# Business Ethics

## CONCEPTS AND CASES

EIGHTH EDITION

MANUEL G. VELASQUEZ

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### Eighth Edition

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# Contents

# Preface

*Business Ethics: Concepts and Cases* remains one of the most widely used texts in the field of business ethics. It continues to be popular among students and is valued by instructors because of its accessible style and lucid explanations of complex theories and concepts. As instructors know, providing clear explanations of ideas without oversimplifying them is a major challenge in this field. Those who have used previous editions of this text have said that it does an outstanding job of meeting this challenge, while also providing an excellent balance of ethical theory and managerial practice. However, the world does not stand still. Not only have new moral issues arisen to challenge business, but also advances and innovations in the textbook industry have resulted in exciting new forms of publication. So, it is a pleasure to say that this newly revised edition is now available in Revel.

## Perspective and Goals

*Business Ethics: Concepts and Cases* is founded on a comprehensive explanation of ethical theory and its relationship to business practices. Its fundamental perspective is the view that ethical behavior is the best long-term business strategy for a company. By this, I do not mean that ethical behavior is never costly. Nor do I mean that ethical behavior is always rewarded or that unethical behavior is always punished. It is obvious, in fact, that unethical behavior sometimes pays off, and that ethical behavior can impose serious losses on a company. When I argue that ethical behavior is the best long-range business strategy, I mean merely that over the long run, and for the most part, ethical behavior can give a company important competitive advantages over companies that are not ethical.

The primary aims of this text remain the same as in earlier versions. They are as follows:

- To introduce the reader to the ethical concepts that are relevant to resolving moral issues in business
- To impart the reasoning and analytical skills needed to apply ethical concepts to business decisions
- To identify the moral issues involved in the management of specific problem areas in business
- To provide an understanding of the social, technological, and natural environments within which moral issues in business arise
- To explore case studies of moral dilemmas faced by businesses and business people

## Thoughtful Organization

This text is organized into four theoretical parts, each consisting of two chapters. The text begins with an introduction to basic ethical theory. Chapter 1 develops the fundamental perspective of ethical behavior and business success. It also indicates how we come to develop ethical principles and how such principles can be incorporated into our moral reasoning processes. The chapter also reviews some key findings in the psychology of ethical behavior, or what is now sometimes called *behavioral ethics.* Chapter 2 critically examines four kinds of moral principles: utilitarian principles, principles based on moral rights, principles of justice, and the principles of an ethic of care. These four kinds of moral principles, it is argued, can provide a framework for resolving most of the kinds of ethical dilemmas and issues that arise in business. In addition, the text explains virtue theory as an alternative to a principles-based approach and discusses automatic moral decision-making and casuistry.

Having defined the nature and significance of ethical standards and identified four basic ethical standards for resolving moral issues in business, the resulting theory is brought to bear on specific ethical issues in business. Chapters 3 and 4 examine the ethics of markets and prices. Chapters 5 and 6 look at environmental and consumer issues, respectively. Chapter 7 explores issues related to job discrimination. Chapter 8 covers general employee issues that are relevant and meaningful to anyone in the work world.

I assume throughout that in order to apply a moral theory to the real world, we must have some information (and theory) about what that world is really like. Consequently, each chapter, in all four parts, includes the theories and empirical information that decision makers must have if they are to apply morality to reality. The chapter on market ethics, for example, provides a neoclassical analysis of market structure; the chapter on discrimination presents several statistical and institutional indicators of discrimination; and the chapter on employees in the organization relies on three models of organizations.

Each chapter contains two kinds of materials. The main text of the chapter sets out the conceptual materials needed to understand and address the type of ethical issues discussed in the chapter. In addition, each chapter includes short cases in the main body of the chapter and longer cases at the end of the chapter, both of which describe real business situations in which moral issues are raised. I have provided these discussion cases on the pedagogical assumption that a person's ability to reason about moral matters will improve if the person attempts to think through several concrete moral problems and allows himself or herself to be challenged by others who resolve the issue on the basis of different moral standards. These kinds of challenges, when they arise in dialogue and discussion with others, force us to confront the adequacy of our moral norms and motivate us to search for more adequate principles when our own are shown to be inadequate. Some of the rationale for these pedagogical assumptions is discussed in Chapter 1 in the sections on moral development and moral reasoning. I hope that I have provided sufficient materials to allow the reader to develop, in discussion and dialogue with others, a set of ethical norms that they can accept as adequate.

# Features and Learning Aids

Although this edition significantly updates the format of its predecessor, it retains both the basic organization and the conceptual framework of previous editions.

Shorter, more readable modules, each with fresh explanatory headings, allow the reader to progress through complex exposition and reasoning processes one step at a time, building knowledge and applying concepts.

The text's robust case approach, featuring detailed end-of-chapter *Case Studies* and briefer *On the Edge* in-chapter cases, remains the signature feature. Some cases are new, others have been revised and updated, and many are illustrated.

The learning aids included in each chapter are as follows:

- *Learning Objectives* allow students to know what they are expected to master in the chapter.
- *Journals* conclude *On the Edge* brief cases and longer *Case Study* offerings. These writing exercises encourage students to examine the connections between ethical problems within business organizations, the foundational ethical concepts that are involved in an analysis of these situations, and their personal moral values.
- *Interactive visuals* include graphs, charts, and media galleries.
- *Key terms* show instant definitions for easy reference.
- *Ethical Applications* take case and example content that has been presented, enrich it with increasing detail as necessary, and connect it to the chapter's developing narrative.
- *Quick Reviews* summarize the basic ideas, philosophical viewpoints, and ethical arguments examined.
- *Shared Writing* assessments promote debate, discussion, and critical thinking as they further test conceptual understanding.
- Each *Chapter Summary* provides a refresher on essential concepts and ties the material together.

# New to This Edition

The eighth edition of *Business Communication: Concepts and Cases* incorporates the following refreshed coverage:

- an emphasis on the growing global environment and its interconnected business practices, which continue to present complex ethical issues
- new and updated research and examples from corporations and smaller organizations
- a focus on evolving views in business ethics
- clear viewpoints on increasingly complex arguments
- an emphasis on critical thinking through journaling
- a renewed focus on the ethics of environmental issues

Numerous large and detailed revisions have been made to all the chapters of this edition. However, the following specific changes from the previous edition's text should be noted:

## Chapter 1: Ethics in Business

Chapter 1 includes a new *On the Edge* case "Blowing the Whistle on JCPenney's 'Fake' Sales." *Case Studies* "Slavery in the Chocolate Industry" and "Aaron Beam and the HealthSouth Fraud" have both been updated.

## Chapter 2: Ethical Principles in Business

Chapter 2 has a wholly revised introduction. Specifically, the previous edition's introductory discussion of business responses to the South African apartheid regime was removed and replaced with a discussion of Unocal's activities in Burma under a military regime. Several small but important revisions have been made to the discussion of Ford and its decision to produce and market the Pinto. The discussion of utilitarianism has been revised at several points to emphasize that utilitarianism requires comparing the benefits and costs of *every* available course of action. The introduction to the section on justice and fairness now opens with a discussion of wages in the fast food industry. The introduction to the section on virtue ethics now opens with a discussion of Joe Nacchio, former chairman and CEO of Qwest Communications. "Testing Drugs in the Developing World" is a new *Case Study* in this edition.

## Chapter 3: The Business System: Government, Markets, and International Trade

In Chapter 3, the statistics related to inequality in the discussion of Locke have been updated, and the discussion of Marx has been revised.

## Chapter 4: Ethics in the Marketplace

Chapter 4 has a revised introduction. In addition, the discussion of oligopoly markets has been revised.

## Chapter 5: Ethics and the Environment

The introduction to Chapter 5 has been revised, and the graphs, statistics, and other data in the section discussing the dimensions of pollution and resource depletion have all been updated. In addition, the discussion of nuclear wastes has been revised to include a comparison of the human costs of nuclear power plants with the human costs of fossil fuel-based power plants, and the discussion of the depletion of oil reserves has been updated to take into account the development of technologies such as fracking. The *On the Edge* case "Ford's Toxic Wastes" has been revised and updated, and so has the *Case Study* entitled "Gas or Grouse?"

## Chapter 6: The Ethics of Consumer Production and Marketing

The introduction to Chapter 6 has been revised. A new *On the Edge* case entitled "Mr. Trump's University" has been included, the brief case on selling personalized genetics direct to consumers has been updated and slightly expanded, and the *On the Edge* case "Advertising Death to Kids?" has been expanded to include a brief discussion of e-cigarettes. The chapter also includes a new *Case Study* entitled "Promoting Infant Formula in the Twenty-First Century."

## Chapter 7: The Ethics of Job Discrimination

In Chapter 7, all the statistical data, graphs, and tables in the section "Extent of Discrimination" have been updated.

## Chapter 8: Ethics and the Employee

In Chapter 8, the statistics have been updated. A new *On the Edge* case entitled "Beyoncé's Gym Clothes" is included, and the *Case Study* "Death at Massey Energy Company" has been updated.

# About the Author

Manuel Velasquez is the author of *Business Ethics: Concepts and Cases*, the most widely used business ethics textbook in the world.

Known as the father of academic business ethics, Velasquez is the Charles J. Dirksen Professor of Business Ethics at Santa Clara University, where he holds appointments in the department of Management and the department of Philosophy and teaches courses in business ethics and in business and public policy.

The author of numerous articles and case studies on business ethics, he has provided consulting and training in business ethics for several companies, as well as workshops on teaching business ethics to more than 2,000 business school faculty.

Velasquez received his undergraduate and master's degrees from Gonzaga University and earned his Ph.D. from the University of California, Berkeley.

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- **PowerPoint**—provides a core template of the content covered throughout the text. Can easily be added to, to customize for your classroom.

- **Instructor's Manual**—includes lecture support, chapter overviews, and classroom activities for each chapter.
- **Test Bank**—includes additional questions beyond the REVEL course in multiple choice and open-ended—short and essay response—formats.
- **MyTest**—an electronic format of the Test Bank to customize in-class tests or quizzes. Visit http://www.pearsonhighered.com/mytest.

# Acknowledgments

Like every textbook author, I owe a very large debt of gratitude to the numerous colleagues and scholars around the world from whom I have shamelessly borrowed ideas and materials. They all, I hope, have been duly recognized in the text and in the notes.

Manuel G. Velasquez,
*Soquel, California*

# Chapter 1
# Ethics and Business

In business the handshake is an expression of trust, and ethical behavior is the foundation of trust.

## Learning Objectives

**1.1** Analyze the basic nature of business ethics

**1.2** Emphasize the importance of moral reasoning and moral decision-making in business ethics

**1.3** Examine ethical issues arising from globalization and international business connections and practices

**1.4** Explain the deep foundations and structure of moral reasoning

**1.5** Assess the factors that define and refine the concept of moral responsibility

Business ethics is applied ethics. It is the application of our understanding of what is good and right to that assortment of institutions, technologies, transactions, activities, and pursuits that we call business. A discussion of business ethics must begin by providing a framework of basic principles for understanding what is meant by the terms *good* and *right*; only then can one proceed to profitably discuss the implications these have for our business world. This chapter provides such a framework. This chapter introduces you to some methods of moral reasoning and some of the obstacles that can get in the way of thinking clearly about ethical issues. We begin by discussing the nature of business ethics and some of the issues it raises and continue by examining moral reasoning, moral decision making, and moral responsibility.

# 1.1: The Nature of Business Ethics

**OBJECTIVE: Analyze the basic nature of business ethics**

The best way to introduce a discussion of business ethics is by looking at how real companies have—or have not—incorporated ethics into operations. Consider how Merck & Co., Inc., a U.S. drug company, dealt with the issue of river blindness.

## 1.1.1: Merck & Co., Inc.

River blindness, or *onchocerciasis,* is a debilitating parasitic disease. It affects about 17 million impoverished people living in remote villages along the banks of rivers in tropical regions of Africa and Latin America. The disease is endemic in 30 African countries, 6 Latin American countries, and Yemen. River blindness is caused by a tiny parasitic worm that is passed from person to person by the bite of the black fly, which breeds in fast-flowing river waters. The tiny worms burrow under a person's skin, where they grow as long as 2 feet curled up in colonies inside ugly round nodules half an inch to an inch in diameter. Male worms move between the colonies to mate with the females. After mating, the female worms each day release thousands of microscopic offspring called *microfilariae*. These tiny worms wriggle their way throughout the body moving beneath the skin, discoloring it as they migrate. The worms cause lesions on the skin and such intense itching that victims sometimes commit suicide. Eventually, the *microfilariae* invade the eyes and blind the victim. Toward the end of the twentieth century, in some West African villages, the parasite had blinded more than 60 percent of adults older than 55. The World Health Organization (WHO) reported that the disease had blinded 270,000 people and left another 800,000 with impaired vision. It is estimated that worldwide more than 100 million people were at risk of infection and 37 million people had been infected.

Pesticides no longer stop the black fly because it has developed immunity to them. Moreover, until the events described below, the only drugs available to treat the parasite in humans were impractical for the destitute victims who lived in isolated rural villages. The drugs were expensive, had severe side effects, and required lengthy hospital stays. In many countries, young people fled the areas along the rivers, abandoning large tracts of rich fertile land. Villagers who stayed to live along the rivers accepted the nodules, the torturous itching, and eventual blindness as an inescapable part of life.

Having looked at how Merck dealt with its discovery of a cure for river blindness, let us now turn to the relationship between ethics and business. Pundits sometimes quip that the phrase *business ethics* is a contradiction in terms because there is an inherent conflict between ethics and the pursuit of profit. When ethics conflicts with profits, they imply, businesses always choose profits over ethics. Yet, the case of Merck suggests a different perspective—a perspective that many companies are increasingly taking. Merck's managers spent $200 million developing a product they knew had little chance of ever being profitable. They did so because they felt they had an ethical obligation to make its potentially great benefits available to people. In this case, at least, a large and very successful business seems to have chosen ethics over profits. Moreover, the comments of Dr. Vagelos at the end of the case suggest that, in the long run, there may be no inherent conflict between ethical behavior and the pursuit of profit. His comments suggest that ethical behavior creates the kind of goodwill and reputation that expand a company's opportunities for profit.

**LONG-TERM BUSINESS STRATEGY** Not all companies operate like Merck, and Merck itself has made decisions that were not ethical. Many—perhaps most—companies will not invest in a project that will probably be unprofitable even if it will benefit humanity. Every day newspapers announce the names of companies that choose profits over ethics or that, at least for a time, profited through unethical behavior: Enron, WorldCom, Global Crossing, Rite-Aid, Oracle, ParMor, Adelphia, Arthur Andersen, Louisiana-Pacific, and Qwest are but a few of these. In 2004, even Merck was accused of failing to disclose heart problems associated with its drug Vioxx, and in 2010 the company put $4.85 billion into a fund to compensate patients who said they had suffered heart attacks or strokes because they had used Vioxx. In spite of its significant lapse in regard to Vioxx, Merck has remained committed to operate ethically. It has continued to win dozens of awards for its ethically responsible operations.[1]

Although many companies engage in unethical behavior, habitually unethical behavior is not necessarily a good long-term business strategy. Ask yourself whether, as a customer, you prefer buying from a business that you know is honest and trustworthy or one with a reputation for being dishonest and crooked. As an employee, are you more likely to loyally serve a company that treats you with fairness and respect or one that habitually treats

### The Cure for River Blindness

In 1980, Dr. Bill Campbell and Dr. Mohammed Aziz, research scientists working for Merck, had discovered evidence that one of the company's best-selling animal drugs, Ivermectin, might kill the parasite that causes river blindness. Aziz, who had once worked in Africa and was familiar with river blindness, traveled to Dakar, Senegal, where he tested the drug on villagers who had active infections. He found that a single small dose of the drug killed all the microfilariae, made the female worms sterile, and made the person immune to new infections for months.[2, 3, 4, 5, 6]

Interactive

When Aziz returned to the United States, he and Campbell went to see Merck's head of research and development, Dr. P. Roy Vagelos, a former physician. They showed him their results and recommended that Merck develop a human version of the drug.

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you and other workers unjustly and disrespectfully? Clearly, when companies compete for customers and for the best workers, the company with a reputation for ethical behavior has an advantage over one with a reputation for being unethical.

