother to go through an exhaustive litany of the places where firms such as Andersen fell short in its responsibility to be skeptical of companies such as Enron and Global Crossing. But a brief look at the first three areas of concern ought to indicate Andersen's failure.

1. "The auditor's understanding of the internal control structure should either heighten or mitigate the auditor's concern about the risk of material misstatements." In the case of Enron, the internal control structure was such that Andrew Fastow's ownership of SPEs was only allowed by Enron waving its conflict of interest stipulations in its code of ethics. In the case of GS Andersen set up the internal control structure and recommended the swaps.
2. Are there significant difficult-to-audit transactions? In the case of Enron, the SPEs and the Mahonia transactions were virtually impossible to keep track off. Again, in Global Crossing, Andersen a consultant set up the IRU transactions.
3. Are there significant and unusual related party transactions not in the ordinary course of business? The relationships between Enron and Special Purpose entities are well known, for example, Chewco, JEDI, LJM1, LJM2.[21] "In GX the transactions had little purpose beyond increasing the company's revenue at the end of each quarter."

In short, Andersen did not live up to its responsibilities as outlined in the auditing standards (GAAS) put forward by the AICPA.

We can then summarize the major responsibilities of the auditor as first, being responsible to the using public for evaluating financial statements and declaring that they represent a fair picture of the financial situation of a company, and second of being a watchdog and calling into question irregular practices that would distort those pictures.

3. CAUSES OF ETHICAL FAILURE

But what caused this lack of due care? Why did the accounting firms fall short? Is this skepticism a realistic expectation? How much more do the other gatekeeper intermediaries contribute to the malaise? Our further claim was of course that what motivated Andersen and other accounting firms to abandon these responsibilities and their proper goals was falling into the trap of accumulating wealth for its own sake.

4. ACCUMULATION AS A FACTOR IN ACCOUNTING FIRMS

In the recent business scandals it was not only the officials of companies such as Enron Tycho, World Com, and Global Crossing (to mention only a few) that got swept up in the accumulation fever. Accounting firms also got caught. It was no accident that since the majority of revenues and hence profits for accounting firms in the 1990s began to come from consulting rather than auditing accounting firms lost their focus on the importance of responsible auditing.

This switch from auditing to consulting as the main source of revenue, was more or less true of all the big five accounting firms, and it seems clear that the main motive for pursuing consulting was to accumulate more sources of revenue without consideration of what this would do to the culture. As the large accounting firms grew, they began to expand. What was the purpose of the expansion? To do consulting. Why? To bring in more profits? To accumulate more?

As Lynn E. Turner of the SEC said:

> Where as recently as the early 1980s, the accounting firm's principal source of revenues were from the performance of audits, a survey of 563 of the Fortune 1,000 companies showed that for every $1 of revenues generated for the performance of the review and audits of the quarterly and annual financial statements in 2000, $2.69 in revenues were generated by providing other services. Those other services accounted for 73% of total fees billed by the accounting firms to the companies surveyed.[22]

There was little reflection on how this consulting impacted on the primary function of the auditing firm. There was little speculation about how reliance on consulting fees might impact the independence needed for objective auditing. What occurred was that the new profit making enterprises took the focus off the auditing and what's more caused a new view about an auditor's responsibilities. While this is true of all the big five firms to an extent, we have used the behavior of Arthur Andersen as an example of what happened industry wide.

A venerable firm like Andersen, at one time, prided itself in its role as auditor since it fulfilled an important public function. As an auditor, Arthur Andersen had a clear mission, to attest that the financial statements they were auditing reflected what was really going on in the company. However, since more money was to be made in consulting, the responsibilities that the firm should have met as auditor were compromised for the sake of ever increasing fees. Accumulation caused Andersen to lose its soul and eventually its very life.

5. CONCLUSION

We have indicated that accumulation and forgetfulness of responsibility lead to a compliance mentality, where there is no ethics governing business. Only what is illegal is considered unethical. A mere accumulator, as we have seen, will only be deterred or limited by the law. That discouragingly enough leads us back in time to an article that appeared in the Harvard Business Review a half century ago by Albert Carr, called “Is Business Bluffing Ethical?” which claimed that ethically a business in its pursuit of profit was only responsible to obey the law. One had thought that ethics in business had progressed to a point where business seriously considered ethical matters, and tried to live within the spirit of the law, rather than just the letter of the law, that is, did the right thing and not just skirted the legal edge. However, an accumulation spirit seems to have infected business and when accumulation is the primary goal, the sole limit on activity is the law, and energy is spent trying to find loopholes to allow for the accumulation of even more money—a typical compliance mentality.

Absent a sense of ethical responsibility, the only deterrent to the accumulator is the sanction of the law. With that in mind it is probably important to conclude by considering that Protagoras could have lost his case. He who lives by the sword will perish by the sword. The Wall Street Journal reports on June 4, 2002 that Deloitte and Touche are being sued because they didn’t bother to inform Adelphia directors about the Rigas’ insider loans. Merrill Lynch had to pay $100 million to settle a lawsuit over the integrity of its analysts during the Internet hype. Finally *The Economist* reports a June 3, 2002 Supreme Court ruling in favor of an SEC action against a broker. The ruling stated that the securities market’s regulations introduced in the 1930s “sought to substitute a philosophy of full disclosure for the philosophy of caveat emptor, and thus to achieve a high standard of business ethics to the securities industry.”[23]

In a happy marriage of morality and the law it might be the case that financial services professionals, accountants and securities dealers, might have a legal duty of care for their customers and the stakeholders who depend on their services, which means they need to offer only such advice or attestations as they would give to themselves. If ethics is reduced to compliance one can only hope that the judges will throw out the suits brought by the Protagorases of the world and punish them for the transactions against their professional and fiduciary responsibilities.

To sum up: becoming a mere accumulator means you forget your primary responsibility that is dictated by your purpose. When the accumulation of money drove him, Protagoras forgot his purpose was to teach. Similarly, when the pursuit of money and commissions or fees is the major driver of an accounting firm, that firm forgets its responsibilities. When a company strives only to maximize profit and forgets its mission of producing goods and services, it leaves aside ethics and values. When accumulation of wealth is the only driver the lack of responsibility inevitably follows.

To the extent that the accumulator disposition infiltrates or pervades a person or industry the person or industry gets corrupted, because to that extent it loses its soul, its ennobling purpose. The ethical course is to keep one’s noble goal of serving others in mind: Executives to fulfill their fiduciary responsibilities to all shareholders and other stakeholders by profitably making a useful product; Auditors to fulfill their responsibilities to the general public to make sure financial statements "fairly" present a picture of the financial situation of a company for those with a need to use them; and others to fulfill whatever responsibilities they have in the varied world of financial services. Such a pursuit of honorable goals makes life eminently worth living.

NOTES

* "The Ethical Responsibilities of Accountants," *Geneva Papers on Risk and Insurance Issues and Practice*. July 2005.

1 Thomas Aquinas, *Summa Theologica*, I–II, Q.21 art 2, ad. 2.

2 *Encyclopedia Britannica*, Vol. "Accounting."

3 John C. Bogle, "Public Accounting: Profession or Business?" Speech delivered at New York University on October 16, 2000.

4 464 US 805, 1984.

5 As quoted in Abraham J. Briloff, "The 'Is' and the 'Ought'," *Accounting Today*, September 6–26, 1999, p. 6ff.

6 Ibid.

7 C. Richard Baker and Rick Stephan Hayes, "Regulating the Public Accounting Profession: An International Perspective, from http://les.man.ac.uk/cpa96/papers.htm/baker2.htm, p. 9.

8 Quoted in Briloff, pp. 4–5.

9 Quoted in Briloff, p. 5.

10 Cf. the AICPA Statements on Auditing Standards No. 55 SAS53 entitled "The Auditor's Responsibility To Detect And Report Errors And Irregularities."

11 In the American Institute of Certified Public Accountants' *Statements on Auditing Standards* (SAS), the section titled: "The Auditor's responsibility to detect errors and irregularities." (SAS 53) has been superseded (whether for better or worse I hesitate to say) by a section called "Consideration of Fraud in a Financial Statement Audit. (SAS 82) (I am somewhat bemused by the fact that the word "responsibility" found in the title of SAS 53 is jettisoned and replaced by the word "consideration" in SAS 82. Be that as it may SAS 82 still refers to the "responsibility" of auditors in its summary.) So far as I can tell, never in his testimony to congressional committees, did Joseph Berardino (the CEO of Arthur Andersen), refer to the ethical obligation of Andersen to detect irregularities or its responsibility to investigate fraud.

12 Whether they contained irregularities or constituted fraud would make for an interesting discussion but is beyond the scope of this article.

13 We reiterate. Standard 85, which superseded SAS 53, eliminated the words "responsibility" and "irregularities." We are not clear why the Auditing Standards Board took this approach, but we will view it as a minor technical move. In this book we will continue to refer to "errors, irregularities and/or fraud."

14 SAS. 82.16.

15 SAS. 53.08.

16 SAS no. 1, section 230.

17 SAS 53.16.

18 SAS 53.12.

19 See SAS 53.16 to .21, SAS 82.27, and SAS no. 1 AU sec. 230, paragraphs 7–9.

20 Ahmed Reahi-Belkhauli, *Morality in Accounting* (New York: Quorum Press, 1992), p. 37.

21 One of the richest sources of the Byzantine structures created by Enron is found in *First Interim Report of Neal Boston, Court-Appointed Examiner*, United States Bankruptcy Court, Southern District of New York, In re: Enron Corp., et al., Debtors. September 21, 2002. These ought to indicate numerous areas and transactions that should have served as red flags for an auditor who was sufficiently "skeptical."

22 Lynn E. Turner, "Independence: A Covenant for the Ages," at International Organization of Securities Commissions, Stockholm Sweden, June 28, 2001. www.sec.gov/news/speech/spch504.htm.

23 The Economist, June 8, 2002.

CHAPTER 15

FINANCIAL PLANNING—THE NEW CENTURY ETHICS*

"Increasing sales at the expense of those for whom these (Variable Annuity) products are not suited will not be tolerated." With those words, Paul F. Roye, director of the Division of Investment Management of the Security and Exchange Commission, at a meeting of the National Association for Variable Annuities, laid down the blue print for the ethical expectations of financial service professionals in the twenty first century. Financial services professionals and their companies are expected to look out for the interests of their clients and customers, and profit making at the expense of those customers will not be tolerated. Entering the twenty first century, the belief that the primary responsibility of any corporation is to maximize shareholder wealth is being discarded and replaced by the belief that the corporation has a multitude of responsibilities to a multitude of stakeholders, first and foremost being their customers and clients. Profit for shareholders is an essential element, but is no longer will stand as the primary and only focus.

In the last half of the twentieth century financial planning has developed into a distinctive practice. With that development a number of organizations have sprung up, whose goal is to turn Financial Planning into a profession with all the marks of a profession, including a commitment to ethical behavior. Such a commitment to ethical behavior recognizes that the primary obligation of any professional is not to themselves but to their clients. Hence the concern about the value of variable annuities, one of the fastest growing financial instruments available. For whom are they suitable? In a June 8, 2000 press release, TIAA-CREF, the original Teachers' Insurance Annuity Association, expressed concern that "inappropriate selling of annuities to people for whom the product is not suitable, along with excessive fees and costly surrender charges, have caused the product to be scorned by the personal financial press."

The selling of Variable annuities is only the newest example of the perennial ethical conflicts the financial planner will be facing in the new millennium. New and different products will raise the same problem of the conflicts of interests of the companies, planners and clients. To help overcome those difficulties and forestall the regulatory force of bodies such as the SEC, financial planners have done what other groups have done, attempted to police themselves, by setting themselves up as a profession.

In the case of financial planning, the Certified Financial Planners Board of Standards has developed a code of ethics, which reflects the common consensus about what is required of planners from an ethical perspective. If we examine the principles of that code, we can get a good feel for what is now and will be in the future, ethically required of the Financial Planner.

The code affirms that a financial service professional must be a professional who exhibits integrity and objectivity, is competent and diligent in his practice where he will act fairly with confidentiality. In short, the code lists seven characteristics that if fashions into its principles of behavior. Integrity, Objectivity, Competence, Fairness, Professionalism, Confidentiality and Diligence. To see what is required of the financial planner from an ethical perspective, it will be helpful to examine those characteristics, for they furnish an outline of the basic ethical responsibilities of the financial planner.

As we have seen, the primary move for individuals, in the new millennium, to underline their ethical obligations, is to insist that they are professionals. All the other characteristics such as integrity, objectivity or competence are requirements of any professional. Hence it will be helpful to begin by examining what it means to be a professional and why groups want to recognize themselves as professionals.

1. PROFESSIONALISM

Designating one's area of endeavor as a profession is tantamount to declaring special ethical responsibilities in one's area of work. What is happening in the new millennium to financial planners happened at the beginning of the twentieth century among insurance salesmen. In 1927 Solomon Huebner established The American College to teach life insurance sales people in order to turn the life insurance sales person into a professional hoped to establish the selling of insurance as a profession. Just as Huebner placed life insurance sales on the plane of a profession, it is time now to place financial services on that same plane.