## 1.1.2: Clarifying Ethical Issues

This text takes the view that ethical behavior is the best long-term business strategy for a company—a view that has become increasingly accepted during the last few years.[7] Acceptance of this view does not mean that occasions never arise when doing what is ethical will prove costly to a company. Such occasions are common in the life of a company, and we will see many examples in this text. Nor does it mean that ethical behavior is always rewarded or that unethical behavior is always punished. On the contrary, unethical behavior sometimes pays off, and the good guy sometimes loses. To say that ethical behavior is the best long-range business strategy just means that, over the long run and for the most part, ethical behavior can give a company significant competitive advantages over companies that are not ethical. The example of Merck suggests that being ethical is a good business strategy. A bit of reflection on how consumers and employees respond to companies that behave unethically shows that unethical behavior leads

## Ethical Application

### Analyzing Merck's Decision

It is important to study ethics because often it is not clear what the ethical course of action is. In fact even the Merck decision raises questions that require some hard thinking. In the Merck case, Dr. Roy Vagelos decided that the company had an ethical obligation to proceed with the development of Mectizan. Yet to someone else, the issue may not have been so clear. Vagelos noted he would be "spending a considerable amount of company money" in a way that would not "make stockholders happy" and that would put his own career at "some risk." Don't the managers of a company have a duty toward investors and shareholders to invest their funds in a profitable manner? Indeed, if a company spent all of its funds on charitable projects that lost money, wouldn't it soon be out of business? Then, wouldn't its shareholders be justified in claiming that the company's managers had spent their money unethically? Should Vagelos have risked his career, considering the implications that such risk would have had for his family? Is it so clear, then, that Vagelos had an ethical obligation to invest in an unprofitable drug? What reasons would justify Vagelos's belief that Merck had an obligation to develop Mectizan? Can any good reasons justify the claim that Merck had no such obligation? Which view do you think is supported by the strongest reasons?

to a loss of customer and employee support. Later, we will see what more can be said for and against the view that ethical behavior is the best long-term business strategy for a company. The more basic problem is that the ethical course of action is not always clear to a company's managers.

Although ethics may be the best policy, then, the ethical course of action is not always clear. The purpose of this text is to help you, the reader, deal with this lack of clarity. Although many ethical issues remain difficult and obscure even after a lot of study, gaining a better understanding of ethics will help you deal with ethical uncertainties more adequately.

This text aims to clarify the ethical issues that you may face when you work in a business and, perhaps, become part of a company's management team. This does not mean that it is designed to give you moral advice nor that it is aimed at persuading you to act in certain "moral" ways. The main purpose of the text is to provide you with a deeper knowledge of the nature of ethical principles and concepts. Studying the many cases it contains can help you see how to use this knowledge to deal with the ethical choices you will encounter in the business world. This type of knowledge and skill should help you steer your way through ethical decisions like the one Dr. Vagelos had to make. Everyone in business is confronted with decisions like these, although usually not as significant as deciding whether to develop a cure for river blindness. Before you even start working for a company, you will be faced with ethical decisions about how "creative" your resume should be. Later, you may have to decide whether to cut corners just a little in your job. Or whether to give your relative or friend a company contract. Or whether to put a little extra into the expenses you report for a company trip you made. Maybe you will catch a friend stealing from the company and have to decide whether to turn him in. Maybe you will find out your company is doing something illegal and have to decide what you are going to do about it. Maybe your boss will ask you to do something you think is wrong. Ethical choices confront everyone in business, and this text should give you some ways of thinking through these choices.

# 1.2: Moral Reasoning and Moral Decision Making

**OBJECTIVE: Emphasize the importance of moral reasoning and moral decision-making in business ethics**

According to the dictionary, the term *ethics* has several meanings. One of the meanings given to it is as follows: "the principles of conduct governing an individual or a group."[8] We sometimes use the term *personal ethics* when referring to the rules by which an individual lives his or her personal life. We use the term *accounting ethics* when referring to the code that guides the professional conduct of accountants.

A second—and for us, more important—meaning of ethics according to the dictionary is this: ethics is the study of morality. Just as chemists use the term *chemistry* to refer to a study of the properties of chemical substances, ethicists use the term *ethics* to refer primarily to the study of morality. Although ethics deals with morality, it is not quite the same as morality. Ethics is a kind of investigation. It is an investigation into morality that includes both the activity of investigating as well as the results of that investigation. Morality, on the other hand, is the subject matter that ethics investigates.

So what, then, is morality? We can define *morality* as the standards that an individual or a group has about what is right and wrong, or good and evil. To clarify what this means, let's consider another case, one that is different from the Merck case.

## 1.2.1: BFGoodrich

Several years ago, BFGoodrich, a manufacturer of vehicle parts, won a military contract to design, test, and manufacture aircraft brakes for the A7-D aircraft. The A7-D was a new lightweight airplane the U.S. Air Force was developing.

### Brakes for the A7-D Aircraft

An older BFGoodrich engineer, John Warren, designed the brake. A young engineer named Searle Lawson was given the job of determining the best material to use as the brake lining and testing the brake to make sure it qualified. Lawson was in his twenties. He had just graduated from school with an engineering degree, and BFGoodrich had only recently hired him.[9, 10, 11, 12, 13]

Interactive

Lawson built a prototype—a working model—of the small brake to test lining materials. He found that when the brake was applied, the linings on the four rotors heated up to 1,500 degrees and began disintegrating. When he tried other linings and got the same results, Lawson went over Warren's design and decided that it was based on a mistake. By his own calculations, there was not enough surface area on the rotors to stop an airplane in the required distance without generating so much heat that the linings failed. Lawson went to Warren, showed him his calculations and suggested that Warren's design be replaced with a new design for a larger brake with five rotors. Warren rejected the suggestion that his design was based on a mistake that a "green kid" just out of engineering school had discovered. He told Lawson to keep trying different materials for brake linings until he found one that worked.

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To conserve weight, BFGoodrich managers guaranteed that their compact brake would weigh no more than 106 pounds, contain no more than four small braking disks or rotors, and be able to repeatedly stop the aircraft within a specified distance. The contract was potentially very lucrative for the company. So its managers were anxious to deliver a brake that "qualified," that is, that passed all the tests the U.S. Air Force required for the A7-D.

## 1.2.2: Moral and Nonmoral Standards and Norms

*Moral standards* include the *norms* we have about the kinds of actions we believe are morally right and wrong, as well as the kinds of things we believe are morally good or morally bad. Moral norms can usually be expressed as general rules about our actions. These are examples of general rules that express moral norms: "Always tell the truth," "It's wrong to kill innocent people," and "Actions are right to the extent that they produce happiness." Our beliefs about the kinds of things we judge to be morally good or morally bad can usually be expressed with statements that indicate their value, such as "Honesty is good," and "Injustice is bad."

Where do moral standards come from? Typically, moral standards are first learned when we are children. We learn our moral standards from family, friends, and various societal influences such as church, school, television, magazines, music, and associations. Later, as we mature, our life experience and intellectual development may lead us to evaluate and perhaps revise these standards.

We may judge some moral standards to be reasonable and others we may come to see as unreasonable. If we decide a certain moral standard is unreasonable, we may discard it and adopt a new standard that seems more reasonable than the one we previously accepted. Through this maturing process, we develop moral standards that are more rational and so more suited for dealing with the moral issues of adult life. As Lawson and Vandivier's example shows, however, we do not always live up to the moral standards we hold. That is, we do not always do what we believe is morally right nor do we always pursue what we believe is morally good. Later in the chapter, we will look at how our actions can become disconnected from our moral beliefs.

Moral standards can be contrasted with norms or standards we hold about things that are not moral. Examples of **nonmoral standards** and norms include the standards of etiquette by which we judge people's manners as good or bad, the rules of behavior set by parents, teachers, or other authorities, the norms we call *the law* by which we determine what is legally right and wrong, the standards of language by which we judge what is grammatically right and wrong, the standards of art by which we judge whether a painting or a song is good or bad, and the sports standards by which we judge how well a game of football or basketball is being played. In fact, whenever we make judgments about the right or wrong way to do things, or judgments about what things are good and bad, or better and worse, our judgments are based on standards or norms of some kind. In Vandivier's case, we can guess that he probably believed that reports should be written with good grammar; that having a well-paid, pleasant, and challenging job was a good thing; and that it's right to follow the law and wrong to break it. The norms of good grammar, the value of a well-paid, pleasant, and challenging job, and the laws of government are also standards. However, these standards are not moral standards. As Vandivier's decision demonstrates, we sometimes choose nonmoral standards over our moral standards.

How do we distinguish between moral and nonmoral standards? Before reading any further, look at the two groups of norms in table 1.1 and see if you can tell which is the group of moral norms and which is the group of nonmoral norms.

**Table 1.1** Moral versus Nonmoral Norms

| Group 1 | Group 2 |
|---|---|
| "Do not harm other people." | "Do not eat with your mouth open." |
| "Do not steal what belongs to others." | "Do not chew gum in class." |
| "Do not lie to other people." | "Do not wear socks that do not match." |

During the last two decades, numerous studies have shown that the human ability to distinguish between moral norms and nonmoral norms emerges at a very early age. Moreover, that ability remains with us throughout life.[14] Psychologist Elliot Turiel and several others have found that by the age of three, a normal child has acquired the ability to tell the difference between moral norms and conventional norms. By age three, the child sees violations of moral norms as more serious and always wrong. However, violations of nonmoral norms are seen as less serious, and those violations are seen as wrong only when authorities mandate such norms.[15] For example, three-year-olds will say that it is not wrong to chew gum at schools where teachers do not have a rule against it. But they will insist it is still wrong to hit someone even at schools where teachers do not have a rule against hitting. Because this ability to distinguish between moral and conventional norms develops in childhood, it was not just easy, but trivially easy for you to see that the norms in group one are moral norms and those in group two are nonmoral norms. This innate ability to distinguish moral norms from nonmoral norms is not unique to Americans, Europeans, or Westerners. It is an ability that every normal human being in every culture develops.[16] Even though all cultures may not agree on which norms are moral norms and which are nonmoral norms (although there is a surprising amount of agreement), they do agree that the two are different and that the difference is extremely important.

***Quick Review 1.1***
**Moral Norms and Nonmoral Norms**

- From the age of three, we can distinguish moral from nonmoral norms.
- From the age of three, we tend to think that moral norms are more serious than nonmoral norms and apply everywhere, independent of what authorities say.
- The ability to distinguish moral from nonmoral norms is innate and universal.

**DISTINGUISHING BETWEEN MORAL AND NONMORAL NORMS** What is the difference between moral norms and nonmoral, or conventional, norms? This questions is not easy to answer, even though three-year-olds seem to know the difference. Philosophers have suggested six characteristics that help pin down the nature of moral standards. (Psychologist Elliot Turiel and others have drawn on the work of philosophers to help them distinguish moral from nonmoral norms in their studies.)

### Six Characteristics of Moral Standards

Moral standards are standards that deal with matters that we think are of serious consequence, override self-interest, are based on good reasons and not on authority, are universal, are based on impartial considerations, and are associated with special feelings such as guilt and shame, and with a special moral vocabulary such as “obligation,” or “responsibility.” We learn these standards as children from a variety of influences and revise them as we go through our lives.[17, 18, 19, 20, 21, 22, 23]

**Interactive**

**1. Moral Standards Deal with Serious Matters**

Moral standards deal with matters that are serious. That is, they deal with matters that we think can seriously wrong or significantly benefit human beings. For example, most people in American society hold moral standards against theft, rape, enslavement, murder, child abuse, assault, slander, fraud, law-breaking, and so on. These standards plainly deal with matters that people feel are serious forms of injury. Because they are about serious matters, violating moral standards is seen as seriously wrong. Moreover, we feel that the obligation to obey moral standards has greater claim on us than conventional norms do. In the BFGoodrich case, it was clear that both Lawson and Vandivier felt that lying in their report and endangering the lives of pilots were both serious harms, and so both were moral matters. On the other hand, failing to adhere to grammatical standards would not have been a serious failure. Since the benefits of developing a cure for river blindness were so significant, Vagelos felt that Merck had a moral obligation to develop the drug Mectizan.

**2. Moral Standards Are Preferred to Other Values**

**3. Moral Standards Are Independent of Authority**

**4. Moral Standards Are Universal**

**5. Moral Standards Are Determined Impartially**

**6. Moral Standards Are Associated with Special Emotions and Vocabulary**

## 1.2.3: Refining the Concept of Ethics

What, then, is ethics?

> ***Ethics* is the discipline that examines your moral standards or the moral standards of a society.**

Ethics asks how moral standards apply to your life and whether these standards are reasonable or unreasonable—that is, whether they are supported by good reasons or poor ones. So you start to engage with ethics when you take the moral standards you have absorbed from family, church, and friends and ask yourself questions like these: What do these standards imply for the situations in which I find myself? Do these standards really make sense? What are the reasons for or against these standards? Why should I continue to believe in them? What can be said in their favor and what can be said against them? Are they really reasonable for me to hold? Are their implications in this or that particular situation reasonable?

### Ethical Application

#### Returning to BFGoodrich

To illustrate the kinds of questions ethics asks lets return to Vandivier’s role in the BFGoodrich case. Vandivier had apparently been raised to accept the moral standard that one has an obligation to tell the truth. Consequently, he felt that in his particular situation, it would be wrong to write a false report on the brake. We might ask whether writing what he believed would be a false report was really wrong in his particular circumstances. Vandivier had several important financial obligations both toward himself and other people. He has stated, for example, that he had just married and bought a house, so he had mortgage payments to make each month and had to provide support for his family. If he did not write the report as he was ordered to do, then he would be fired and not be able to live up to these obligations. Do these moral obligations toward himself and his family outweigh his obligation to not write a false report? What is the basis of his obligation to tell the truth, and why is the obligation to tell the truth greater or lesser than a person's obligations toward oneself and one's family?

Next, consider Lawson's obligations toward his employer, BFGoodrich. Doesn't an employee have a moral obligation to obey his employer? Does the obligation to obey one's employer outweigh the obligation to "try to do your best" as an engineer? What is the source of both of these obligations, and what makes one greater or lesser than another? Also consider that the company and all its older and more experienced managers insisted that the best course of action was to write the report qualifying the brake. If something went wrong with the brake or the contract, BFGoodrich would be held accountable, not Lawson, who was a young and relatively low-level employee. Since the company, not Lawson, was accountable, did it have the moral right to make the final decision about the report, instead of Lawson, who had just finished college? Does the moral right to make a decision belong to the party that will be held accountable for the decision? What is the basis of such a right, and why should we accept it?

Finally, consider that Vandivier stated that his refusal to write the report would have given him some "satisfaction" but would have made no difference because someone else would have been hired to write the report. Since the consequences would be the same whether he agreed or refused, did he really have a moral obligation to refuse? Can one have a moral obligation to do something that will make no difference? Why?

Notice the sort of questions that arise from the choices Vandivier and Lawson faced in the BFGoodrich case. They are questions about the reasonableness of our moral standards or about the way we use them. These questions could include the following: Is it reasonable to apply various moral standards to a situation? Is it reasonable to say that one moral standard is more important or less important than another? What reasons might we have to hold certain moral standards? When you ask these kinds of questions about your own moral standards or about the moral standards of a society, you have started to engage in ethics. Ethics is the study of moral standards. It is the process of examining the moral standards you or your society (or other societies) holds in order to determine whether these standards are reasonable or unreasonable and how they apply to the concrete situations and issues you face. The ultimate aim of ethics is to develop a body of moral standards that you feel are reasonable for you to hold. They will be reasonable to the extent that you have thought them over carefully and have decided they are justified for you to accept and to apply to the choices you make.

**NORMATIVE AND DESCRIPTIVE STUDY** Ethics is not the only way to study morality. The social sciences—such as anthropology, sociology, and psychology—also study morality. However, they do so in a way that is different from the approach to morality that ethics takes. While ethics is a *normative* study of morality, the social sciences engage in a *descriptive* study of morality.

> **A *normative study* is an investigation that tries to reach normative conclusions—that is, conclusions about what things are good or bad or about what actions are right or wrong.**

A normative study aims to discover what *ought* to be. As we have seen, ethics is the study of moral standards whose explicit purpose is to determine as far as possible which standards are correct or supported by the best reasons, and so it tries to reach conclusions about moral right and wrong and moral good and evil.

> **A *descriptive study* is an investigation that does not try to reach any conclusions about what things are truly good or bad or right or wrong.**

However, a descriptive study tries to describe or explain the world without reaching any conclusions about whether the world is as it ought to be. For example, anthropologists and sociologists may study the moral standards that a particular village or culture holds. They may try to develop accurate descriptions of the moral standards of that culture and perhaps develop a theory that explains how they came to hold those standards. However, it is not the aim of anthropologists or sociologists to determine whether these moral standards are correct or incorrect.

Ethics, in contrast, is a study of moral standards whose explicit purpose is to determine as far as possible whether a given moral standard (or moral judgment based on that standard) is more or less correct. The sociologist asks, "Do Americans believe that bribery is wrong?" By contrast, the ethicist asks, "Is bribery wrong?" The ethicist, then, is concerned with developing reasonable normative claims and theories. However, an anthropological or sociological study of morality aims at providing descriptive characterizations of people's beliefs and theories that can explain those beliefs.

**BUSINESS ETHICS** What we have said about ethics so far has been meant to convey an idea of what ethics is.

Here, however, we are not concerned with ethics in general, but with a particular field of ethics: business ethics.

> ***Business ethics* is a specialized study of moral right and wrong that focuses on moral standards in business institutions, organizations, and activities.**

Business ethics is a study of moral standards and how these apply to the social systems and organizations through which modern societies produce and distribute goods and services, and to the activities of the people who work within these organizations. Business ethics is a form of applied ethics. It not only includes the analysis of moral norms and moral values but also tries to apply the conclusions of this analysis to the institutions, organizations, and activities that we call business.

As this description of business ethics suggests, the issues that business ethics covers encompass a wide variety of topics. When analyzing the ethical issues raised by a concrete situation or case, the issues can be sorted in terms of whether they are *systemic*, *corporate*, or *individual* issues.

Failing to sort out the different kinds of issues raised by a concrete situation can result in a lot of confusion. Moreover, the kinds of solutions appropriate for systemic or corporate issues are generally not appropriate for dealing with individual issues. If a company is trying to deal with a systemic issue—such as a government culture that permits bribery—then the issue must be dealt with on a systemic level. That is, the systemic issue must be dealt with through the coordinated actions of many different social groups. On the other hand, corporate ethical issues

### Types of Issues Covered by Business Ethics

To introduce some order into this variety, it will help if we distinguish between the three different kinds of issues.

Interactive

Systemic Issues | Corporate Issues | Individual Issues

Systemic issues in business ethics are ethical questions about the economic, political, legal, and other institutions within which businesses operate. They include questions about the morality of capitalism or of the laws, regulations, industrial structures, and social practices within which U.S. businesses operate. One example would be questions about the morality of the government contracting system through which BFGoodrich was allowed to test the adequacy of its own brake design for the A7-D. Another example would be questions about the morality of the international institutions with which Merck was forced to deal when it was looking for a way to get its cure for river blindness to the people who needed it most.

## Ethical Application

### BFGoodrich: Conclusion

So what happened after Searle Lawson and Kermit Vandivier turned in their report and the U.S. Air Force put the BFGoodrich brakes on planes flown by their test pilots? Lawson was sent as BFGoodrich's representative to Edwards Air Force Base in California where the test flights took place. There, he watched as the brakes caused several near crashes when the pilots tried to land the planes. In one case, he saw an airplane go skidding down the runway when the pilot's braking produced so much heat in the brake that its parts fused together and the wheels locked up. Surprisingly, none of the pilots were killed. When Lawson returned home, both he and Vandivier quit and notified the FBI of what had been going on. This was their way of dealing with the individual issues their actions had raised. A few days later, BFGoodrich announced that it was replacing the small brake with a larger five-disk brake at no extra charge to the U.S. government. In this way the company's managers tried to deal with the *corporate* issues the brake incident had created. About a year later, Lawson and Vandivier came before the U.S. Congress and testified about their experiences at BFGoodrich. Shortly thereafter, the U.S. Department of Defense changed the way it let companies test equipment, making fraudulent reports less likely. These changes were responses to a key *systemic* issue that became obvious once the truth came out.

can be solved only through corporate or company solutions. If a company has a culture that encourages moral wrongdoing, for example, then changing that culture requires the cooperation of many corporate personnel. Finally, individual ethical issues need to be solved through individual decisions and actions, and, perhaps, individual reform. Individual actions, however, will generally be ineffective when the important issue is a corporate or systemic issue.

***Quick Review 1.2***
**Business Ethics Studies . . .**

- How our moral standards apply to business
- How reasonable or unreasonable the moral standards we have absorbed from society are
- The implications that our moral standards have for business activities

## 1.2.4: Applying Ethical or Moral Concepts to Corporations

The statement that business ethics applies ethical or moral concepts to corporate organizations raises a puzzling issue. Can we really say that the acts of organizations are moral or immoral in the same way that the actions of human individuals are? Can we say that corporations are morally responsible for their acts in the same sense that individuals are morally responsible for what they do? Or must we say that it makes no sense to apply moral terms to organizations as a whole, but only to the individuals who make up the organization? A few years ago, for example, employees of Arthur Andersen, an accounting firm, were caught shredding documents potentially proving that its accountants helped Enron hide its fraud by using several accounting tricks. The U.S. Justice Department charged the firm of Arthur Andersen with obstruction of justice but not the employees who shredded the documents. Critics afterward claimed that the U.S. Justice Department should have charged the individual employees of Arthur Andersen, not the company. "Companies don't commit crimes," they said, "people do."[24] Can moral notions like responsibility, wrongdoing, and obligation be applied to corporations, or are individuals the only real moral agents?

Should corporations be viewed as moral agents or are humans alone moral agents? The underlying difficulty with which both views are trying to struggle is this: although we say that corporate organizations exist and act like individuals, obviously they are not human individuals. Yet, our moral categories are designed to deal with human individuals who feel, reason, and deliberate, and who act on their feelings, reasons, and deliberations. So, how can we apply these moral categories to corporations and their acts when corporations have neither feelings nor minds with which to reason or deliberate?

We can see our way through these difficulties if we first note that corporate organizations and their acts depend on human individuals. Since corporate acts originate in the choices and actions of human individuals, those individuals are the *primary* bearers of moral duties and responsibility. Human individuals are responsible for what the corporation does because corporate actions flow wholly out of their decisions and behaviors. If a corporation acts wrongly, it is because of what some individual or individuals in that corporation chose to do. If a corporation acts morally, it is because some individual or individuals in that corporation chose to have the corporation act morally. As several law courts have held, the idea that the actions of a corporation are the actions of some "person" who is separate from the humans who carry out those actions is a "legal fiction."[25] This fiction is set aside (by "piercing the corporate veil") when justice requires that those humans who really carried out the actions of the corporation should be held responsible for injuries "the corporation" caused.[26]

Nonetheless, it makes perfectly good sense to say that a corporate organization has moral duties and that it is morally responsible for its acts. However, organizations have moral duties and are morally responsible in a *secondary* or *derivative* sense. A corporation has a moral duty to do something only if some of its members have a moral duty to make sure it is

### Can Moral Notions Be Applied to Corporations?

Two views have emerged in response to the question of whether moral notions can be applied to corporations.[27]

**Interactive**

**Companies Act as Moral Agents** | **Companies Act as Machines**

**Arguments in Favor**

At one extreme is the view of those who argue that if an agent (such as a company) *acted* and it acted *intentionally*, then it is a "moral agent." That is, it is an agent capable of having moral rights and obligations and being morally responsible for its actions, just like humans. The argument for this view goes like this: We can clearly say that corporations engage in actions and that they carry out those actions intentionally. Companies, for example, can merge together, make contracts, compete against other companies, and make products. These things do not just happen: companies seem to do these things intentionally. However, if an agent can act intentionally, then it can be morally responsible for its actions and it can be blamed when it does what is morally wrong. It follows, therefore, that corporations are morally responsible for their actions, and that their actions are moral or immoral in exactly the same sense as those of an individual.

**Limitations of This View**

The major problem with this view is that organizations do not seem to act or intend to act in the same sense that people do. Unlike individuals, organizations have no minds to form intentions. They are conscious of neither pain nor pleasure nor anything else. Unlike individuals, organizations do not act on their own; instead, humans must act for them.

done. Moreover, a corporation is morally responsible for something only if some of its members are morally responsible for what happened; that is, only if they acted with knowledge and of their own free will—topics we will discuss later.

The central point is that when we apply the standards of ethics to business, we must not let the fiction of "the corporation" obscure the fact that human individuals control what the corporation does. So these human individuals are the *primary* carriers of the moral duties and moral responsibilities that we attribute in a *secondary* sense to the corporation. This is not to say, of course, that the human beings who make up a corporation are not influenced by each other and by their corporate environment. Corporate policies, corporate culture, and corporate norms all have an enormous influence on the behavior of corporate employees. However, a corporation's policies, culture, and norms do not make the employee's choices and so they are not responsible for the actions of that employee. We will return to this issue when we discuss moral responsibility in Module 1.5.

***Quick Review 1.3***

**Should Ethical Qualities Be Attributed to Corporations?**

- One view says corporations, like people, act intentionally and have moral rights and obligations, and are morally responsible.
- Another view says it makes no sense to attribute ethical qualities to corporations since they do not act like people but more like machines; only humans can have ethical qualities.
- A middle view says that humans carry out the corporation's actions so they are morally responsible for what they do and ethical qualities apply in a primary sense to them; corporations have ethical qualities only in a derivative sense.

## 1.2.5: Objections to Business Ethics

We have described business ethics as the process of rationally evaluating our moral standards and applying them to business situations. However, many people raise objections to the very idea of applying moral standards to business activities. In this section, we address some of these objections and also look at what can be said in favor of bringing ethics into business.

In addition, occasionally people object to the view that ethical standards should be applied to the behavior of people within business organizations. Persons involved in business, they claim, should single-mindedly pursue the financial interests of their firm and not sidetrack their energies or their firm's resources into "doing good works." Three different kinds of arguments are advanced in support of this view. Here are some specific arguments.

1. In a free market economy, the pursuit of profit will ensure maximum social benefit, so business ethics is not needed.
2. A manager's most important obligation is loyalty to the company, regardless of ethics.
3. As long as companies obey the law, they will do all that ethics requires.

Each of the above arguments are discussed further in the following sections.

**PROFIT BENEFITS ALL** Some have argued that in perfectly competitive free markets, the pursuit of profit will by itself ensure that the members of society are served in the most socially beneficial ways.[28] To be profitable, each firm has to produce only what the members of society want and has to do so by the most efficient means available. The members of society will benefit most, then, if managers do not impose their own values on a business, but instead devote themselves to the pursuit of profit. By pursuing profit, they will efficiently produce what the members of society value.

Arguments of this sort conceal a number of assumptions that require a much lengthier discussion than we can provide at this stage. We will examine those assumptions later in this text. Here we only note some of the more questionable assumptions on which the argument rests, which are as follows:[29]

1. Most industrial markets are not "perfectly competitive" as the argument assumes. To the extent that firms do not have to compete, they can maximize profits despite inefficient production.
2. The argument assumes that any steps taken to increase profits will necessarily be socially beneficial. However, several ways of increasing profits actually injure society. Examples include allowing harmful pollution to go uncontrolled, deceptive advertising, concealing product hazards, fraud, bribery, tax evasion, and price fixing.
3. The argument assumes that by producing whatever the buying public wants (or values), firms produce what all the members of society want. However, the needs of large segments of society (the poor and disadvantaged) are not necessarily met when companies produce what buyers want. These segments of society cannot participate fully in the marketplace.
4. The argument is essentially making a normative judgment ("managers *should* devote themselves to the single-minded pursuit of profits") on the basis of some unspoken and unproved moral standard ("people should do whatever will benefit those who participate in markets"). Thus, although the argument tries to show that ethics does not matter, it assumes an unproved ethical standard to show this. That standard does not look very reasonable.

**THE LOYAL AGENT'S ARGUMENT** A second kind of argument sometimes advanced to show that business managers should single-mindedly pursue the interests of their firms and should ignore ethical considerations is embodied in what Alex C. Michales called the *loyal agent's argument*.[30] The argument can be paraphrased as follows:

1. As a loyal agent of his or her employer, the manager has a duty to serve the employer as the employer would want to be served (if the employer had the agent's expertise).
2. An employer would want to be served in whatever ways will advance his or her interests.
3. Therefore, as a loyal agent of the employer, the manager has a duty to serve the employer in whatever ways will advance the employer's interests.

Unethical managers have often used this argument to justify unethical conduct.

### Ethical Application

#### Following Orders at WorldCom

Scott Sullivan, former finance executive for WorldCom, was accused of running an $11 billion accounting fraud that destroyed the retirement money thousands of employees had saved. Sullivan's defense was that his boss, Bernie Ebbers, had ordered him to "hit the numbers." Sullivan obeyed, although, he said, he raised an objection: "I told Bernie, 'This isn't right.'"[31] Betty Vinson, a former WorldCom accounting executive, defended her part in the fraud by pleading that Sullivan had ordered her to "adjust" the books to hide the company's poor financial state from investors.[32] Both Sullivan and Venison thought that loyal obedience to their employer justified ignoring the fact, which both admitted they knew, that what they were doing was wrong.

Notice that if in the loyal agent's argument we replace *employer* with *government*, and *manager* with *officer*, we get the kind of argument that Nazi officers used after World War II to defend their murder of about 6 million Jews and others that Hitler's government labeled "undesirables." When they were captured and brought to trial, the Nazi officers repeatedly defended their actions by claiming: "I had to do it because I had a duty to serve my government by following its orders."

It takes only a little reflection to realize that the loyal agent's argument rests on questionable assumptions. First, the argument tries to show that ethics does not matter by assuming an unproved moral standard. The assumed standard is "the manager *should* serve the employer in whatever way the employer wants to be served." However, there is no reason to think that this moral standard is acceptable as it stands. If an employer orders a manager to perform a criminal act, the manager certainly would not have a duty to obey. To be acceptable, then, the standard would have to say something like this: "the manager should serve the employer in whatever *moral* and *legal* way the employer wants to be served." Second, the loyal agent's argument assumes that there are no limits to the manager's duties to serve the employer. In fact, such limits are an express part of the legal and social institutions from which these duties arise. An agent's duties are defined by what is called the **law of agency**. The law of agency is that part of commercial law that specifies the duties of persons—"agents"—who agree to act on behalf of another party—the "principle." Lawyers, managers, engineers, stockbrokers, and so on all act as agents for their clients or employers. By freely entering an agreement to act as someone's agent, then, a person accepts a legal (and moral) duty to serve the client loyally, obediently, and in a confidential manner as specified in the law of agency.[33] But the law of agency states that when determining whether a client's or an employer's orders are "reasonable" and should be followed, the agent must take "business or professional ethics" into account. The law of agency specifically indicates that an agent never has a duty to do what a client, employer, or other principle asks the agent to do if it would require performing an act that is "illegal or unethical." [34]

The manager's duties to serve the employer, then, are limited by the constraints of ethics, since it is with this understanding that the duties of a loyal agent are defined. Finally, the loyal agent's argument assumes that once a manager agrees to serve an employer, whatever the manager does for his employer is justified. However, this assumption is false. An agreement to serve an employer does not automatically justify doing wrong on his or her behalf. If it is wrong for me knowingly to put people's lives at risk by selling them defective products, then it is still wrong when I am doing it for my employer. Agreements do not change the moral character of wrongful acts, nor does the argument "I was following orders" justify them.

**IF IT IS LEGAL, IT IS ETHICAL** A third kind of argument is sometimes made against bringing ethics into business. This is the objection that to be ethical it is enough for businesspeople to follow the law: If it is legal, then it is ethical. For example, managers at financial company Goldman Sachs were accused of helping Greece hide loans larger than European Union rules allowed. Goldman Sachs's managers allegedly disguised the loans as currency exchanges that legally did not have to be disclosed as debt. Greece's debt eventually got so huge that, in 2010, it threw Greece and then the entire European Union into a financial crisis whose consequences continue to reverberate. Goldman Sachs's managers were accused of behaving unethically because they helped Greece hide debt that was more than it could handle. In response, the managers excused themselves with the statement that "these transactions were consistent with European principles [laws] governing their use and application at the time."[35] Since it was legal, they were saying, it was ethical.

It is wrong, however, to see ethics as no more than what the law requires. It is true that some laws require behavior that is the same as the behavior required by our moral standards. Examples of these are laws that prohibit murder, rape, theft, fraud, and so on. In such cases, law and morality coincide, and the obligation to obey such laws is the same as the obligation to be moral. However, law and morality do not completely overlap. Some laws have nothing to do with morality because they do not involve serious matters. These include parking laws, dress codes, and other laws covering similar matters. Other laws may even violate our moral standards so that they are actually contrary to ethics. Our own pre-Civil War slavery laws, for example, required us to treat slaves like property, and the laws of Nazi Germany required anti-Semitic behavior. The laws of some Arab countries today require that businesses discriminate against women and Jews in ways that most people would say are clearly wrong. So it is clear that ethics is not simply following the law.

This does not mean, of course, that ethics has nothing to do with following the law.[36] Many of our moral standards have been incorporated into the law because enough of us feel that these moral standards should be enforced by the penalties of a legal system. On the other hand, laws are sometimes removed from our law books when it becomes clear that they violate our moral standards. Our moral standards against bribery, for example, were incorporated into the Foreign Corrupt Practices Act, and only a few decades ago it became clear that laws permitting job discrimination—like earlier laws permitting slavery—were unjust and had to be changed. Morality, therefore, has shaped and influenced many of the laws we have.

Moreover, most ethicists agree that all citizens have a moral obligation to obey the law so long as the law does not require clearly unjust behavior. This means that, in most cases, it is immoral to break the law. Tragically, the obligation to obey the law can create terrible conflicts when the law requires something that the businessperson knows or believes is immoral. In such cases, a person will be faced with a conflict between the obligation to obey the law and the obligation to obey his or her conscience. Such conflicts are not unusual. In fact, you the reader will likely have to deal with such a conflict at some point in your business life.

## 1.2.6: The Case for Ethics in Business

We have looked at some arguments that try to show that ethics should not be brought into business. Is there anything to be said for the other side—that ethics should be brought into business? Offhand, it would appear that ethics should be brought into business because ethics should govern all human activities and business is a human activity. There is nothing special about business that prevents us from applying the same ethical standards to business that we apply to all human activities.