However, Huebner's dream started long before the 1927 founding of the American College. In 1915, Huebner, in an address delivered before the annual meetings of Baltimore Life and New York Life Underwriters called for the insurance agents to be professionals and in a speech that is as timely today as it was then, laid out the characteristics of the professional. Using physicians, lawyers, teachers and others as models of what professionals should be, Huebner cited four characteristics of the professional.

1. The professional is involved in a vocation useful and noble enough to inspire love and enthusiasm on the part of the practitioner.
2. The professional's vocation in its practice requires an expert's knowledge.
3. "In applying that knowledge the practitioner should abandon the strictly selfish commercial view and ever keep in mind the advantage of the client."

4. The practitioner should possess a spirit of loyalty to fellow practitioners, of helpfulness to the common cause they all profess, and should not allow any unprofessional acts to bring shame upon the entire profession.

Those characteristics apply to the financial planner today, just as they did to the insurance agent in 1915. Let's apply each characteristic to the profession of financial planning.

1. That financial services are useful, and that providing them requires expertise is obvious. Financial planning's utility is manifest in the fact that it helps people alleviate anxiety and gain security makes it a noble vocation. The aging of the baby-boomers leaves thousands of people in need of help to insure they manage their assets correctly to provide for their old age. In the new millennium the insurance will be necessary to guarantee we don't outlive our assets, much more than insuring against premature death. To provide for this need, to help people plan to meet it, is surely useful.
2. With respect to Huebner's second criteria of professionalism, it is clear that financial services is a complicated area requiring study to become a competent expert, who stays abreast of the latest developments and not only learns what the latest beneficial practices are, but understands why they are beneficial.
3. With respect to the fourth criteria, it is imperative that the financial planner upholds the standards of the profession.
4. For our purposes, the most interesting characteristic of the professional is the third, for it lays out an ethical prescription. It requires the professional "to abandon the strictly selfish commercial view and ever keep in mind the advantage of the client."

2. ABANDONING THE STRICTLY SELFISH COMMERCIAL VIEW

What is that strictly selfish commercial view that the professional must abandon? It is the view of those for whom the only concern of business is making money or increasing profit. It is a view voiced by extreme advocates of the free market system echoing the economist Milton Friedman and others who insist that "the primary and only responsibility of business is to increase profit." Such a view distorts the position of Adam Smith, the rather of the capitalistic free-market economy. Smith, the eighteenth century economist-philosopher in his book *The Wealth of Nations*, convinced economists of what today is a commonplace—that a great deal of good comes from a system that allows people to pursue their own interests. This belief became the theoretical foundation and justification of the capitalist free-market economic system. However, Smith warned that this pursuit of self-interest cannot be unfettered. He insisted that the pursuit of self-interest be constrained by ethical considerations of justice and fairness. Hence, one should not look out for one's interests exclusively. There are times when it is ethically necessary to limit self-interest in the name of justice or fairness to others' interests.

A "strictly selfish commercial" view, to the contrary, encourages the pursuit of self-interest with no limits—a pursuit that inevitably leads to selfishness. Our ordinary usage of the English language recognizes this point. We use two different words, self-interest and selfishness, to distinguish between behavior that is perfectly acceptable (self-interested behavior), and behavior that is ethically inappropriate (selfish behavior). The New Testament reminds us that the pursuit of self-interest is quite acceptable, for it wisely prescribes that we love our neighbor as ourselves, thereby reminding us that if we don't have a healthy self-love and self-interest, we do both our neighbors and ourselves a disservice. Nevertheless, if we pursue our self-interest at the expense of another, we act unethically. To have an ethical world, there are times people need to sacrifice their own interests for the common good—to abandon the "strictly selfish commercial view."

Recall the words of Paul Royce. "Increasing sales *at the expense of* those for whom these products are not suited will not be tolerated."

In a background paper, on its current initiatives, the CFP Board indicates its interest in professionalizing the practice of financial planning. It that paper it spells out a list of the characteristics of a profession, that they adopted from the American Institute of Certified Public Accountants. The list is reminiscent of Huebner's characteristics. It calls for:

- A specialized body of knowledge;
- A recognized formal education process for acquiring the requisite specialized knowledge;
- A standard of professional qualification governing admission to the profession;
- A standard of conduct governing the relationship of the practitioner with clients, colleagues and public;
- Recognition of status;
- Acceptance of social responsibility inherent in an occupation endowed with the public interest; and
- An organization devoted to the advancement of the social obligations of the group.

Ethics comes into play here in the standard of conduct and the acceptance of social responsibility inherent in an occupation endowed with the public interest. But what are those standards and responsibilities of the financial services professional? They are laid out in the remaining principles and rules of the code. We don't have time of space to examine all of the rules governing professional behavior of CPA designees. However much can be teamed from examining the principles briefly.

3. INTEGRITY

Integrity is mentioned in almost every code of ethics governing financial services professionals. For example, it is mentioned in the CFP Board code, in the Accountant's code and in the Code of the Society for Financial Service Professionals. Integrity means many things to many people, but one of the basic meanings of integrity is honesty. At its most commonsensical level it simply means "tell the truth and don't deceive." It is important to note, that even the above mentioned Milton Friedman, the defender of profit as the primary goal of business says that the pursuit of profit must be carried out without "deception and fraud." It is next to impossible to find any ethicist who would not condemn dishonesty. Business works on trust, and we need to trust other people's word for the system to flourish.

Still, it is important to note that integrity means more than simply telling the truth and being honest. In the words of Shakespeare it includes being "true to oneself." Reflect, for a moment, on the picture we have of the poor struggling artist who is lionized in motion pictures, stories and plays. It is the picture of the artist who refuses to betray his or her vision (read mission) just to produce what is popular, in order to make a living. Such a person is often held out as a paradigm of integrity. Many of the world's greatest artists were not recognized in their own time. In spite of hardships they faced they stayed true to their own beliefs about what art demanded and dedicated to the goals of their art. Their genius was recognized later, and they are now recognized for their being true to their calling—in short for their integrity.

The financial planner is in a situation similar to that of the artists. The professional financial planner exists as a financial planner for the sake of helping the client. Professional planners enter into a special fiduciary relationship with a client, where the financial planners might have to sacrifice their self-interest to do what they know is right for their client. To forget the pursuit of what's beneficial to the client would be to distort the planner's chief purpose. It would damage the planner's integrity. Financial planners who puts their own concerns before that of the client is not true to his or her calling or mission. They lack integrity.

Integrity leads to behavior that fosters a relationship based on trust and confidence—trust that the financial planner will look out for the client's best interest and confidence in the financial planner's ability to determine that interest. The client of the professional planner of integrity recognizes that because of that integrity, the planner will not practice deceit or subordinate the clients best interests to the personal gain or advantage of the planner.

To sum up, integrity requires honesty and fidelity to one's mission, one's clients and one's profession. It demands a person who in being true to himself or herself as a provider of important services is true to one's client and to what the profession demands.

4. OBJECTIVITY

A second characteristic of the professional found in most financial services codes is objectivity. Objectivity deals primarily with the way one looks at things. To look at something objectively means to set aside one's personal biases, preferences, and the consideration of one's advantages, and to look at all sides of a situation in an honest manner. It requires being impartial like a judge. It means standing back and removing one's own interests out of the equation. Thus, if a financial planner is influenced by his own interest in recommending a product to a client the planner does not appear to be acting objectively. On the contrary he appears to be acting selfishly and not impartially. The financial planner needs to avoid subordinating his/her judgment to anything except the question of whether the service is in the best interest of the client. Recommendations made on the basis of factors other than that concern lack objectivity. The demand for objectivity puts one in mind of the golden rule. "Do unto others as you would have them do unto you!" To have to put yourself in another's place is the preeminent way to achieve objectivity.

Finally, objectivity is necessary to overcome not only one's own interests when they conflict with the client's interests, but other conflicts of interests. It is simply the case that one cannot serve two masters who make conflicting demands. Examples of this are seen over and over in estate planning where the professional is the advisor for two individuals in the same family whose interests have come into conflict. Another instance is seen in recent debates in the accounting profession where it has recently been reiterated that to be an auditor one must maintain objectivity, and one does this by asserting their independence.

5. COMPETENCE

Since a profession requires a specific set of skills or expert knowledge, it necessarily demands competence from its members. The professional must have the necessary knowledge and skill to fulfill her mission. For a financial planner in the increasingly complex world of financial instruments, having expert knowledge requires a continued acquisition of knowledge. It also requires a willingness to admit limitations and ignorance in areas where competence is lacking. So while competence requires attaining and maintaining an adequate level of knowledge and skill, as well as the ability to apply that knowledge effectively in providing services, beyond that, paradoxically perhaps, competence requires knowing what one doesn't know. The professional needs the wisdom and humility to recognize his/her limitation so that he/she will know when consultation or referral is appropriate. I was struck recently when talking to a giant in the financial services profession about variable annuities, by the fact that he begged off talking about the area he did not consider his area of expertise. In an era of instant experts on everything, it is important to recognize one's limitations.

6. FAIRNESS

One could argue that fairness is one, if not the most basic of, ethical concepts. Fairness is generally understood as giving everyone their due. How does one determine what is due? Put oneself in the other's place. Hence fairness is treating others in the same fashion that you would want to be treated. As a central ethical virtue, it is required of a professional.

Fairness, of course, as we can see, is encapsulated in the golden rule, which requires that we do unto others as we would have done to us. In that way, fairness, just as is the principle of objectivity, is related to impartiality and intellectual honesty. The Golden Rule provides a technique for achieving that impartiality. To be fair we need to recognize that things that are the same should be treated the same. Since, with respect to basic rights, all human beings are the same and should be treated the same. Different treatment should occur only if there are relevant differences between the individuals.

Think back to times when you feel you were treated unfairly. Suppose your parents had given your sibling a gift for no apparent reason and had given you none. Suppose a colleague got a bigger raise than you and they had done virtually the same work. You would have thought that such treatment wasn't fair and that a double standard was being employed. The other person was being favored over you and not being treated the same as you. They were being treated better even though they had done nothing to deserve such special treatment. You would probably resent such disparate treatment and want to know why it occurred. If you could see no relevant reason for the different treatment you would feel it was unfair and that you should be treated the same as your sibling or your colleague.

Intellectual honesty requires impartial thinking even with respect to ourselves, not matter how hard that is, if we would not want to be treated in a specific way, we should not treat others in the same situation that way. If there are no relevant difference between us and others, they should be treated the same as us, and vice versa, for we are no better or more deserving than they. All things being equal, our interests are no more deserving of being filled than any other person's. If we feel we are entitled to respect, and care and love, we should recognize that others are too. Hence as the principle says fairness "involves a subordination of one's own feelings, prejudice, and desire, so as to achieve a proper balance of conflicting interests." If you are a financial planner, your ready test for fairness toward your client is to ask yourself if you would want the same product you are recommending to your client, if you were in the same position as the client.

Concretely, the principle of fairness requires, that conflicts of interests be disclosed to relevant parties. If I have loyalties to two different people that might conflict, leading me to favor one over the other, it is only fair that I disclose that to the parties, so they know my objectivity is being challenged. They can properly evaluate whether any potential harm can come to them, or whether they will be treated unfairly, thus potentially harming them.

7. CONFIDENTIALITY

Human beings, in an ever more public world have a need for a private space in their life. Even though disclosure and openness are good things, it is fairly obvious that confidentiality in certain contexts is desirable. Persons have a right to privacy. When people go to a lawyer or a doctor they often need to reveal things about themselves that they do not wish to be general knowledge. Most professionals in giving service to clients learn a great deal about their clients that should respect that need and be kept private and confidential.

Financial status is often one of the things people wish to keep private. When they go to a financial planner, they need to trust that he or she will keep their personal financial matters confidential. A planner has an obligation not to disclose any confidential client information without the specific consent of the client. To offer effective services, the planner might have to know as much as possible about the financial affairs of the client, but the client will be reluctant to give such information if the client suspects the planner will not keep the information confidential. The planner who discloses financial information about clients is acting unprofessionally, if not illegally, depending on the sensitivity of the information.

Even though, as a general rule a planner should not disclose confidential client information without the specific consent of the client, there are times, of course, when there are exceptions to that principle. To take an easy example, if a planner determines that a client needs life insurance and the client has a pre-existing condition that would affect the underwriting, the planner needs to report such information in writing the policy. There are also times when the legal process requires disclosure of confidential information. Finally, in cases where a planner is accused of wrong doing, or if there is a civil dispute, in certain situations the planner is exempted from the confidentiality requirement.

8. DILIGENCE

The final principle of the CFP Board's code of ethics for financial planning is the prescription to act diligently. "Diligence means providing services in a reasonably prompt and thorough manner and it includes planning for and supervision of the rendering of professional service." Since diligence commonly means quickly and with care, the demand for reasonably prompt and thorough provisions of services is self-evident. But along with promptness and thoroughness, being diligent also means being watchful particularly about behavior in one's profession. Hence if one occupies a supervisory role they need to be diligent about the activities of their subordinates.