In fact, a business cannot exist unless the people involved in the business and its surrounding society adhere to some standards of ethics:

1. Any individual business will collapse if all of its managers, employees, and customers come to think that it is morally permissible to steal from, lie to, or break their agreements with the company. Since no business can exist entirely without ethics, every business requires at least a minimal adherence to ethics on the part of those involved in the business.
2. All businesses require a stable society in which to carry on their business dealings. Yet, the stability of any society requires that its members adhere to some minimal standards of ethics. In a society without ethics, as the philosopher Hobbes once wrote, distrust and unrestrained self-interest would create "a war of every man against every man," and life would become "nasty, brutish, and short." The impossibility of conducting business in such a society—one in which lying, theft, cheating, distrust, and unrestrained self-interested conflict became the norm—is shown by the way in which business activities break down in societies torn by strife, conflict, distrust, and civil war. Since businesses cannot survive without ethics, then it is in the best interests of business to promote ethical behavior both among its own members as well as within its larger society.[37]

Is there any evidence that ethics is consistent with what most people see as the core of business: the pursuit of profit? To begin with, there are many examples of companies in which good ethics has existed side-by-side with a history of profitability. Companies that have combined a good history of profit with consistently ethical behavior include Levi Strauss & Co., Gap, Inc., Cummins Inc., Accenture, Intel, Google, Granite Construction, Colgate-Palmolive Company, Mattel, Inc., Applied Materials, Visa Inc., Kellogg Company, Weyerhaeuser Company, Baptist Health South Florida, Deere & Company, Eaton Corporation, Blue Shield of California, Starbucks Coffee, Whole Foods Market Inc., Petco Animal Supplies Inc., Cisco Systems, and United Parcel Service.[38] But many chance factors affect profitability such as overcapacity in a particular industry, recessions, weather patterns, interest rates, and changing consumer tastes. Consequently, these companies may be nothing more than the few companies in which ethics by chance happened to coincide with profits for a period of time.

There are, then, good reasons to think that ethics should be brought into business. Taken together, the arguments above—some philosophical and some more empirical—suggest that businesses are shortsighted when they fail to take the ethical aspects of their activities into consideration.

***Quick Review 1.4***
**Arguments Supporting Ethics in Business**

- Ethics applies to all human activities.
- Business cannot survive without ethics.
- Ethics is consistent with profit seeking.
- Customers, employees, and people in general care about ethics.
- Studies suggest that ethics does not detract from profits and seems to contribute to profits.

## 1.2.7: Business Ethics and Corporate Social Responsibility

Business ethics is sometimes confused with corporate social responsibility (CSR). Although the two are related, they are not quite the same. It is important to understand how they are different as well as how they are related to each other. We will begin by clarifying what CSR is because this will help us understand how business ethics and CSR are related. Note also that theories of CSR provide answers to the important question: What is the purpose of business?

**The phrase *corporate social responsibility* refers to a corporation's responsibilities or obligations toward society.**

Some disagreement exists about what a corporation's responsibilities or obligations include. Do companies have a responsibility to donate to charities or to give their

### Positive Business Effects of Ethical Practices

Is there any evidence that ethics in business is helpful to business? That is, what can be said for the proposition that good ethics is also good business?[39, 40, 41, 42, 43, 44, 45, 46, 47, 48]

Interactive

**Promotion of Trust and Cooperation**

**Avoidance of Reprisal**

A lot of research in social psychology shows that people in all kinds of social situations respond to perceived injustices with moral anger—whether the injustice is directed against themselves or others—and this anger motivates them to attempt to restore justice by punishing the party that inflicted the injustice. Employees who feel their company's decision-making processes are unjust will exhibit higher absenteeism, higher turnover, lower productivity, and demand higher wages. Customers will turn against a company if they perceive a gross injustice in the way it conducts its business and will be less willing to buy its products. Customers and employees who feel a company has behaved unethically, for example, now sometimes start critical websites such as *complaintsboard.com*, *ripoffreport.com*, *pissedconsumer.com*, and *screwedcentral.com*.

On the other hand, when people feel that an organization is treating people fairly, they will reward it with loyalty and commitment. For example, when employees feel that an organization's decision-making processes are just, they exhibit lower levels of turnover and absenteeism, show higher levels of trust and commitment to the company and its managers, and demand lower wages. When employees believe an organization is just, they are more willing to follow the organization's managers, do what managers say, and tend to see managers' leadership as legitimate. In short, unethical behavior breeds reprisals, while ethical behavior breeds cooperation.

**Increased Success**

employees higher wages and customers safer products? Or are they obligated to maximize profits for their shareholders or stockholders?

One view of CSR is a view that many accept and that was articulated by the economist Milton Friedman. His view is that businesses should serve only the interests of shareholders and no one else.

**STAKEHOLDER THEORY** A view of CSR that is very different from the shareholder theory of Milton Friedman is a view called stakeholder theory. According to Edward Freeman and David Reed, two scholars who pioneered this view, a *stakeholder* is "any identifiable group or individual who can affect the achievement of an organization's objectives or who is affected by the achievement of an organization's objectives."[49] In other words, a stakeholder is anyone that can harm, benefit, or influence the corporation, as well as anyone the corporation can harm, benefit, or influence. A stakeholder, in short, is anyone who has a stake in what the company does.

For example, General Motors influences the lives of its customers when it decides how much safety it will build into its cars, it benefits employees when it raises salaries, it harms the local community when it shuts down a plant, and it benefits its stockholders when it increases their dividends. On the other hand, government can influence General Motors through the laws and regulations it passes, creditors can harm it by raising their interest rates or calling back a loan, and suppliers can benefit it by lowering their prices or raising the quality of the car parts they supply. General Motors' stakeholders, then, include customers, employees, local communities, stockholders, government, creditors, and suppliers. Of course, the influences between the company and its stakeholders can go

### Evaluating Milton Friedman's Shareholder Theory

An extreme but traditional view of CSR is the view espoused by the late economist Milton Friedman. Friedman argued that in a "free enterprise, private-property system," corporate executives work for the "owners" of the company. Today these owners are the company's shareholders. As their employee, the executive has a "direct responsibility" to run the company "in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom."[50]

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**Milton Friedman's View**

In Friedman's view, a company's only responsibility is to legally and ethically "make as much money as possible" for its owners; that is, to maximize shareholder returns. We can call his view the "shareholder theory" of CSR. The main reason why Friedman held this theory was that, in his view, shareholders own the company. Since the company is their—and only their—property, only they have the moral right to decide what it should be used for. These "owners" hire executives to run the business for them. So the executives have a moral obligation to do what the stockholders want. Moreover, what stockholders want, he claimed, is to make as much money as possible. Friedman did not say, however, that there are no limits to what executives can do to make stockholders as much money as possible. Executives, he explicitly said, must operate within the "rules of society," including both the rules of the "law" and the rules of "ethical custom."

**Details of the Shareholder View**

**Criticisms of the Shareholder View**

both ways. For example, although General Motors influences its customers and employees, customers can also influence General Motors by refusing to buy its cars, and employees can impact General Motors by going on strike. Other groups also are sometimes able to influence General Motors. For example, environmental activists or the media can impact General Motors by organizing demonstrations or by reporting on a safety defect of General Motors' cars. Thus, activist organizations, the media, and other interest groups can also become stakeholders of General Motors.

Unlike Friedman's shareholder theory, which says the corporation should be run for the benefit *only of its shareholders*, stakeholder theory says that a corporation should be run for the benefit of *all stakeholders*.

**According to stakeholder theory, a manager should take all stakeholder interests into account when making decisions.**

Managers should try to balance the interests of stakeholders so each stakeholder gets a fair share of the benefits the corporation produces. The manager, then, has the responsibility of running the company in a way that will best serve the interests of all stakeholders, not just stockholders.

Notice that stakeholder theory does not claim that managers should not try to make a profit; it does not even claim that managers should not try to maximize profits.

The claims of stakeholder theory are about *who should get* the profits. Friedman's shareholder theory says that the manager should try to maximize what goes to the stockholder, which means it should try to minimize what goes to other stakeholders (except, of course, when giving some stakeholders more would make even more profits for stockholders). Stakeholder theory, on the other hand, says that the manager should give stockholders a fair share of profits, but in a way that allows all other stakeholders to also get their fair share. This may mean, for example, investing in better working conditions for employees or in safer products for consumers, or in reducing pollution for the local community, even if doing so reduces the share of profits stockholders would get. Stakeholder theory, then, rejects Friedman's view that resources should not be used to benefit other stakeholders at the expense of shareholders.

**EVALUATING THEORY AND THE BUSINESS-ETHICS RELATIONSHIP** Which of these two views is correct: stakeholder theory or shareholder theory? Today, many businesses accept stakeholder theory, and most of the fifty U.S. states have passed laws that recognize business' obligations to its many stakeholders even at the expense of stockholder interests. will have to decide for themselves which theory makes the most sense and seems most reasonable. The two theories are critical to one's view of the important question: What is the purpose of business? Shareholder theory says the ultimate purpose of business is to serve the interests of stockholders and by doing so businesses in competitive markets will generally end up providing significant benefits to society. The stakeholder view says that the ultimate purpose of business is to serve the interests of all stakeholders and thereby the interests of all stakeholders are explicitly addressed even when

### Support for the Stakeholder View of Corporate Social Responsibility

Two main kinds of arguments support the stakeholder view of CSR: instrumental arguments and normative arguments.[51]

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**Instrumental Arguments** | **Normative Arguments**

Instrumental arguments claim that being responsive to all of its stakeholders is in the best interests of the corporation, even though it may not be in the best interests of shareholders. The idea here is that if a company takes the interests of all its stakeholders into account, those stakeholders will be favorably disposed to do their part to support the company and its interests. For example, treating employees decently while paying them good salaries will make employees more loyal to the company, while treating employees poorly may lead to shirking or even destructive behavior. Similarly, when a company is responsive to environmentalists or other activists, these groups are less likely to engage in activities that can damage the company's image or its reputation. Yet paying employees higher wages and investing in meeting environmentalists' demands may force a company to reduce shareholder dividends. In short, instrumental arguments for stakeholder theory claim that being responsive to all stakeholders is good for the business even though it may reduce the profits shareholders get.

competitive markets fail to secure their interests. We cannot discuss these important questions any farther. Our aim here is only to explain corporate social responsibility so that we can explain how corporate social responsibility is related to business ethics.

So how are business ethics and CSR related? Being ethical, according to most scholars, is one of the obligations companies owe to society. In this respect, business ethics is a *part* of CSR. In what has become a widely accepted description of the kinds of social responsibilities companies can have, for example, Archie Carroll writes:

> The social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations . . . [52]

CSR, then, is the larger more inclusive notion, and business ethics is just one part of this larger notion. In addition to its ethical obligations, a company's CSR includes those legal obligations, economic contributions, and those "discretionary" or philanthropic contributions society expects from companies. Notice that both shareholder theory and stakeholder theory can accept this way of defining what CSR includes. For example, Friedman explicitly says that a company should live up to the ethical and legal expectations of society, that by pursuing shareholder profits it will make the greatest economic contribution to society, and that it should make whatever other discretionary contributions it needs to make so that society will enable it to operate profitably. Stakeholder theory says that companies should be responsive to all its stakeholders and that would include making the economic and discretionary contributions society expects, as well as behaving ethically and legally toward its stakeholders.

However, the relationship between business ethics and CSR is more complicated than we have so far suggested. As we have seen, the arguments underlying the various views of business's obligations to society—both the arguments that say businesses are *obligated* only to stockholders, and those that say they have *obligations* to all stakeholders—are ethical arguments. Friedman, for example, held that owners have the *right* to say how the corporation should be run because they own the corporation, and so managers have the *obligation* to do what stockholders want. The normative argument for stakeholder theory, as we saw, says that *fairness* implies that business has *obligations* to all stakeholders. All of these concepts—rights, obligations, and fairness—are ethical concepts. So ethics is not only part of a company's social responsibilities; ethics also provides the basic normative reasons for CSR. Paradoxically, then, ethics is one of business's social responsibilities, but business has these responsibilities to society because it is what ethics demands.

***Quick Review 1.5***

**Corporate Social Responsibility Is a Business's Societal Obligation**

- Friedman's shareholder theory argued that a manager's only responsibility is to legally and ethically make as much money as possible for shareholders.
- Stakeholder theory says managers should give all stakeholders a fair share of the benefits a business produces.
- Business ethics is both a part of CSR and part of the justification for CSR.

# 1.3: Ethical Issues in International Business

**OBJECTIVE: Examine ethical issues arising from globalization and international business connections and practices**

We have so far discussed some of the main issues business ethics has had to deal with during human history. The issues we have talked about are the kinds of issues that, for the most part, arise within the national borders of a single country. Next, we will turn to look at some of the business ethics issues that emerge in the international arena, including technology.

## 1.3.1: Technology and Business Ethics

Technology consists of all those methods, processes, and tools that humans invent to manipulate and control their environment. Since the Industrial Revolution, technology has been developing rapidly and changing our societies. Businesses in particular have been transformed by the development of new technologies. Inevitably, these changes have raised the ethical issues we now face.

This is not the first time that new technologies have had a revolutionary impact on business and society. Several thousand years ago, during the Agricultural Revolution, people developed the first farming technologies. These technologies enabled them to stop relying on foraging and on the luck of the hunt. Farming could now provide a reasonably constant and consistent supply of food. The invention of irrigation, the harnessing of water and wind power, and the development of levers, wedges, hoists, and gears eventually allowed people to produce more than they consumed. Out of this surplus grew trade, commerce, and the first businesses. With commerce came the kinds of questions that make up business ethics: What is fair in trading? What is a just price? When are weights and measures deceptive?

In the eighteenth century, the technologies of the Industrial Revolution again transformed Western society and business. The Industrial Revolution introduced machines powered by fossil fuels, such as the steam engine, the railroad, and the cotton gin. Before the Industrial Revolution, most businesses were small organizations that operated in local markets. They were managed by an owner who employed relatively few workers, and those workers assembled goods by hand. The Industrial Revolution changed all of this. Machinery and the factory assembly line enabled businesses to make massive quantities of goods to ship and sell in national markets. Large-scale production required large organizations to manage the enormous armies of people needed to work the long assembly lines in huge factories. The result was the large corporation that came to dominate our economies. These large-scale organizations brought with them a host of new ethical issues. Were the workers who labored at the new machines being exploited? Was the stock that financed these large enterprises being fraudulently manipulated? Were the new factories producing such massive amounts of wastes that they were destroying the environment?

New technologies developed in the closing decades of the twentieth century again transformed business and introduced new ethical problems. Foremost among these developments were the revolutions in biotechnology and

### Ethical Issues and New Technologies

Almost all ethical issues raised by our new technologies are related in one way or another to questions of risk: Are the risks of a new technology predictable? Are the benefits worth the potential risks, and who should decide? How large are the risks and are they reversible? Do those persons on whom the risks will fall know about the risk, and have they consented to bear these risks? Will they be justly compensated for their losses? Are the risks fairly distributed among the various parts of society, including poor and rich, young and old, future generations and present ones?

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**Information Technology Related to Privacy**

Many of the ethical issues new technologies have created—especially information technologies—are related to privacy. Technology lets us collect detailed information on individuals on a scale that was never possible before. Computer systems track users on the Internet, gather information on customers at cash registers, collect information on credit card purchases, retrieve information from applications for licenses, bank accounts, credit cards, e-mail, monitor employees at work stations, and so on. They have the power to link this information to other databases containing financial information, purchase histories, addresses, telephone numbers, driving records, arrest records, credit history, medical and academic records, or memberships. They can quickly sift, sort, analyze, or retrieve any part of this information for anyone who has access to the computer. However, gathering such detailed information about people, many argue, violates people's right to privacy. That is, it violates the right to prohibit others from knowing things about us that are private.

**Information Technology Related to Property Rights**

**Nanotechnology**

**Biotechnology**

in ***information technology***. These included the development of powerful computers, the Internet, wireless communications, digitization, and numerous other technologies that capture, process, and move information in innovative ways. Technology spurred a number of changes, including globalization and the decreasing importance of distance; the acceleration of change as product life cycles get shorter and revolutionary new products are invented and marketed ever more quickly; and the ability to create new life forms and new mechanisms whose benefits and risks are unpredictable. To cope with these rapid changes, business organizations have had to become smaller, flatter, and more nimble. Some have completely refashioned themselves as they have entered the world of e-commerce. Leaving their brick-and-mortar operations behind, they have transformed themselves into web-based entities that exist and operate largely in **cyberspace**. All of these developments have again forced businesses to deal with new ethical issues.

***Quick Review 1.6***
**New Technologies Raise New Ethical Issues for Business**

- The agricultural and industrial revolutions historically introduced new ethical issues.
- Information technology raises new ethical issues related to risk, privacy, and property rights.
- Nanotechnology and biotechnology raise new ethical issues related to risk and to the spread of dangerous products.

## 1.3.2: Globalization and Business Ethics

Many of the most pressing issues in business ethics today are related to the phenomenon of globalization.

> ***Globalization* refers to the way nations have become more connected so that goods, services, capital, knowledge, and cultural artifacts move across national borders at an increasing rate.**

Of course, for centuries people have moved and traded goods across national boundaries. Merchants have been carrying goods over the trading routes of Europe, Asia, and the Americas since recorded history began. However, the sheer volume of goods that are being moved and traded across national boundaries has grown almost exponentially since World War II. That international flow has transformed the face of our world. Globalization has resulted in a phenomenon that is familiar to anyone who travels outside their country. Namely, that the same products, music, foods, clothes, movies, brand names, stores, cars, and companies we know at home are now present everywhere in the world. People eat McDonald's hamburgers and Kentucky Fried Chicken on the sidewalks of Moscow, London, Beijing, Paris, Tokyo, Jerusalem, or Bangkok. Great Britain's *Harry Potter* novels have been read by children and adults in India, Japan, China, Italy, and Germany. People of every nation know the same bands, the same songs, the same singers, the same actors, and the same movies that entertain Americans.