9. CONCLUSION

We have covered the seven principles of the CFP Board's Code of Ethics for Certified Financial Planner designees. They as succinctly as anything lay out the ethical responsibilities of the financial planner of the twenty-first century. Financial Planning cannot be well done unless there is an element of trust between the client and the planner. Ethics and ethical behavior tend to support that trust.

In a recent speech at The American College, Jack Brennan, CEO of Vanguard mused about the new paradigm of professionalism, looking out for client's interests and the problems facing the financial services professionals.

> I worry that many in the financial industry have lost sight of the idea that financial services companies exist to serve their clients' best interests. The concept of putting the client first gets smothered by everything else that's going on in this intensely competitive and incredibly rapidly changing world. We're living through a financial services revolution, thanks to a fortunate confluence of events, including demographic shifts, technological breakthroughs, legislative changes—and of course, the long-running bull market. The boundaries that once separated retail banking, securities, mutual funds, property/casualty and life insurance are disappearing.
>
> A time of lightning changes and fierce competitive pressures can be a very risky time for an industry. While change and competition are stimulating, they cause businesses to question whether it's high time to discard old ideas about their business models. At a juncture like this, it's easy to lose sight of fundamental values—or worse yet, toss them out like the proverbial baby with the bathwater.

> … knowledge *is* good—but in financial services, treating the client with integrity and honesty is just as important as knowing all the finer points of the products we sell. We are nothing without our clients. If we want to endure, we must make sure that our enterprises operate on a sound ethical foundation and that we provide our people with the opportunity to regularly renew their expert knowledge and their ethical awareness … strengthening the professionalism of financial services providers ultimately strengthens the financial security of the individuals, families, businesses, and society they serve.

The Financial Planner, to be a true professional, needs to develop moral sensitivity to know when they are facing a situation with an ethical component, moral imagination to help provide effective means to a resolution of the ethical situation, and moral judgment to enable him to evaluate various means to such resolutions. Yet the financial planner does not have to do it alone. As a professional they are in these tasks of sensitivity, imagination and judgment by their own associations, which generally provide them a code of ethics to follow and examples of best ethical practices. Such codes make them sensitive to areas of behavior that have ethical dimensions as well as help them in determining which behavior is acceptable and which is not.

NOTE

* "The Ethics of Financial Planning" In *Financial Planning- The New Century*, 5th Edition, Bryn Mawr, The American College, 2000.

EPILOGUE

WHAT'S LITERATURE TO ETHICS OR ETHICS TO LITERATURE?*

> Quarry the granite rock with razors, or moor the vessel with a thread of silk; then may you hope with such keen and delicate instruments as human knowledge and human reason to contend against those giants, the passion and pride of man.
>
> John Henry Newman

One can always learn from literature.[1] That statement might offend some purists among contemporary aestheticians who would want to claim that the function of literature as art is to delight and that to use literature for didactic purposes is to abuse it. But the fact remains that literature, good literature, has always been a marvelous teacher. It humanizes us as perhaps nothing else can. Hence the topic of this paper. I want to examine a few ways in which literature aids us in dealing with ethical matters. My conviction, which might appear perverse to some is that in many ways literature contributes more to the clarification of values and the development of morals than ethical theory as it is done today.

I will claim that contemporary ethical theory is inadequate because it rests on an unrealistic picture of human life, which largely ignores or misconstrues the role of the passions[2] in constituting a meaningful human life. Literature, however, expresses or represents in a unique way the passionate sources of human action and consequently shows us what a meaningful human life is in a way that ethics does not. In short, it provides us with what ethical theory does not, content for what has become the formally stringent but largely vacuous enterprise of contemporary ethical theory. I begin with a defense of that claim.

A generation ago, G.E.M. Anscombe requested a moratorium on ethical theory. Since then, Phillipa Foot expressed a desire to quit talking about "morality." Rather than acceding to the wishes of these two esteemed philosophers, ethicists have talked and written even more about ethical issues. However, rather than dry as dust discussions of ethical theory or meta-ethics, the talk now revolves around pertinent and substantive ethical issues, often under the name of applied ethics. For my part, instead of teaching about naturalistic fallacies, I now find myself engaged in medical and business ethics, talking about abortion, genetic engineering, corporate responsibility, preferential hiring and a host of other topics. Nevertheless, periodically I ask myself "Why?" Is the kind of discussion carried on about these issues relevant? The topics certainly are relevant, but can this be said of our treatment of them?

The standard move of most "applied ethicists" is to take one of the two canonized ethical theories, either the deontological principles of Kant or Ross, possibly updated by his contemporary disciples and apply them/it to either a class of actions like suicide and abortion or to a particular ethical dilemma. For example, if we address euthanasia or suicide, two problems of the same stripe: either we begin by talking about the duty to oneself or others and the contradictoriness of the taking of a human life to preserve the values of life; or we begin by talking of the rationality of euthanasia or suicide in terms of the consequences of this type of action, and determine whether it is right by deciding whether it will maximize happiness.

One must grant that both of these methods have something to be said in their favor, for they do show that if certain principles are accepted, certain actions logically follow as appropriate or inappropriate. Nevertheless, for anyone who has ever taught courses in applied ethics, this procedure leaves much to be desired.

What is the problem? First, it seems to be that the application of formal rules to materially concrete problems never leads to definitive solutions. For every answer there is a counter objection and a kind of skepticism is encouraged. Second, even if a definitive solution would be arrived at, a highly unlikely possibility, the question, why do what is prescribed would still remain, that is, we could still ask, "Why be moral?" "Why do what we have determined that we should?"

There are defenses of these procedures. In a remarkably well written textbook called *Moral Reasoning*, Victor Grassian offers a defense for the study of ethics. According to Grassian, even though the study of ethics will not make us into a good person, it can serve to help us better understand and classify our own moral principles, even refine and change them (one hesitates to ask whether for the better or worse); and it can lead us to a consistent set of principles. Grassian states, at the end of the defense:

> By studying the arguments that philosophers give for their ethical positions and the objections they pose to the view of others, a person's ability to defend his own positions and recognize their shortcomings will itself be sharpened. This is by far the *most important* thing that the study of ethics has to offer.[3]

Marvelous! But with all the sharpening, changing and elimination of shortcomings, something is still missing. What is the good of all this eristic ability if it leads to the sharpening of misguided principles that can be used by a despot or tyrant to justify his behavior? Further, what is the good if it cannot lead to a good person behaving well? What Grassian offers is vaguely reminiscent of what the Sophists offered, is it not?

To give my point more substance, let us examine a dilemma found in Grassian's text and demonstrate what ethical theorists are likely to do with it.