Multinational corporations are at the heart of this process of globalization and are responsible for much of the enormous volume of international transactions that take place today.

> **A *multinational corporation* is a company that has operations in several nations.**

Multinationals make and market their products in whatever nations offer manufacturing advantages and attractive markets. They draw capital, raw materials, and human labor from wherever in the world they are cheap and available. Virtually all of the 500 largest U.S. industrial corporations today are multinationals. General Electric, for example, which was founded by Thomas Edison and is headquartered in New York, has operations in more than 100 countries around the world. Almost half of its revenues are made outside the United States. It has metallurgy plants in Prague, software operations in India, product design offices in Budapest, Tokyo, and Paris, and assembly operations in Mexico.

***Quick Review 1.7***
**Globalization Is . . .**

- To a large extent driven by multinationals
- Beneficial in that it has brought great benefits to developing countries including jobs, skills, income, technology, a decrease in poverty, specialization
- Blamed for many ills including rising inequality, cultural losses, a "race to the bottom," introduction of inappropriate technologies into developing countries

**DIFFERENCES AMONG NATIONS** Globalization has also required companies to operate in nations whose laws, governments, practices, levels of development, and cultural understandings are much different from those with which the multinational's managers are familiar.[53] This creates significant ethical dilemmas for their

### Globalization: Advantages and Disadvantages

Globalization is a "mixed bag." While it has brought tremendous economic benefits to many poor nations, it has done so at a price. Both the benefits and the costs of globalization are, to a large extent, due to the activities of multinationals.[54, 55]

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**Advantages of Globalization**

Globalization has brought the world tremendous benefits. It has led multinationals such as Nike, Motorola, General Electric, and Ford to build factories and establish assembly operations in less developed countries with low labor costs. Multinationals have brought jobs, skills, income, and technology to these underdeveloped countries. This has raised the standard of living in these areas and provided consumers everywhere with lower-priced goods. According to the World Bank, between 1981 and 2011 the percentage of extremely poor people in the developing world was cut from 52 percent to 17 percent. (The extremely poor are those who live on less than $1.25 a day.) Globalization helped millions of people emerge from poverty in countries such as China, India, Bangladesh, Brazil, Mexico, and Vietnam. As a group, in fact, the economies of developing nations grew at about 5 percent per capita, while developed nations such as the United States grew by only 2 percent.

Globalization has also enabled nations to specialize in producing those goods that they can produce most efficiently, and then trade for what they do not make. India has specialized in software production. France and Italy have specialized in fashion and footwear design, and Germany has specialized in chemical production. The United States has specialized in computer hardware design, while Mexico has specialized in television assembly. Many developing regions such as Central America and Southeast Asia have specialized in apparel, shoe, and other low-skill assembly operations. Such specialization has increased the world's overall productivity, which in turn has made all participating nations better off than they would be if each nation tried to produce everything on its own.

**Disadvantages of Globalization**

managers. For example, the laws that the managers of Dow Chemical Company are used to in the United States are very different from those they find in Mexico and other host countries. Laws regulating workers' exposure to workplace toxins and other safety hazards are stringent in the United States, but they are vague, lax, or altogether lacking in Mexico. Consumer product safety and labeling laws require careful quality controls, rigorous product tests, and warnings of risk in the United States. However, Mexico allows lower levels of quality control, much less testing of products, and fewer warnings directed at consumers. The environmental pollution laws of the U.S. government are strict and set at very high levels. Those of Mexico set much lower standards or they are unenforced.

Entire governments can be completely different from the kind of government managers are accustomed to in industrialized nations. Although the U.S. government has its shortcomings, it is responsive to the needs of its citizens. The same cannot be said for the governments of many other nations. Some governments are so corrupt, that their legitimacy is questionable. The former government of Haiti, for example, was notoriously corrupt and consistently promoted the interests and wealth of a small group of government elites at the expense of the needs of the general population.

Managers also often find themselves in countries that are very undeveloped compared with their home country.[56] Industrialized countries have relatively high levels of technological, social, and economic resources available.

However, the resources of poorer countries can be quite undeveloped. Technological sophistication, unions, financial markets, unemployment insurance, social security, and public education are widespread in more developed countries. However, they are lacking in many developing countries. So managerial decisions in developing countries affect people differently from the way they affect people in developed countries. Many developing countries do not provide unemployment insurance like the United States does. So layoffs inflict greater pains on workers in those nations than they would in the United States. A warning fixed on a product label may be suitable when it is sold to educated consumers in Japan. However, it may be inadequate when the same product is sold to illiterate consumers in a developing country.

Moreover, the cultural views of some nations that managers of multinationals enter can be so different from their own that they misinterpret or misunderstand many of the behaviors they encounter there. In the United States, for example, it is considered a lie for a company to provide the government with income statements that materially understate the company's actual earnings. In some periods of Italy's history, however, it was accepted as a matter of course that all businesses understated their annual earnings by about one-third when they reported their earnings to the government. Knowing this, the government would automatically inflate each company's income statements by one-third and levy taxes on this more accurate estimate. Companies would willingly pay the tax the government imposed on them. Thus, because of a cultural practice that was understood both by the business community and the government, Italian companies did not actually lie to their government when they understated their income. What looked like a lie to an outsider was, in the cultural context, a clearly understood signal of a company's true income.

What should the manager of a multinational do when in a foreign country whose laws, government, level of development, and culture are significantly different from what the manager is used to? Some scholars have suggested that when operating in less developed countries, managers from developed nations should try to stick to the higher standards that are typical in their home countries.[57] Yet this suggestion ignores the real possibility that introducing such practices may do more harm than good. For example, if an American company operating in Mexico pays local workers U.S. wages, it may draw skilled workers away from local Mexican companies that cannot afford the same high salaries. Other scholars have gone to the opposite extreme and argued that multinationals should always follow local practices and laws. However, going along with a local practice or law may be worse than trying to operate by the higher standards of a developed country. For example, the lower environmental standards of Mexico may permit pollution levels that seriously harm the health of local residents. Moreover, the governments of some countries are corrupt, and their laws serve the interests of ruling elites and not the public interest.

It is clear, then, that both a blanket rule to always go along with local practices, as well as one that always tries to adhere to the higher standards of developed nations, are both inadequate. Instead, managers who want to operate ethically in foreign countries must judge each case as it comes along. When judging the ethics of a particular policy, practice, or action in a foreign country, they must take into account the nature of the country's laws, how corrupt and how representative its government is, what the country's level of technological, social, and economic development is, and what cultural understandings affect the meaning of the policy, practice, or action that is being judged. In some cases, going along with local practices may be what is right, while in other cases it may be better to adopt the standards found in more developed nations. In some cases, managers may have to choose between staying in a country and going along with a local practice that is clearly and seriously evil, or doing what is right and leaving the country.

***Quick Review 1.8***
**Differences and Questions**

- Differences exist in laws, governments, practices, levels of development, and cultural understandings.
- They raise the question whether managers in foreign countries should follow local standards or their home standards.

**BUSINESS AND ETHICAL RELATIVISM** Certain cultural differences create a special problem for managers. Managers of multinationals often find it hard to know what to do when they encounter *moral* standards that are different from the ones they personally hold and that are accepted in their home country. Nepotism and sexism, although condemned as morally wrong in the United States, for example, are accepted as a matter of course in some foreign business environments. The people of certain Arab societies hold that business bribery is morally acceptable, although Americans believe that it is immoral. What should a manager do when a government official in such a society asks for a bribe to perform some routine duty the official is supposed to provide for nothing? Or when the hiring department of a U.S. factory in Thailand seems to hire only relatives of those already working for the factory? Or when a group of South American managers refuse to accept a woman as a manager because they feel that women cannot be good managers?

The fact that different cultures have different moral standards leads many people to adopt ethical relativism.

***Ethical relativism* is the theory that there are no ethical standards that are true absolutely.**

Ethical relativism holds that whether an ethical standard is true depends on (is relative to) what a particular culture or society accepts or believes. If a culture or society accepts or believes a certain ethical standard, then that standard is true for the people of that culture or society. However, if a culture or society rejects or does not believe in a certain ethical standard, then that standard is not true for the people of that culture or society. For the ethical relativist, then, no moral standards apply to everyone everywhere. A person's action is morally right if it accords with the ethical standards accepted in that person's culture, and it is wrong if it violates the ethical standards accepted in that person's culture. To put it another way: ethical relativism is the view that, because different societies have different moral beliefs, there is no rational way of determining whether a person's action is morally right (or wrong) other than by asking whether the members of the person's society believe it is morally right (or wrong).

The ethical relativist will say, for example, that it is wrong for a U.S. manager to engage in nepotism in the United States because everyone there believes that it is wrong. However, it is not wrong for a person in Thailand, for example, to engage in nepotism because people there do not see it as wrong. The ethical relativist would advise the manager of a multinational who works in a society whose moral standards are different from her own that she should follow the moral standards prevalent in the society in which she works. Since moral standards differ and since there are no absolute standards of right and wrong, the best a manager can do is follow the old adage, "when in Rome, do as the Romans do." But is ethical relativism a reasonable view to hold?

## On the Edge

### A Traditional Business

In over 28 countries, mostly North African nations, female circumcision—or female genital mutilation, as its critics call it—is generally accepted.[58] Female circumcision is normally performed when a girl is between 7 and 12 years old. It involves cutting the girl's external genitalia. In most countries, the procedure is done by a female "practitioner" who uses a small knife or razor blade but no anesthesia. A young girl will often resist, so several women must hold her down while the practitioner works. The women who perform circumcisions charge for their services and see their work as a business. It is estimated that in countries where the practice is widely accepted, the annual fees collected by all the businesses that provide circumcision services total tens of millions of dollars.

Mothers in these countries feel they must have their daughters circumcised because otherwise no "good" man will marry them. Many believe that circumcision controls a woman's sexual desires and cleanses her spiritually so that others can eat what she cooks. Although the practice is not mentioned in the Koran, many North African Muslims believe that female circumcision is required by certain sayings they attribute to Muhammad, the founder of Islam. However, Muslim scholars dispute both the authenticity and the interpretation of these sayings.

Many Americans and Europeans feel strongly that female genital mutilation is an immoral assault on a helpless and unwilling girl, an assault that provides her no medical benefit, risks serious infection, and permanently deprives her of the ability to feel sexual pleasure. They have pressured foreign governments to outlaw the practice and to crack down on the women who make a business of it because they are violating the human rights of thousands of girls.

Practitioners claim that Westerners who want to prohibit female circumcision are trying to impose their own morality on others. A Somali practitioner said: "This is a great offence and a great interference with our lives and our lifestyle. For too long Europeans have come into our countries and told us how to live our lives and how to behave and we believe that is totally unacceptable. We will not allow foreigners to tell us how to behave or put our businesses at risk any longer. In order for our daughters to be free they must have this procedure. It is their right as women and our obligation as adults to make them into the best young women we can. Circumcision is a fundamental part of becoming a young woman and we will not deny them that because of some misplaced sense of morality from foreigners."

Phillip Waites, a doctor and medical analyst for a news service noted, "The core issue here is whether or not Europeans have the right to step into another country and demand that they change their traditions and culture." Remarking on the many practitioners for whom female circumcision is a business, he said: "There aren't a whole lot of jobs in Somalia. There really isn't a whole lot of anything in Somalia frankly, and these women have a specialty that not only garners them a good living but also gives them a certain status in the country that they might not otherwise have."

#### WRITING PROMPT

**Journal: Ethical Relativism**

1. Is the business of providing female circumcision services morally wrong? Why? If a practitioner asks for a small business loan from a Western "micro-finance lender" such as www.Kiva.org, would it be wrong for the lender to refuse? Would it be wrong for the lender to agree? Explain.
2. Is it wrong for Westerners to pressure North African governments to prevent practitioners from doing female circumcisions?
3. Does this case support ethical relativism? Or does it suggest that there are certain actions that are wrong no matter what? Or neither of these positions?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

**CRITICISM OF ETHICAL RELATIVISM** The ethical relativist is clearly right to claim that there are numerous practices that are judged immoral by people in one society that people of other societies believe are morally acceptable. Some examples of practices societies disagree about include polygamy, abortion, infanticide, slavery, bribery, homosexuality, racial and sexual discrimination, genocide, patricide, and the torture of animals. Yet critics of ethical relativism have pointed out that it does not follow that *no* moral standards are binding on people everywhere. Although societies disagree about some moral standards, they agree on others. Critics of ethical relativism have argued, in fact, that there are certain basic moral standards that the members of any society must accept if that society is to survive and if its members are to cooperate with one another effectively.[59] Thus, all societies have norms against injuring or killing their own members, norms about using language truthfully among themselves, and norms against taking the goods that belong to other members of society. Moreover, anthropologists have found numerous moral values and norms that are universal; that is, that all known human groups recognize. Among these universals are the appropriateness of reciprocity; the appropriateness of cooperation; the prohibition of incest; the prohibition of rape; empathy; friendship; the difference between right and wrong; fairness; the requirement to compensate injuries; the goodness of courage; the requirement that parents care for their children; restrictions on some forms of violence; the prohibition of murder; the prohibition against breaking promises; the appropriateness of feeling guilt and shame for wrongdoing; the appropriateness of having pride for one's achievements; and the requirement that actions one could control should be treated differently from those one could not control.

In addition, many apparent moral differences among societies turn out on closer examination to hide deeper underlying similarities. For example, anthropologists tell us that in some Alaskan Inuit societies, it was morally acceptable for families to abandon their aged to die outdoors during times of hardship. Other societies have felt that abandoning someone to freeze to death outdoors is akin to murder. Yet on closer examination, it can turn out that underlying this difference between Inuit society and other societies is the same moral standard: the moral duty of ensuring the long-term survival of one's family. In their harsh environment, Inuit people may have had no way of ensuring the family's survival when food supplies ran short other than by abandoning their aged. Other societies have believed that family survival required protecting the elders who carried within them the knowledge and experience the family needed. The differences between Inuit people and other societies is not due to a real difference in values, but is due, rather, to the fact that one and the same value can lead to two different moral judgments when that value is applied in two very different situations.

Other critics of ethical relativism have pointed out that when people have different moral beliefs about some issue, it does not follow that there is no absolute truth about that issue nor that all beliefs about it are equally acceptable. All that follows when two people or two groups have different beliefs is that at least one of them is wrong. For example, the late philosopher James Rachels points out:

> The fact that different societies have different moral codes proves nothing. There is also disagreement from society to society about scientific matters: in some cultures it is believed that the earth is flat, and that disease is caused by evil spirits. We do not on that account conclude that there is no truth in geography or in medicine. Instead, we conclude that in some cultures people are better informed than in others. Similarly, disagreement in ethics might signal nothing more than that some people are less enlightened than others. At the very least, the fact of disagreement does not, by itself, entail that truth does not exist. Why should we assume that, if ethical truth exists, everyone must know it?[60]

The theory of ethical relativism, then, does not seem to be correct. However, even if the theory of ethical relativism is ultimately rejected, this does not mean that it has nothing to teach us. The ethical relativist correctly reminds us that different societies have different moral beliefs and that we should not simply dismiss the moral beliefs of other cultures when they do not match our own. However, ethical relativism seems to be mistaken in its basic claim that all moral beliefs are equally acceptable and that the only criteria of right and wrong are the moral standards prevalent in a given society. If ethical relativism is wrong, then there are some moral standards that should be applied to the behaviors of everyone, regardless of what society they live in. We will explore later what kind of standards these might be.

***Quick Review 1.9***
**Objections to Ethical Relativism**

- Some moral standards are found in all societies.
- Moral differences do not logically imply relativism.
- Relativism has incoherent consequences.
- Relativism privileges whatever moral standards are widely accepted in a society.

## 1.3.3: Integrative Social Contracts Theory

The upshot of our discussion is that there are two kinds of moral standards: those that differ from one society to another, and those that should be applied in all societies.

### Ethical Relativism and Incoherent Consequences

Perhaps the most important criticism of ethical relativism is that it has incoherent consequences. If ethical relativism were true, opponents claim, then it would not make sense to criticize the practices of other societies as long as their practices conformed to their own standards. For example, we could not say that child slavery, as practiced in many societies around the world, is wrong, nor that the discrimination practiced in the society of apartheid South Africa in the twentieth century was unjust, nor that it was immoral for the Germans to kill Jews in the Nazi society of the 1930s. For, in each of these societies, people were just doing what the standards of their society said they should do.[61]

**Interactive**

**Implies a Society's Moral Beliefs Are Correct**

Critics of ethical relativism argue that if ethical relativism were correct, then it would make no sense—in fact it would be morally wrong—to criticize any of the moral standards or practices accepted by our own society. If our society accepts that a certain practice—such as slavery—is morally right, then as members of this society, we too must accept that practice as morally right, at least according to ethical relativism. For example, ethical relativism implies that it was wrong for Southern abolitionists to object to slavery, since slavery was accepted in Southern society before the Civil War. According to critics, then, the theory of ethical relativism implies that whatever most of one's society believes about morality is automatically correct and so such beliefs cannot be criticized.

**Gives a Society's Moral Standards a Privileged Place**

One way of thinking about these two kinds of moral standards is to adopt a framework called Integrative Social Contracts Theory (ISCT).[62] ISCT provides a useful framework for understanding how to deal with moral differences.

Assuming that there are hypernorms that apply to all societies, the distinction between them and microsocial norms that ISCT makes provides a useful way to think about the interplay between absolute moral norms that apply to all people everywhere, and local norms that differ from one society to another. We have argued that there are absolute moral norms that should apply everywhere; what these might be is a question that we will discuss in the next chapter.

***Quick Review 1.10***
**Integrative Social Contracts Theory**

- Hypernorms should apply to people in all societies.
- Microsocial norms apply only in specific societies and differ from one society to another.

### Hypernorms and Microsocial Norms

According to the ISCT framework, there are two kinds of moral standards: hypernorms and microsocial norms.[63]

Interactive

**Hypernorms: Part of a Social Contract**

Hypernorms consist of those moral standards that should be applied to people in all societies. ISCT holds that it is useful to think of hypernorms as part of a social contract that all people have accepted, and to think of microsocial norms as part of a social contract that the members of a specific community have accepted. Examples of some hypernorms might be human rights principles and principles of justice that apply to all people in all communities.

Many critics reject the ISCT view that hypernorms should be thought of as part of a social contract that all reasonable people have accepted, while relativists reject the very idea that there are any absolute universal hypernorms. Nevertheless, the distinction between hypernorms and microsocial norms is a useful one.

**Microsocial Norms: Applied with Consent of Community**

**Relationship Between Hypernorms and Microsocial Norms**

## 1.4: Foundations of Moral Reasoning

**OBJECTIVE: Explain the deep foundations and structure of moral reasoning**

We have said that ethics is the study of morality and that a person begins to engage in ethics when he or she turns to look at the moral standards learned from family, church, friends, and society and begins asking whether these standards are reasonable or unreasonable and what these standards imply for the situations and issues we face. In this section, we examine more closely this process of examining one's moral standards and the reasoning process by which we apply our standards to the situations and issues we face. We begin by describing how a person's ability to use and critically evaluate moral standards develops in the course of a person's life, and then we describe some of the reasoning processes through which these moral standards are evaluated and used, and some of the ways they can go wrong.

### 1.4.1: Moral Development

Many people assume that our values are formed during childhood and do not change after that. In fact, a great deal of psychological research, as well as our own personal experience, demonstrates that as we mature, we change our values in deep ways. Just as people's physical, emotional, and cognitive abilities develop as they age, so too does their ability to deal with moral issues. In fact, just as identifiable stages of growth exist in physical development, the ability to make reasoned moral judgments develops in identifiable stages. As children, we are simply told what is right and what is wrong, and we obey so as to avoid punishment. As we mature into adolescence, these conventional moral standards are gradually internalized, and we start trying to live up to the expectations of family, friends, and surrounding society. Finally, as adults we learn to be critical about the conventional moral standards bequeathed to us by our families, peers, culture, or religion. We start to evaluate these moral standards and to revise them where we think they are inadequate, inconsistent, or unreasonable. We begin, in short, to engage in ethics and to develop moral principles that we feel are better and more reasonable than what we accepted earlier.

A good deal of psychological research shows that people's moral views develop more or less in this manner. Psychologist Lawrence Kohlberg, for example, who pioneered research in this field, concluded on the basis of over 20 years of research that a sequence of six identifiable stages exists in the development of a person's ability to deal with moral issues.[64] Kohlberg grouped these stages of moral development into three levels, each containing two stages. At each level, the second stage is the more advanced and organized form of the general perspective of that level.

**DECODING KOHLBERG** Kohlberg's theory is useful because it helps us understand how our moral capacities develop, and it reveals how we may mature in our understanding of our own moral standards. Research by Kohlberg and others has shown that, although people generally progress through the stages in the same sequence, not everyone progresses through all the stages. Kohlberg

### Kohlberg's Stages of Moral Development

The sequence of the six stages can be summarized as follows.[65]

Interactive

Kohlberg's model defines three levels of moral development for the human being, beginning in early childhood. Each level contains two progressive stages through which a person passes as he or she gains maturity. The three levels, preconventional, conventional, and postconventional, reflect the child's passage from believing right and wrong is dictated by others to an adult's full integration of universal moral principles. We look at each stage from the eyes of a child, young person, and mature adult within that stage.

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found that many people remain stuck at one of the early stages throughout their lives. Those who stay at the preconventional level continue to see right and wrong in the egocentric terms of avoiding punishment and doing what powerful authority figures say. Those who reach the conventional level, but never get past it, continue defining right and wrong in terms of the conventional norms and expectations of their social groups or of their nation and its laws. Further, those who reach the postconventional level and take a rational and critical look at the conventional moral standards they have been raised to hold will come to define right and wrong in terms of moral principles they have chosen because they are reasonable.

It is important to see that Kohlberg believes that the moral reasoning of people at the later stages of moral development is better than the moral reasoning of those at earlier stages. First, he claims, people at the later stages have the ability to see things from a wider and fuller perspective than those at earlier stages. The person at the preconventional level can see situations only from the person's own egocentric point of view; the person at the conventional level can see situations only from the familiar viewpoints of people in the person's own social groups; and the person at the postconventional point of view has the ability to look at situations from a universal perspective that tries to take everyone into account. Second, people at the later stages have better ways of justifying their decisions to others than those at earlier stages. The person at the preconventional level can justify decisions only in terms of how the person's own interests will be affected, and therefore justifications are ultimately persuasive only to the person. The person at the conventional level can justify decisions in terms of the norms of the group to which the person belongs, and so justifications are ultimately persuasive only to members of the person's group. Finally, the person at the postconventional level can justify his or her choices on the basis of moral principles that are impartial and reasonable and that any reasonable person can accept.

***Quick Review 1.11***
**Kohlberg's Three Levels of Moral Development**

- Preconventional stages: punishment and obedience orientation; instrumental and relative orientation
- Conventional stages: interpersonal concordance orientation; law and order orientation
- Postconventional stages: social contract orientation; universal principles orientation

**CRITICISMS OF KOHLBERG: CAROL GILLIGAN'S VIEW** Kohlberg's theory has been subjected to criticisms.[66] First, Kohlberg has been criticized for claiming that the higher stages are morally preferable to the lower stages. This criticism is surely right. Although the higher Kohlberg levels incorporate broader perspectives and more widely acceptable justifications, it does not follow that these perspectives are *morally* better than the lower ones. To establish that the higher stages are *morally* better will require more argument than Kohlberg provides. In later chapters, we will see what kind of reasons can be given for the view that the moral principles that define the later Kohlberg stages are morally preferable to the criteria used in the preconventional and conventional stages.

A second significant criticism of Kohlberg is one that arises from the work of psychologist Carol Gilligan. She argues that, although Kohlberg's theory correctly identifies the stages through which men pass as they develop, it fails to adequately trace out how women's morality develops.[67] Because most of Kohlberg's subjects were male, Gilligan has argued, his theory failed to take into account how women think about morality.

Gilligan claimed that there are "male" and "female" approaches to morality. Males, she argued, tend to deal with moral issues in terms of impersonal, impartial, and abstract moral principles—exactly the kind of approach that Kohlberg says is characteristic of postconventional thinking. However, Gilligan claimed, there is a second, female, approach to moral issues that Kohlberg's theory does not take into account. Females, Gilligan claimed, tend to see themselves as part of a web of relationships with family and friends. When females encounter moral issues, they are concerned with nurturing these relationships, avoiding hurt to others in these relationships, and caring for the well-being of others. For women, morality is primarily a matter of "caring" and "being responsible" for those with whom we have personal relationships. Morality is not a matter of following impartial principles. Gilligan claimed that the female approach to morality develops through stages that are different from those Kohlberg described. Moral development for women is marked by progress toward better ways of caring and being responsible for oneself and others with whom we are in relationship. In her theory, the earliest or preconventional level of moral development for women is one marked by caring only for oneself. Women move to a second or conventional level when they internalize conventional norms about caring for others and in doing so come to neglect themselves. As women move to the postconventional or most mature level, they become critical of the conventional norms they had earlier accepted, and they come to achieve a balance between caring for others and caring for oneself.

Is Gilligan right? Although additional research has shown that male and female moral development does not differ in the ways that Gilligan originally suggested, that same research has confirmed the claim that Gilligan has identified a way of thinking about moral issues that is different from the way that Kohlberg emphasizes.[68] Moral issues can be dealt with from a perspective of impartial moral principles or from a perspective of caring for persons and relationships, and these two perspectives are distinct. However, women as well as men sometimes approach moral issues from the perspective of impartial moral principles, and men as well as women sometimes approach moral issues from the perspective of caring for persons and relationships.[69] Although research on the "care perspective" that Gilligan described is still ongoing, it is clearly an important moral perspective that both men and women should take into account. We look more carefully at this care perspective in the next chapter, where we will assess its relevance to business ethics.

***Quick Review 1.12***
**Gilligan's Theory of Female Moral Development**

- For women, morality is primarily a matter of caring and responsibility.
- Moral development for women is progress toward better ways of caring and being responsible.
- Women move from a conventional stage of caring only for oneself, to a conventional stage of caring for others to the neglect of oneself, to a postconventional stage of achieving a balance between caring for others and caring for oneself.

**THE GOAL OF REFLECTIVE UNDERSTANDING** For our purposes, it is important to notice that both Kohlberg and Gilligan agree that there are stages of growth in our moral development. Both also agree that moral development moves from a preconventional stage focused on the self, through a conventional stage in which we uncritically accept the conventional moral standards of society around us, and on to a mature stage in which we learn to critically and reflectively examine how reasonable the conventional moral standards we earlier accepted are, and to develop more adequate standards of our own—both standards of caring as well as standards of impartiality.

We said earlier that you begin to engage in ethics when you begin to examine critically the moral standards you have accepted from family, friends, and society and ask whether these standards are reasonable or unreasonable. In terms of the stages of moral development that Kohlberg and Gilligan proposed, ethics begins when you move from a simple acceptance of the conventional moral standards that we absorb from society and try to critically and reflectively develop standards based on more adequate reasons and capable of dealing with a wider range of moral issues in a more adequate manner. The study of ethics is the process of developing our ability to deal with moral issues—a process that should enable you to acquire the more reflective understanding of "right" and "wrong" that characterizes the later postconventional stages of moral development. One of the central aims of the study of ethics is the stimulation of this moral development.

This point is important and one that should not be lost on the reader. The text and cases that follow are designed to be read and discussed with others—students, teachers, friends—to stimulate in ourselves the kind of moral development that we have been discussing. Engaged interaction and discussion of moral issues with the people around us develops our ability to move beyond a simple acceptance of the moral standards we absorb from family, peers, nation, or culture. By discussing, criticizing, and reasoning about the moral judgments that you and others make, you acquire habits of thinking and reasoning that you can use to decide for yourself the moral principles that you feel are reasonable because you have tested them in the heat of discussions with others.

The moral principles that are produced by the kind of analysis and reflection that are characteristic of the latter stages of moral development in both Kohlberg and Gilligan, then, are "better" but not because they come at a later stage. One set of moral principles is "better" than another only when it has been carefully examined and found to be supported by better and stronger reasons—a process that is enhanced through discussions with, and challenges from, other people. The moral principles that appear in the later stages of moral development, then, are better because and to the extent that they are the product of the kind of reasoned examination and discussion with others that tends to emerge as people improve their moral reasoning skills, grow in their understanding and knowledge of human life, and interact with others to develop a firmer and more mature moral perspective.

Kohlberg's (and Gilligan's) theory of moral development has been extended by psychologists who have looked at how moral development is related to self-identity and to the motivation to be moral. William Damon, who studies human development, found that "morality does not become a dominant characteristic of the self until middle adolescence."[70] This statement means that until middle adolescence, we tend not to see morality as an important part of who we really are. This point is significant because Damon also found that the more morality becomes part of who we are, the stronger our motivation to do what is morally right. In fact, there are "exemplary people" who have so united "self and morality" that when they do what is morally right, "rather than denying the self, they define it with a moral center [and so do not see] their moral choices as an exercise in self-sacrifice."[71] Psychologist Augusto Blasi has argued that part of the process of making morality part of who we feel we really are requires that we ask ourselves not only "What kind of person do I want to be?" but also "What kind of person should one be?"[72] Blasi points out that people have "reflexive desires, namely desires about their own desires," so another way of asking what kind of person we want to be is to ask, "What kind of desires do I want (or desire) to have?"[73] A major finding of research on moral identity is that it has an important influence on our moral reasoning. That is, in many situations, what we judge we should do depends on the kind of person we think we are. For example, if I see myself as an honest person, then I will generally decide I should be honest when tempted to lie. Ethicists have called this approach to ethics the *virtue* approach. Virtues are moral aspects of our character, such as honesty or courage. Reasoning based on the virtues is somewhat different from reasoning about moral principles. Exactly how it differs we will see when we discuss virtue ethics.

***Quick Review 1.13***
**Research on Moral Identity Suggests . . .**

- Morality is not an important part of the self until middle adolescence
- The more morality becomes part of the self, the stronger the motivation to be moral
- Judgments of right and wrong depend in part on the kind of person we think the self is, that is, on the virtues we think are part of one's self

**ROLE OF EMOTIONS IN MORAL DECISIONS** Ethics is not just a matter of logic, reasoning, and cognition. Our

### Blowing the Whistle on JCPenney's "Fake Sales"

Individuals at various stages of moral development find themselves making choices as a company employee. In 2013, a JCPenney employee revealed publicly that the company was putting on "fake" sales. Let's examine the ethical considerations that surround the company's discounting practices, the employee's decision to go public about them, and the company's response.[74]

**Interactive**

Ron Johnson, CEO of JCPenney for only 17 months, was fired on April 8, 2013. Under Johnson, company sales revenues fell by $4.3 billion, the company lost $1.3 billion, and the stock lost half its value. Johnson had instituted a new policy of "fair and square every-day" low prices. Yet his every-day low price policy alienated JCPenney's traditional customers, who preferred periodic sales with heavily discounted merchandise. Johnson's replacement was Mike Ullman, who got rid of the every-day low price policy and brought back the sales promotions that customers loved. Under the new management, the sales promotions came along with a sales strategy.

On July 24, 2013, Bob Blatchford, a JCPenney employee, appeared on NBC's *Today* show and said that JCPenney was systematically raising its prices so it could later claim it was selling its goods at lower "sale" prices, a practice that could be illegal. Blatchford said, "I saw a lot of pricing teams going through the store, raising the prices, mostly doubling—towels and clothing. Then they would go on sale, and they wouldn't always go on sale for 50 percent off. Not only was it a fake sale, but they [customers] were actually paying more than they would have been previously."

Before revealing what the company was doing, Blatchford said, he had contacted senior executives about what was going on; although they said they would look into it, nothing changed. So even though he knew it might cost him his job, he had gone public. "I thought it was wrong and I thought the public had a right to know," he said.

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emotions and feelings play a central role in our moral decisions.[75] We noted earlier that one of the defining features of moral standards is that they are connected to special emotions and feelings, such as guilt, shame, compassion, and empathy. In addition, moral thinking is, and has to be, aided by our emotions. Of course, emotions can sometimes get in the way of clear thinking. However, we cannot engage in moral reasoning without the presence of our emotions.[76] People who have suffered damage to those parts of the brain that are responsible for producing emotions, and so who no longer experience emotions, become incapable of engaging in moral reasoning. They are still able to reason logically and can think abstractly, but they can no longer apply moral standards to their interactions with other people.

Phineas Gage, for example, was a well-liked and respected young man who one day at work happened to lean over an explosive charge while holding an iron rod. The charge exploded with such force that it instantly drove the rod upward through his cheek, behind his left eye, through the front part of his brain, and out at high speed through the top of his skull. Miraculously, he survived and recovered without any loss of his ability to walk, move, perceive, speak, think, remember, and reason. However, the front part of the brain plays a critical role in the production of emotions, so Gage lost most of his ability to experience emotions. With that loss, he also lost something else. According to witnesses, he became

> fitful, irreverent, indulging at times in the grossest profanity which was not previously his custom, manifesting but little deference for his fellows, impatient of restraint or advice when it conflicts with his desires, at times pertinaciously obstinate, yet capricious and vacillating, devising many plans of future operations, which are no sooner arranged than they are abandoned.[77]

With the loss of his emotions, the young Gage lost the ability to engage in the kind of moral thinking that previously enabled him to deal ethically with his fellow human beings. Many other people who, like Gage, have lost the ability to experience emotions also lost the ability to engage in moral reasoning. The link between moral reasoning and emotions has also been supported by studies of the parts of the brain that become active when we engage in moral reasoning. One of the parts of the brain that becomes active during moral reasoning is the part that is active when we experience emotions, the part of the brain that Gage lost.