1. A POISONOUS CUP OF COFFEE

> Tom, hates his wife and wanting her dead, puts poison in her coffee, thereby killing her. Joe also hates his wife and would like her dead. One day, Joe's wife accidentally puts poison in her coffee,

thinking it's cream. Joe, who happens to be a chemist, has the antidote, but he does not give it to her. Knowing that he is the only one who can save her, he lets her die. Is Joe's failure to act as bad as Tom's action? Why or why not?

It seems fairly obvious that Grassian is using this dilemma to provoke a discussion of the difference (if there is any) between killing and letting die (a distinction that is quite useful in contrasting active and passive euthanasia, among other issues), For that, the dilemma might be pertinent. However, when we look at the questions asked, we cannot help but be frustrated. "Is Joe's failure to act *as bad as* Tom's action?" How would students, confronted with this question, answer it? It requires some sort of calculus to determine quantitatively the relative merits of two reprehensible actions. Presumably the answer would look something like this: from a utilitarian perspective the consequences for the woman are the same. However, Tom is liable to prosecution for homicide whereas it is unlikely that Joe is, and thus it would seem that Tom's action is worse than Joe's because it brings worse consequences. A possible answer from a deontological perspective might be that both actions are equally wrong because they use another person as a means, except that if one distinguishes between killing and letting die, one might say that Joe did not *use* his wife, if using must be an act of commission rather than an omission.

Note what happens. We begin with two obviously immoral acts and then are asked for reasons why one is worse than the other. The reasons are expected to be based on a very general principle, either deontological or consequentialist. These principles quite often conflict, as in cases where good consequences are brought about by immoral means. In that case neither set of reasons is persuasive.

Surely this sort of intellectual rumination is sterile. How, though, did this sort of procedure become so predominant? I suspect that ethicists, under the influence of, or in response to positivism, got locked into a quasi-scientific mode of proceeding, or perhaps more accurately into using an engineering model. If I want to achieve a certain end, I need to perform certain appropriate operations. Given an end, my only problem is to discover acceptable means. Acceptable paths are those which fall within permissible procedures—in ethics the deontological requirements of justice and fairness determine what is acceptable. Thus, we have a goal, find acceptable means, and "Voila!" arrive rigorously at an answer. Unfortunately, deontology does not tell us what to do, only to do it with equity and fairness, while utilitarianism has yet to get clear about what the appropriate ends of man are, however, wouldn't the engineering model work if we could get clear about the ends of man?

If we could find the ends of man and get agreement on them wouldn't my objections lose their force? It is quite fashionable in searching for an end to appeal to a picture or way of life that is held forth as an ideal. In appealing to such an ideal, one attempts to show how one's position on a certain moral issue can be understood in the light of that picture of the ideal life. This sort of appeal is supposed to serve as a justification of one's ethical judgments. We see this in the theory of R.M. Hare when he says, "If pressed to justify a decision completely, we have to give a complete specification of the way of life of which it is a part."[4] Or it can be seen in the theory of P.H. Nowell-Smith, when he says, "Moral philosophy is a practical science; its aim is to answer questions in the form, 'What shall I do?' " But no general answer can be given to this type of question. The most a moral philosopher can do is to paint a picture of various types of life in the manner of Plato and ask which type of life you really want to lead.[5]

It would make the task of this paper quite easy if I were to settle for either of these approaches and say, "Yes, Quite right. Except literature, or fiction if you prefer, is much better at painting pictures than philosophy. Thus, rather than depending on philosophers, let us go to novels and plays and perhaps biographies where we get presentations of specific lives and choose the ones that appeal to us." But there is something amiss. Hare speaks of deciding on a type of life that is completely specified. Who makes choices in that way? That is simply not what we do.[6] Nowell-Smith speaks of asking what type of life we want, but that is probably not what we do either.[7] Hare and Nowell-Smith attack the problem from the engineer's model. Give me a picture of your goal, (chosen with Hare, and wanted with Nowell-Smith) and then we will figure out what needs to be done to get there. Hare and Nowell-Smith are not the only people who approach ethics in this way. It is a common way of proceeding in ethics. Generally, though, the goal was given the name "Happiness." Suppose, however, we raise some seemingly outrageous questions. Is happiness really the ultimate end of life? Or, if there is an ultimate end, is it the kind philosophers look for?

Happiness is quite often construed as some goal to be pursued or some state to be accomplished as in, "the pursuit of happiness." Often, too, it is thought to be reducible to pleasure or at least the avoidance of pain. It is seen as the goal, the *terminus ad quem* of life. This, however, is precisely the engineering view of life we discussed above.

However, happiness, thus construed, rarely serves as a real goal in life, except according to the anemic views of our engineering friends, the utilitarians. Aristotle's view of happiness, although quite vague and empty in terms of content, seems correct to the extent that he asserts that it is not an end in the sense of a product or a *terminus ad quem* of an activity; rather, it is something that accompanies activity.

Anyone who has been disappointed when he has gone out for a good time ought to recognize that one does not seem to be able to "pursue" happiness successfully. This is the hedonistic paradox: those who strive for happiness rarely achieve it, whereas those who pursue other things might find it. Happiness accompanies a life process, but it is not the goal of life in the engineering sense of a goal.

If, however, life is not to be construed as the pursuit of a predetermined goal, how is it to be construed? R.G. Collingwood[8] in writing on art makes a distinction between art and craft that might be helpful. A craft for him is an enterprise where we have a clear goal in mind and where specific steps can be taken to achieve that goal. Collingwood's notion of a craftsman parallels our notion of an engineer. But art is not craft. The true artist does not know his end: he discovers it as he works it out. He works it out through the expressing of his emotions. I would like to suggest that human life is also the working out of our emotions or passions, without a clear notion of where the end is. Thus if ethics or morality concerns itself with the art of living it should do this viewing life as art in Collingwood's sense and not in the sense of art as a craft.

But let us see if the living out of life is really like the working out of an artpiece as Collingwood describes it. When a painter puts a line on the canvas he thereby limits the next line. It can be an indefinite number of lines, but it cannot be just any old line and be appropriate. When an author sketches his character, the character can develop in any number of ways but not just willy-nilly. By page two of *Catcher in the Rye* there are things that Salinger can do with Holden Caulfield, but there are also things he cannot do. To complete the work he must be creative, but creative within the limits set by the opening lines. Just as Salinger creates Caulfield without fully foreseeing possible outcomes, we create our lives without fully foreseeing possible outcomes. In sum, we do not know where we will end up, but a large part of the working out will depend on where we are. We need to creatively respond to where we are to make our life a finished whole.