How do our emotions and reasoning work together? Consider a simple example: our emotional reaction—empathy—to seeing a woman in front of us being treated badly. The sight of her mistreatment will suddenly focus our attention on her and how she feels and what is happening to her, driving other concerns out of our mind. The information we get from this focused perception might then make us feel sympathy. In turn, we may be moved to ask ourselves, and reason about, whether she deserves to be treated as she is being treated. If we judge that she does not deserve it and is being treated unjustly, we may then feel anger. The anger may drive us to think about what we can do to end the injustice, and, perhaps, move us to act. This is just a simple example of how our feelings and reasoning can work together. Moreover, it should be enough to suggest how some of our feelings can even give us information about what is going on around us. Empathy, for example, allows us to know what the victim is feeling and to even experience what she is experiencing. Emotions such as sympathy can make us recognize that we are faced with a situation that raises ethical issues and motivate us to try to understand and reason about what is happening. Anger can drive us to think about what we can and ought to do, and then motivate us to act.

A lot of the discussion that follows focuses on the reasoning processes upon which moral decisions are based. However, it is important to keep in mind that these reasoning processes are driven by, and suffused with, emotions and feelings. Reasoning about ethics is important, but without emotions we would be like Gage: unable to become focused on and concerned about ethics and no longer moved to engage in moral reasoning about ourselves and those around us.

## 1.4.2: The Structure of Moral Reasoning

We have used the term moral reasoning repeatedly. What is its exact definition?

> ***Moral reasoning* refers to the reasoning process by which human behaviors, institutions, or policies are judged to be in accordance with or in violation of moral standards.**

Moral reasoning always involves three components:

1. An understanding of our moral standards and what they require, prohibit, value, or condemn
2. Evidence or information about whether a particular person, policy, institution, or behavior has the features that these moral standards require, prohibit, value, or condemn
3. A conclusion or moral judgment that the person, policy, institution, or behavior is prohibited or required, right or wrong, just or unjust, valuable or condemnable, and so on.

In the following example of moral reasoning, the author offers reasons for the moral judgment that some U.S. social institutions are unjust:

> Blacks and other minorities live in our society and a disproportionate number fight the wars that keep our society safe: 20 percent of the military is black yet only 11 percent of the U.S. is black. Minorities take the dirty jobs (30 percent of cleaners are Hispanics, who are 7 percent of the workforce) and contribute cheap labor (44 percent of farm workers are Hispanic) that lets us live and eat disproportionately well. Yet minorities do not get society's benefits. Twenty-six percent of blacks and 25 percent of Hispanics fall below the poverty line compared to 12 percent of whites. Black and Hispanic infant mortality is double that of whites. Blacks are 11 percent of the U.S. workforce, but hold only 7 percent of all management positions and 6 percent of all engineering jobs. Discrimination that prevents minorities from getting out of their society what they contribute is unjust.[78]

In this example, the author has in mind a moral standard that he sets out at the end of the paragraph: "Discrimination that prevents minorities from getting out of their society what they contribute is unjust." The earlier part of the paragraph is devoted to citing factual evidence showing that U.S. society exhibits the kind of discrimination this moral principle condemns. The author's moral judgment about U.S. society is not explicitly stated, but it is obvious enough: U.S. society is unjust. So this example of moral reasoning has the usual components:

1. A moral standard on which the moral judgment is based
2. Evidence or factual information about the institution that is being judged
3. A moral judgment or conclusion that is supposed to be drawn from (1) and (2)

Schematically, then, moral or ethical reasoning generally has the kind of structure indicated in Figure 1.1.[79]

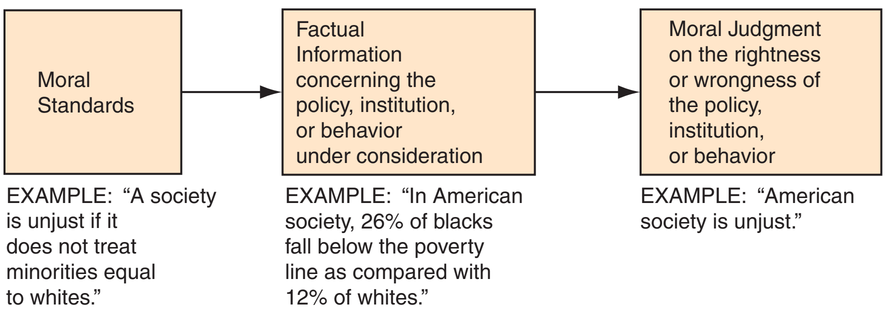
***Quick Review 1.14***
**Psychological Research on Moral Reasoning**

- It suggests that emotions are necessary for moral reasoning.

**EXPLICIT AND NONEXPLICIT STATEMENTS** Sometimes one of the three parts of moral reasoning is not expressed. In the example of moral reasoning we have just reviewed, the conclusion was not explicitly stated because it was so obvious. More often, however, people do not explicitly state the moral standards on which their moral judgments are based, and we may have to search for them. For example, a person might say, "U.S. society is unjust because it allows 26 percent of blacks to fall below the poverty line, while only 12 percent of whites are below the poverty line." Here the moral judgment is "U.S. society is unjust" and the evidence is "it allows 26 percent of blacks to fall below the poverty line while only 12 percent of whites are below the poverty line." But what is the moral standard on which this judgment is based? The unspoken statement of moral standard has to be something like: "A society is unjust if it allows a higher percentage of people of one race to be poorer than those of another race." How do we know? Because the factual information that "26 percent of blacks fall below the poverty line, while 12 percent of whites are below the poverty line" can serve as evidence for the moral judgment that U.S. society is unjust only if we accept the moral standard that "a society is unjust if it allows a higher percentage of people of one race to be poorer than those of another race." Without this moral standard, the information would have no logical relation to the conclusion and so could not be evidence for the conclusion. So to uncover the unspoken moral standards someone is using when he or she makes a moral judgment, we have to trace his or her reasoning back to its moral assumptions. This involves asking the following questions:

1. What factual information does the person think is evidence for his or her moral judgment?
2. What moral standards are needed to logically relate this factual information to his or her moral judgment?[80]

**Figure 1.1** Structure of Moral Reasoning



One reason we do not make our moral standards explicit in our moral reasoning is that we generally assume that these moral standards are obvious. So we put most of our efforts into looking at whether there is evidence that a given situation does or does not violate our (unspoken) moral standards. However, we put little or no effort into examining the (unspoken) moral standards on which our judgments rely. Yet if we do not make our moral standards explicit, we can end up basing our judgments on moral standards we do not even realize we hold. Or, worse, we may rely on standards that we would reject if we explicitly thought about them. Our unspoken moral standards might be inconsistent, they might be unreasonable, or they might have implications we do not accept. In the example of moral reasoning, we have been discussing the unspoken moral standard: A society is unjust if it allows a higher percentage of people of one race to be poorer than those of another race. Now that we have made this standard explicit, we might not be so sure it is right. For example, some people have suggested that the inequalities in the percentages of each race that are poor are the result of different natural characteristics the two races possess. If they are the result of natural differences, then do such inequalities show that a society is unjust? We may reject the suggestion that inequalities are the result of natural racial differences, but the suggestion should at least lead us to look more carefully at whether the moral standards we are using are justified. Making explicit the moral standards upon which our moral judgments are based, then, is crucial to understanding whether the moral standards that underlie our reasoning are really justified.

The moral standards upon which adults base their moral judgments are usually a lot more complex than these simple examples suggest. A person's moral standards usually include qualifications, exceptions, and restrictions that limit their scope. Also, they may be combined in various ways with other important moral standards. Still, the general method of uncovering people's unspoken moral standards remains roughly the same, however complex their standards are. We need to ask: What general moral standards are needed to relate this person's factual evidence to the moral judgment he or she is making?

Hopefully, this explanation of moral reasoning has not suggested that it is always easy to separate factual information from moral standards in moral reasoning—nothing could be further from the truth. In practice, the two are sometimes intertwined in ways that are hard to disentangle. Also, there are several theoretical difficulties in trying to draw a precise line separating the two.[81] Although the difference between the two is usually clear enough for practical purposes, the reader should be aware that sometimes the two cannot be clearly distinguished.

***Quick Review 1.15***
**Moral Reasoning Involves . . .**

- The moral standards by which we evaluate things
- Information about what is being evaluated
- A moral judgment about what is being evaluated

**EVALUATING MORAL REASONING** Not all moral reasoning processes are equal. Ethicists use three main criteria to evaluate the quality of a piece of moral reasoning.[82]

When inconsistencies between one's moral standards are uncovered, one (or both) of the standards has to be changed. Following our example on whether to obey an employer, I might decide that orders of employers have to be obeyed except when they threaten human life. Notice that, to determine what kinds of modifications are called for, one has to examine the reasons one has for accepting the inconsistent standards and weigh these reasons to see what is more important and worth retaining and what is less important and subject to modification. In this example, for instance, I may have decided that the reason that employee loyalty is important is that it safeguards property, but the reason that the refusal to endanger people is important is that it safeguards human life. Human life, I then decide, is more important than property. This sort of criticism and adjustment of one's moral standards is an important part of the process through which moral development takes place.

There is another kind of consistency that is perhaps even more important in ethical reasoning.

Consistency also refers to the requirement that one must be willing to accept the consequences of applying one's moral standards consistently to all persons in similar circumstances.[83] This consistency requirement can be phrased as follows.

Suppose that "doing A" refers to some type of action, and "circumstances C" refers to the circumstances in which someone carried out that action. Then, we can say the following:

> If you judge that one person is morally justified (or unjustified) in doing A in circumstances C, then you must accept that it is morally justified (or unjustified) for any other person to perform any act relevantly similar to A, in any circumstances relevantly similar to C.

That is, you must apply the same moral standards to the action of one person in one situation that you applied to another that was relevantly similar. (Two actions or two circumstances are "relevantly similar" when all those factors that have a bearing on the judgment that an action is right or wrong in one case are also present in the other.) For example, suppose that I judge that it is morally permissible for me to fix prices because I want the high profits. If I am going to be consistent, I have to hold that it is morally permissible for my *suppliers* to fix prices when they want high

### Criteria for Evaluating Moral Reasoning

Moral reasoning must be logical; the evidence used to support it must be accurate, relevant, and complete, and moral standards must be consistent.

Interactive

**Moral Reasoning Must Be Logical**

First, moral reasoning must be logical. This means that when we evaluate a person's moral reasoning, we should first make the person's unspoken moral standards explicit. We should also understand what evidence the person offers to support his or her conclusion, and know exactly what the person's conclusion is. Then, we can determine whether the person's moral standards together with the evidence he or she offers logically support his or her conclusion.

**Factual Evidence Cited Must Be Accurate, Relevant, and Complete**

**Moral Standards Must Be Consistent**

profits. If I am not willing to consistently accept the consequences of applying to other, similar persons the standard that price fixing is morally justified for those who want high prices, I cannot rationally hold that the standard is true in my own case.

The consistency requirement is the basis of an important method of discovering that we need to change or modify our moral standards: the use of counterexamples or hypotheticals. If we are wondering whether a moral standard is acceptable, we can often test it by seeing whether we are willing to accept the consequences of applying that standard to other similar hypothetical cases. For instance, suppose that I claim it was morally justified for me to lie to protect my own interests because "it is always morally justified for a person to do whatever will benefit himself or herself." We can evaluate whether this principle is really acceptable by considering the hypothetical example of an individual who knowingly injures me or someone I love, and who claims he or she was morally justified because the injury was to his or her own benefit. If, as is likely, I do not think another person would be morally justified in injuring me or someone I love simply because it benefits him or her, then I need to qualify or reject the principle that "it's always morally justified for a person to do whatever will benefit himself or herself." I have to qualify or reject it because consistency requires that if I really accept the idea that I am justified in injuring someone when it benefits me, then I would have to accept that anyone else would be justified in injuring me whenever it benefits him or her. The point is that hypothetical examples can be used effectively to show that a moral standard is not really acceptable and so must be rejected or at least modified.

***Quick Review 1.16***
**Moral Reasoning Should . . .**

- Be logical
- Rely on evidence or information that is accurate, relevant, and complete
- Be consistent

## 1.4.3: Impediments to Ethical Behavior

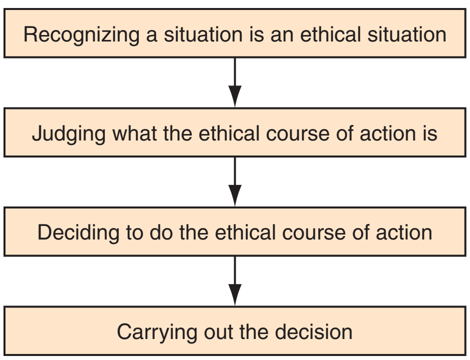
We have spent some time discussing what moral reasoning is. However, moral reasoning is only one of the processes that lead up to ethical or unethical behavior. Studies of the main steps that lead up to ethical or unethical behavior have converged on a view that was first proposed by moral psychologist James Rest. He found that four main steps precede moral action:

1. We recognize or become aware that we are faced with an ethical issue or situation (i.e., an issue or situation to which we can respond ethically or unethically).
2. We make a judgment about what the ethical course of action is.
3. We form an intention or decision to do or not do what we judge is right.
4. We carry out or act on the intention or decision we have made.[84]

These four steps (see Figure 1.2) do not have to occur in sequence. In fact, they may all occur simultaneously. Moreover, it is not always easy to distinguish them from each other, especially when they are simultaneous.

Notice that moral reasoning is the second step in the process. That is, moral reasoning is involved when we make a judgment about what the ethical response to an issue or situation should be. Moral reasoning, as we will see, is not the only way to make a decision about what the right thing to do is. Based on Rest's model, we are going to look at four main steps that lead to ethical (or unethical) behavior. We will also look closely at several impediments that can influence these steps. Understanding these impediments will perhaps help you deal with them effectively when you encounter them in your own life.

**Figure 1.2** The Four Steps Leading to Ethical Behavior




**STEP ONE: RECOGNIZING AN ETHICAL SITUATION** Every day we encounter situations that raise ethical issues. Before we can even start thinking about those issues, we must first recognize that the situation we have encountered is one that calls for ethical reasoning. We can see or categorize a situation in many different ways. To deal with each type of situation, we use ways of thinking that are appropriate for that type of situation. For example, we can see a situation as being a "business" situation that calls for using business rules and business reasoning. Or we can see it as a "legal" situation or a "family" situation. When a situation is recognized as a *business* situation, we may start thinking about what we can do to save money or about how our actions will affect revenues, sales, or profits. When a situation is seen as a *legal* situation, we may start thinking about the laws or regulations that apply to the situation. We may ask whether this or that course of action would be legal and what we need to do to comply with the law. When we see a situation as a *family* situation, we may start thinking of what a parent, son, daughter, or husband should do in this kind of situation. We can use the word *frame* to refer to the type of situation we think we have encountered *and* the kind of thinking that should be used to deal with that type of situation. Most situations, of course, will fall within several frames. A business situation can also be a personal one, and a legal situation can also involve family.

Besides business, legal, and personal frames, we also apply moral or ethical frames to situations. When we "frame" a situation as a moral or ethical situation, we recognize it as one that raises ethical questions or issues, and we start thinking about it in moral ways. In other words, we start using moral reasoning and moral standards to deal with it. Situations that we correctly frame as "ethical" will ordinarily also fall within some other frame, such as a legal or business frame; that is, a legal or business situation can also be an ethical one. What are the features of situations that lead us to frame them as ethical situations? Some psychologists have argued that we can and do use six criteria to decide whether to frame a situation as an ethical situation calling for ethical reasoning.[85] Simplified somewhat, the six criteria are as follows:

1. Does the situation involve the infliction of serious harm on one or more people?
2. Is the harm concentrated on its victims so that each victim will, or already has, sustained a significant amount of harm?

3. Is it likely that the harm will occur (or has actually occurred)?
4. Are the victims proximate (i.e., close or accessible to us)?
5. Will the harm occur fairly soon (or has it already occurred)?
6. Is there a possibility that the infliction of harm violates the moral standards we or most people accept?

The more of these questions that we answer affirmatively, the more likely we are to frame the situation as an ethical one calling for ethical reasoning. Notice that we can use these criteria to determine whether we *should* frame a situation as an ethical one. That is, we can deliberately use these six questions to determine whether the situation before us is one we should be treating as an ethical situation. The more of these questions that we answer affirmatively the more likely that we *should* frame the situation as ethical. We can sharpen our ability to recognize ethical situations, then, by keeping in mind that they involve harm that is concentrated, likely, proximate, imminent, and that possibly violates our moral standards.

A number of impediments can get in the way of recognizing an ethical situation. Albert Bandura identified eight forms of *moral disengagement* that can prevent us from recognizing or becoming aware that a situation is an ethical situation.[86] (Alternatively, these can be described as patterns of thought we can more or less consciously use to keep ourselves from that recognition or awareness.)

The eight forms of moral disengagement are obstacles that, without our knowledge, can prevent us from framing the situation we are in as an ethical situation. In that way, they can keep us from thinking about the situation in moral or ethical terms. However, we can also deliberately use these forms of moral disengagement to avoid framing a

### Forms of Moral Disengagement

Eight main forms of moral disengagement function as impediments to framing a situation as ethical.