There is a contemporary song, "The Gambler," which can also be seen as analogous to human life. One of the verses runs, "No hand's a winner and no hand's a loser" while another runs, "You never count your money while you're sittin' at the table. There'll be plenty time for countin', when the dealin's done." In the game of life, the cards one is dealt and the attitudes one has dictate what one does to be successful. One can fold with bad cards, or one can bluff. One can lose with good cards or see it through and perhaps win. It depends on what one does with what one gets, and yet there are no guarantees. The point is that in most people's lived existence, the best laid plans go astray. To view the living of a human life as analogous to the process of an engineer building a bridge or a craftsman making a product is to misconstrue what is involved.

Very well, then, what is involved? To get at that I would like to turn to Camus' treatment of a classical literary figure, Sisyphus. Let us examine the closing lines of Camus' *Myth of Sisyphus*.

> I leave Sisyphus at the foot of the mountain! One always finds one's burden again. But Sisyphus teaches the higher fidelity that negates the gods and raises rocks. He too concludes that *all is well*. This universe henceforth without a master seems to him neither sterile nor futile. Each atom of that stone, each mineral flake of that night filled mountain, in itself form a world. The struggle itself toward the heights is enough to fill a man's heart. One must imagine Sisyphus happy.[9]

Incredible as it sounds, Camus suggests that Sisyphus is happy. This however is in no way the happiness associated with pleasure, but, rather, a happiness coming from a life that is full. Note that Camus asserts, "The struggle … is enough to *fill* a man's heart." Obviously, if we wish to call Sisyphus "happy" in Camus' sense we need to revise our meaning of the concept, since it does not accord with our common understanding of happiness. But let us leave that and recognize that what Camus is doing is approving of Sisyphus because he has made his life *full*. Could we not say that in the midst of a meaningless existence Sisyphus has carved out a meaningful life?

Note further that Sisyphus does not choose his life. His lot is given. "One always finds one's burden again." Further Sisyphus does not get what he wants. He, like the gambler, makes the best of what he gets. Nowell-Smith's "wants" and Hare's "choice" are wrong because life does not proceed the way they imagine. Their quasi-scientific engineering model has lead them astray, and to the extent that happiness is construed as an end to be pursued it can serve as a goal for only the most shallow kinds of lives.

But if the craft—engineering model won't do, what will? The clue to this can be found in Sisyphus. Making one's life full seems to be the answer. But if we look at what makes Sisyphus' life full, it seems to be his determination and disposition, those things I would wish to include under the rubric of the passions.

If then the meaningful life is the passionate life, where do we go to find out about it? The best portraits of human passion are found in literature. They are not found in Ethics and some would argue that they are not found in Psychology either. Be that as it might, literature is surely a primary source. Let us claim then that passions are a necessary condition for a full human life, and turn to a piece of literature which not only shows this, but simultaneously depicts the struggle of a person with her passions. I have in mind Amy Lowell's *Patterns*. What this poem teaches us or at least shows us is that we are not automata hooked up to a conveyor belt leading us down the road to happiness. We are individuals in a situation with our passions and we must try to make the best of it. Recall the closing lines.

> In Summer and in Winter I shall walk
> Up and down
> The patterned garden paths
> In my stiff, brocaded gown.
> The Squills and daffodils
> Will give place to pillared roses, and to asters, and to snow.
> I shall go
> Up and down,
> In my gown.
> Gorgeously arrayed,
> Boned and stayed.
> And the softness of my body will be guarded from embrace
> By each button, hook, and lace.
> For the man who should loose me is dead,
> Fighting with the Duke in Flanders,
> In a pattern called a war.
> Christ! What are patterns for?[10]

This is a picture of life, but it is not full. It is empty because it has lost its passion. Lowell's heroine does not stand back objectively and put forth models of the good life. One cannot do that with her own life. She is in the middle of it. Her wants and her passions are removed. What is to be done? The answer is fairly clear … new passions must develop patterns, rules if you will, are not enough. Could we not also suggest that empty moral rules are also not enough? We learn two things from Lowell. Patterns are not enough to live life. We need to be passionate. No one deeply in love ever asks whether life has meaning. No one passionately engaged in a task asks the question either.

But will just any passions do? Passions might be a necessary condition for a full life, but are they sufficient? Is not something else necessary?

To examine that question I wish to cite some lines from Othello. Note his final speech:

> Soft you; a word or two before you go.
> I have done the state some service, and they know't.
> No more of that. I pray you, in your letters,
> When you shall these unlucky deeds relate,
> Speak of me as I am; nothing extenuate,
> Nor set down aught in malice: then must you speak
> Of one that loved not wisely but too well;
> Of one not easily jealous, but being wrought
> Perplex'd in the extreme; of one whose hand,
> Like the base Indian, threw a pearl away
> Richer than all his tribe; one of whose subdued eyes
> Albeit unused to the melting mood,
> Drops tears as fast as the Arabian trees
> Their medicinal gum. Set you down this;
> And say besides, that in Aleppo once,
> Where a malignant and a turban'd Turk
> Beat a Venetian and traduced the state,
> I took by the throat the circumcised dog,
> And smote him, thus [stabs himself].[11]

Here is without doubt a man living out his passions. Here is a life certainly not seeking happiness. But it is a tragic life. Consequently it is apparent that passions, though they make life full do not necessarily make for the best life. The passions must be evaluated.

But the evaluation of passions is by no means impossible. Certain passions are appropriate, others not. For example, there are times my anger is inappropriate. There are passions that are destructive. Lowell's heroine's life is empty. We see that. Othello's life is tragic. Why? Because jealousy is a destructive passion, just as is hate. One could even argue that Sisyphus' obstinance is not the best of passions. Even though it gets him through his burdens it does not allow a life to flower as it might.

We make value judgments about passions easily. Lowell's heroine *needs* a new passion to make her life full. Othello on the other hand does not need more passion; he needs better ones. In some situations passion itself is required and in others some passion *should* have been checked.

The surprising thing is that literature seems to have the ability to show the deficiencies and strengths of the passions. I am not sure I can solve the epistemological question of how this is possible, but it does seem to be a fact. One thought comes to mind though as worth pursuing. If living human life is like doing art in Collingwood's sense, and if there are ways of evaluating art, perhaps we can find some clues for evaluating life in aesthetics. This is not a new suggestion. It was made by Wittgenstein when he said that ethical reasons might well be like aesthetic reasons. Unfortunately, we are not able to develop this theme at this time, not so much for lack of space as for lack of knowing how. Consequently, I leave that as a topic to be pursued at a later time and make some final comments about what I have tried to show.

First, if ethics is irrelevant it is irrelevant because it misconstrues what life is really like, and its procedures for determining what to do fail to take into account the psychology of the passions and the passions' role in making life meaningful. To the extent that literature portrays, imitates or represents human life it shows us that most lives are problematic and, rather than being lives in pursuit of happiness, they are attempts to live out life, perhaps with a hope that we can eke out a bit of happiness along the way, but more importantly in a meaningful way. And, literature shows clearly that the meaning most often comes from the passions.

It should be noted that the encounter with literature can have other benefits. Literature, in allowing us to identify with others, allows us to develop empathy, a requisite for developing our ability to care. It also *shows* us ways of coping *with certain problems* and perhaps even *shows* the shortcomings and flaws of certain lives. All of these contributions are important. Still, the main point of this paper was to claim that literature is relevant to moral considerations because it deals with human beings' inner lives as they are, even if the characters are fictional, whereas ethics deals mainly with rules and maxims that seem so formal that they hardly touch human lives.

If this is so, it is clear that a task needs to be done by ethicists or at least philosophers. We need to begin[12] to deal with the psychology of the passions. Literature, to the extent that it portrays them faithfully, can teach us a great deal about them. Next we need to begin to evaluate them in terms of their potential for making a life good or bad. Literature again provides models. If we do this, we might begin to give our ethical considerations a content they desperately need, and talk about good men in a way that has force.

Let me conclude with a short comment on a few lines written by Stephen King: "If we say that morality proceeds simply from a good heart—which has little to do with ridiculous posturings and happily-ever-afterings—and immorality proceeds from a lack of care, from shoddy observation … we might realize we have arrived at a critical stance, one both workable and humane. Fiction is the truth inside the lie."[13]

If morality has to do with the heart, the passionate side of man and immorality with a lack of care, then is it not obvious that we ethicists need to investigate these areas with much more concern? And is it not also obvious that one of the best places to start to understand and experience the passionate human being is in literature?

NOTES

* "What's Literature to Ethics or Ethics to Literature?" *Listening*, 17 (1982) pp. 29–39.

1 Under the word "literature" I mean to include for the most part, novels, poems, stories and dramas. I also have in mind good literature, classics if you will, and not things like drugstore novels. I am of course assuming there is a difference between run of the mill literature and good or significant literature.

2 In this paper I am using the word "passions" rather indiscriminately in a generic sense to include a whole host of areas that would be placed under what psychologists call the affective side of man, that is, feelings, emotions, attitudes, designations, etc. Much of the sorting out of what I have in mind can be found in Robert Solomon's excellent book, *The Passions*, (Doubleday, 1973). The book is partly responsible for some of the directions of this paper, although I would not claim that the paper intentionally follows it, nor would I hold the book responsible for the shortcomings of my thoughts.

3 Victor Grassian, *Moral Reasoning*, (Englewood Cliffs, N.J., Prentice Hall, 1981), p. 5.

4 R.M. Hare, *The Language of Morals*, (Cambridge, MA, Oxford University Press, 1960), p. 79.

5 P.H. Nowell-Smith, *Ethics*, (Middlesex: Penguin Books Ltd., 1954), p. 319.

[6] I am well aware of the dogmatic appearance of this remark. However, even though the point of this section is critical. I am more concerned with presenting an alternative view to this type of approach that Hare and Nowell-Smith offer, than with getting bogged down in what would be important, but nonetheless tedious refutations of their approach. If I would develop an argument, though, it would be to the effect that Hare forgets that human beings make decisions in an historical environmental context and that they have been conditioned by that environment. This results in our having habits and dispositions that partly constitute what we are and limit what we decide upon. We simply do not stand back from our context and make decisions without factors influencing us. A hint of such an argument can be found on pp. 7–9.

[7] As with the claim against Hare, I will not interrupt the presentation of the main point of the paper to develop a sustained argument against Nowell-Smith. However, he ought to recognize that we do not always know what we want and that occurs because our imagination is needed to intend new goals. Sartre makes an argument to this effect in his defense of freedom in *Being and Nothingness*. Note that literature, by giving us imaginative views of new possibilities of living can furnish many new options. It seems it was this sort of thing that Oscar Wilde bad in mind when he asserted that "Nature imitates Art."

[8] Robin G. Collingwood, *Principles of Art*, (London: Oxford University Press, 1938), esp. pp. 128–135.

[9] Albert Camus, *The Myth of Sisyphus*, translated by Justin O'Brien (New York: Alfred A. Knopf, Inc., 1955).

[10] Amy Lowell, *Patterns*, as found in *Best Loved Poems of All Time*, ed. Gail Harano Cunningham (Kanas City, Mo: Hallmark, 1971), p. 27.

[11] *Othello*, Act V. Scene 2.

[12] "Begin" might not be the correct word. As I have indicated Robert Solomon has begun the type of enterprise I have in mind. What we need to do is expand on such work.

[13] Stephen King, "Notes on Horror," *Quest*, Vol. 5, no. 5, June 1981, p. 31.

BIOGRAPHY

Ronald F. Duska has held the Charles Lamont Post Chair of Ethics and the Professions at The American College since 1996. The Post Chair supports research and study of social responsibilities and ethical challenges confronting the financial services industry. He also serves as Director of The American College Center for Ethics in Financial Services, which sponsors an annual forum on ethical leadership that engages prominent chief executives from financial services companies in a day of dialogue with internationally prominent business ethicists.

Ron is author, co-author, and editor of numerous books and articles. His most recent books, *The Ethics of Accounting* and *Ethics for the Financial Services Professional*, were published in 2003. Other books include *Business Ethics; Organizational Behavior in Insurance; The Next Phase of Business Ethics: Integrating Psychology and Ethics; Moral Development: A Guide to Piaget and Kohlberg; Ethics and Corporate Responsibility: Theory Cases and Dilemmas;* and *Education, Leadership, and Business Ethics: A Symposium in Honor of Clarence Walton.*

Ron has lectured and/or taught business ethics at numerous universities including The Wharton School at the University of Pennsylvania, the University of Virginia (where he serves as a senior fellow of the Olsson Center for Applied Ethics), Villanova University, Pennsylvania State University, St. Joseph's University, and St. John's University. He is a lecturer and consultant on business ethics, the ethics of financial services, and accounting ethics. He offers a range of continuing education seminars and workshops for the financial services industry.

For a decade, Ron served as the Executive Director of the Society for Business Ethics, an international association of academics and practitioners engaged in the study of business ethics, which publishes the prestigious *Business Ethics Quarterly.* He also serves on the executive board of the Academy of Business Education, the Advisory Board of the Center for Corporate Responsibility at Villanova University, and the Advisory Board of The Pedro Arrupe Center for Business Ethics at St. Joseph's University. He also served briefly on the Pennsylvania State Board of Accountancy.

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