Interactive

**1. Euphemistic Labeling**

We can use euphemisms to change or veil the way we see a situation we have encountered. Instead of thinking about the fact that we are firing people, for example, we try to think of what we are doing as "downsizing," "rightsizing," or "outsourcing." The U.S. military refers to the killing of civilians as "collateral damage." Politicians have referred to torture as "enhanced interrogation techniques." They have also referred to lies as "misstatements," "technically inaccurate statements," or "less than precise words." By using such euphemisms, we change how we see the situation. Instead of framing it as an ethical situation, we frame it to ourselves as only a business, a military, or a political one.

**2. Rationalizing Our Actions**

**3. Diminishing Comparisons**

**4. Displacement of Responsibility**

**5. Diffusion of Responsibility**

**6. Disregarding or Distorting the Harm**

**7. Dehumanizing the Victim**

**8. Redirecting Blame**

situation as an ethical situation. We might more or less unconsciously think that seeing a situation in ethical terms might force us to admit that we are doing something wrong. As I am sure you have already realized, all of these forms of disengagement are common occurrences in our ordinary daily human life. They are just as common in business where they are invoked by employees, especially when their company is discovered to be engaged in unethical behavior. Being aware of these obstacles may help you avoid them in your own future work life.

***Quick Review 1.17***
**On Recognizing a Situation as Ethical**

- Doing so requires framing it as one that requires ethical reasoning.
- A situation is likely to be seen as ethical when it involves serious harm that is concentrated, likely, proximate, imminent, and potentially violates our moral standards.
- Obstacles to recognizing a situation is ethical include euphemistic labeling, rationalizing our actions, diminishing comparisons, displacement of responsibility, diffusion of responsibility, disregarding or distorting the harm, dehumanizing the victim, and redirecting blame.

**STEP TWO: JUDGING WHAT THE ETHICAL COURSE OF ACTION IS** Before we make a judgment about a situation, we need reliable information about it. Our attempts to gather such information, however, can be affected by biases that prevent us from getting the kind of information we need. A bias is an assumption that distorts our beliefs, perceptions, and understanding of a situation.

There are, then, a number of biases about ourselves, about others, and about the world around us that lead us to mistaken beliefs about the situations we encounter. If we are not aware of the influence of such biases, we may assume that our decisions are based on solid information. In fact, we may be basing our judgments on distortions or falsehoods. Perhaps even worse, these biases may make us confident that we are right when in fact we are completely wrong.

***Quick Review 1.18***
**A Judgment about the Ethical Course of Action . . .**

- Requires moral reasoning that applies our moral standards to the information we have about a situation
- Requires realizing that information about a situation may be distorted by biased theories about the world, about others, and about oneself

**STEP THREE: DECIDING WHETHER TO DO WHAT IS RIGHT** Even if I know what the morally right course of action is, I may not decide to do what is right. People often choose unethical behavior even though they know it is unethical, or they fail to commit to what is ethical although they know it is the ethical course of action. That is, in fact, the essential nature of evil: knowing something is wrong but deciding to do it anyway. A number of factors influence whether we decide to do what we know is right, or decide instead to do what we know is wrong.

People's decisions to do what is ethical are greatly influenced by their surroundings. Particularly important in business is a person's organizational surroundings, which includes the ethical climate and the ethical culture of the organization.[87]

*Ethical climate* refers to the beliefs an organization's members have about how they are *expected* to behave. In organizations with "egoistic" climates, employees feel they are expected to be self-seeking and so they are. In organizations with "benevolent" climates, employees feel they are expected to support their stakeholders. These include employees, customers, suppliers, stockholders, and the community. Not surprisingly, members of organizations with egoistic climates find it harder to commit to doing what they know is right, than members of organizations with benevolent climates.

*Ethical culture* refers to the kind of behavior an organization *encourages or discourages* by repeated use of examples of appropriate behavior, incentives for ethical behavior, clear rules and ethics policies, rewards for exemplary conduct, stories of notable ethical actions, etc.

While ethical climate refers to employee beliefs about an organization's ethical expectations, ethical culture refers to the ways an organization encourages or discourages ethical behaviors. The culture of some organizations encourages and rewards only business objectives with no attention to ethics. The culture of other organizations encourages and rewards ethical behavior and not just bottom-line results. Organizations with a strong ethical culture make it easier to decide to do what is right. Organizations with strong business cultures can make it harder to decide to do what is right.

Organizations can also generate something called "moral seduction." **Moral seduction** refers to the subtle pressures that can gradually lead an ethical person into decisions to do what he or she knows is wrong. A team of psychologists found, for example, the following:

> Moral seduction occurs one step at a time. For example, in one year, an auditor might decline to demand that the client change an accounting practice that is at the edge of permissibility. The next year, the auditor may feel the need to justify the previous year's decision and may turn a blind eye when the client pushes just past the edge of permissibility. The following year, the auditor might endorse accounting that clearly violates GAAP rules in order to avoid admitting the errors of the past two years and in the hope that the client will fix the problem before

### Three Forms of Bias

Several forms of bias have been studied, and these are usually put into three groups.[88, 89, 90]

**Interactive**

**Biased Theories about the World**

**Bias Theories about Others**

**Bias Theories about Oneself**

Perhaps not surprisingly, research has shown that our own views of ourselves tend to be flawed. We tend to believe (unrealistically) we are more capable, insightful, courteous, honest, ethical, and fair than others. As well, we are overconfident about our ability to control random events. Most of us believe we deserve any rewards, bonuses, or pay increases that we receive for the work we do. We believe we deserve them because we believe we contribute more to the organization's success than others in similar positions. We tend to be overly optimistic about our future because we overestimate the likelihood that we will experience good events. At the same time, we underestimate the likelihood that we will experience bad events.

**Example**

For example, people believe that they are less likely than others to experience divorce, alcoholism, or a serious auto injury. Most of us also assume that we are immune to risk. Because they believe they are immune to risks, managers sometimes commit their organization to risky courses of action. BP's managers, for example, decided not to invest in safety measures, thereby committing the company to a risky future. That decision led to the disastrous 2010 Gulf oil spill. BP's managers seemed to have had a false confidence that matters could not go wrong while they were in charge.

We also tend to be overly confident about what we think we know. In a series of psychology experiments, people were asked several factual questions (e.g., "Which city is farther north, Rome or New York?"). Most regularly overestimated the probability that

the next year's audit. By the fourth year, the auditor and client will both be actively engaged in a cover-up to hide their past practices.[91]

In an organization in which moral seduction occurs, a new employee can gradually be drawn into accepting unethical practices. First, the employee may be asked to do something that is only slightly questionable, perhaps as a favor or to be a "team player." Next, the employee may be asked to go along with something just slightly more serious. Finally, the employee may find himself deeply involved in the unethical practices of the organization. The employee may be so compromised by his past actions that he feels he has to continue his involvement. Moral seduction can lead a person to decide to do what the person knows in his heart is unethical and should not be done.

***Quick Review 1.19***

**Influences on Deciding to Do What Is Ethical**

- The climate of an organization
- The culture of an organization
- Moral seduction

**STEP FOUR: CARRYING OUT ONE'S DECISION** Good intentions do not always result in good behavior, since we often fail to do what we intended to do. I may be genuinely committed to doing what is right, but when the time comes to act, I may lack the determination to do what I intended.

Several impediments, then, can trip up a person even at the fourth and final stage of the road to ethical behavior, which is the stage of actually carrying out a decision to do what is right. Three such impediments are people's ego strength, their views about whether they are in control of

### Factors That Influence a Person's Action

What factors influence whether a person acts on the moral decisions he or she has made?[92, 93, 94]

Interactive

**Ego Strength** | **Locus of Control** | **Response to Authority**

There is the personal or individual factor that Greek philosopher Aristotle called "weakness of will" and its opposite, "strength of will." Strength of will refers to our ability to regulate our actions so that we resolutely do what we know is right even when powerful emotions, desires, or social pressures urge us not to. Weakness of will refers to the inability (or low ability) to regulate our actions so that we fail to do what we know is right when emotions, desires, or external pressures tempt us. Strength of will is similar to what some psychologists call "ego strength." This is the ability to be resistant to impulses and to follow one's own convictions. Some people have a high level of ego strength, while others have low levels. Aristotle argued that a person develops weakness of will by repeatedly giving in to the temptation to overindulge one's appetites and emotions. On the other hand, by repeatedly resisting the temptation to overindulge one's appetites and emotions, a person develops strength of will.

what happens to them, and their willingness to obey authority figures. Other impediments to doing what we have decided is right can only be mentioned here. They include the pressure our peers put on us to do what we know is wrong, fears of the personal costs of doing what we know is right, and limited self-control or limited impulse-control.

Impediments, then, can hamper any of the four steps that should lead up to ethical behavior which are as follows:

- recognizing an ethical issue
- making a judgment about the right thing to do
- forming the intention to do what we judge to be right
- carrying out our intention

We have described these impediments so that armed with the knowledge of what they are and how they can impede you, you will be better equipped to overcome them.

## 1.5: Moral Responsibility and Blame

**OBJECTIVE: Assess the factors that define and refine the concept of moral responsibility**

So far our discussion has focused on judgments about right and wrong and good and evil. Moral reasoning is sometimes directed at a different kind of judgment: determining whether a person is morally responsible for an injury or for a wrong.[95] A judgment about a person's moral responsibility for wrongdoing is a judgment that the person acted intentionally and so should be blamed or punished, or should pay restitution.

The kind of moral responsibility we are discussing here should not be confused with a second but distinct kind of use of the term. The second use of the term "moral responsibility" is sometimes used to mean "moral duty" or "moral obligation."

## Ethical Application

### BFGoodrich and Moral Responsibility

In the case of BFGoodrich's compact aircraft brakes, when we say, "Vandivier had a moral responsibility not to lie," we are using the words "moral responsibility" to mean "moral obligation." This is *not* the kind of moral responsibility that we are talking about here. The kind of moral responsibility we are discussing is the kind that means a person is *to blame* for something. Suppose we say, for example, "Vandivier is morally responsible for the deaths of any pilots who crashed when trying to land the A7-D plane." Then we are using the words "is morally responsible" to mean "is to blame." It is this second meaning of moral responsibility that we are talking about here.

Getting clear about what moral responsibility (i.e., being to blame) involves is important for several reasons:

1. Most important, determining who is morally responsible for a wrong allows us to identify who should fix the wrong. If, for example, you are morally responsible for harming your neighbor, then you are the one who should compensate your neighbor for his or her losses.
2. Determining who is morally responsible for a wrongdoing allows us to ensure that we do not mistakenly punish, penalize, or blame an innocent person. Most businesses, for example, have complex rules against "conflicts of interest." Employees sometimes break these rules without realizing what they are doing. It would be a mistake to punish such employees, since they really were not morally responsible for what they did.
3. Determining you are not morally responsible for someone's injury helps to ensure you do not suffer shame or guilt when you should not be feeling these emotions. For example, if you inflict a bad injury on a fellow worker while operating a machine, you will probably feel pretty bad about what happened. However, you should feel guilty or ashamed only if you are morally responsible for the injury. If, say, the injury was an unavoidable accident, then you are not morally responsible and should not feel guilty or ashamed.
4. Knowing exactly what moral responsibility is may help keep us from wrongly trying to rationalize our conduct. When a person realizes that her actions resulted in serious injuries to others, she may not want to accept her responsibility for what she did. She may then try to escape responsibility for her actions by coming up with rationalizations that she can use to deceive herself and others. Understanding what moral responsibility involves, then, can help us avoid rationalizations and self-deception.

## 1.5.1: When Is a Person Morally Responsible?

People are not always morally responsible for the injuries they inflict on others. For example, a person, who injures someone by accident is "excused" from any blame. So when is a person morally responsible—or to blame—for an injury? We can summarize the traditional view in this way: a person is morally responsible for an injury when the person *caused* the injury and did so *knowingly* and *of his or her own free will*. However, this view ignores the fact that people are sometimes responsible for injuries that they did not cause, but which they could and should have prevented. That is, they are morally responsible for their omissions when they had a duty to act. So a more accurate—but more complicated—way of characterizing moral responsibility is to consider the necessary conditions that underlie it.

A person is morally responsible for an injury or a wrong if

1. The person caused or helped cause it, or failed to prevent it when he or she could have and should have
2. The person did so knowing what he or she was doing
3. The person did so of his or her own free will

For shorthand purposes, we will refer to the three conditions of moral responsibility as follows:

1. Causality
2. Knowledge
3. Freedom

The absence of any of these three conditions will completely eliminate a person's responsibility for an injury and so will fully "excuse" a person from any blame for the injury.[96] For example, several asbestos manufacturers have been judged responsible for the lung diseases suffered by some of their workers.[97] The judgment was based in part on the finding that the manufacturers should have warned their workers of the known dangers of working with asbestos. Yet they knowingly failed to perform this duty, and the lung diseases were a foreseen result of their failure to warn. In their defense, some asbestos manufacturers denied the *causality* requirement. They claimed that the lung injuries suffered by their workers were not caused by working with asbestos, but by smoking. Other manufacturers denied the *knowledge* requirement. They claimed that they did not know that conditions in their plants would cause lung cancer in their workers. Still others denied the *freedom* requirement. They said that they were not free to prevent the injuries because they had tried to get their workers to wear protective masks, but the workers refused. So, they argued, the workers were injured because of circumstances that the manufacturers could not change. Most courts did not accept any of these claims. The point here is that if any of these claims were true, then the manufacturers would not have been morally responsible for the lung diseases of their workers.

**CONDITIONS FOR MORAL RESPONSIBILITY** It is important to understand these three conditions well enough to be able to judge on your own whether a party (you or someone else) was morally responsible for something. Let us begin by examining the first requirement for moral responsibility. This is the requirement that the person must either cause the injury or wrong or else must fail to prevent it when he or she could and should have done so. In many cases, it is easy to determine whether a person's actions "caused" an injury or a wrong (such actions are *commissions*). Yet this is not so easy when a party does not cause an injury but merely fails to prevent it (such failures are *omissions*).

## Ethical Application

### Nike in Developing Countries

Nike, the athletic shoe and apparel company, was long at the center of a controversy over its responsibility for the mistreatment of the workers who make its shoes. Nike does not actually manufacture any of the athletic shoes it sells. Instead, Nike designs its shoes in Seattle, Washington, and then pays other companies in developing countries to make the shoes according to its designs. It was these foreign supplier companies (in China, Indonesia, India, etc.) that directly mistreated and exploited their workers. Nike claimed that it was not morally responsible for this mistreatment because the suppliers caused the injuries, not Nike. However, critics responded that although Nike did not directly cause the injuries, the company could have prevented them. The company had the ability, they argued, to require its suppliers to treat their workers humanely. If it is true that Nike had the ability to prevent the injuries, and should have done so, then the company met the first condition for moral responsibility. Yet if Nike was truly powerless to prevent these injuries—if Nike had no control over the actions of its suppliers—then it did not meet the first condition. In that case, Nike was not morally responsible for the way the workers were being treated.

Notice that the first condition says that people are morally responsible for an injury when they failed to prevent it, *only if* they "could have and should have" prevented it. This qualification is necessary because people cannot be held morally responsible for all the injuries they know about and fail to prevent. We are not morally responsible, for example, for failing to save all the starving people we learn about in the news, even if we could have saved some of them. If we were morally responsible for all these deaths, then we would all be murderers many times over, and this seems wrong. So a person is morally responsible for failing to prevent an injury only when the person has an obligation or duty to prevent that particular injury. Such an obligation generally requires some sort of special relationship to the injury or the injured party. For example, suppose I know that I am the only person near enough to save a drowning child and I can do so easily. Then my special physical relationship to the child creates an obligation for me to save the child. So I would be morally responsible for the child's death if I failed to prevent it. Or suppose I am a police officer on duty and see a crime that I can prevent. Then, because it is my job to prevent such crimes, I have a duty to prevent this crime and so am morally responsible if I fail to do so. Employers, likewise, have a special obligation to prevent employee work injuries. They are morally responsible for any foreseen work injuries they could have prevented.

**KNOWLEDGE AND IGNORANCE** The second condition for moral responsibility is this: the person must know what he or she is doing. This means that if a person is ignorant of the fact that his or her actions will injure someone else, then he or she cannot be morally responsible for that injury. However, ignorance does not always excuse a person. One exception is when a person deliberately stays ignorant of a certain matter to escape responsibility. Suppose, for example, that Nike managers told their suppliers that they did not want to know what was going on in their factories. Then their ignorance would not eliminate their moral responsibility for whatever mistreatment they could have prevented. A second exception is when a person negligently fails to take the necessary steps to find out about something he or she knows is important. Take, for example, a manager in an asbestos factory who has good reason to suspect that asbestos may be dangerous. However, the manager fails to become informed on the matter out of laziness. The manager then cannot later plead that his ignorance absolves him of any responsibility for his workers' injuries. In general, when a person causes his or her own ignorance, that ignorance will not eliminate his or her responsibility for a wrong.

There are two kinds of ignorance. A person can be ignorant of either the relevant *facts* or the relevant *moral standards*. For example, I may be sure that bribery is wrong (a moral standard). However, I may not know that by tipping a customs official I am bribing him or her into canceling the import fees I owe (a fact). Or I might be genuinely ignorant that bribing government officials is wrong (a moral standard). However, I may know that by tipping the customs official, I am bribing him or her into reducing the fees I owe (a fact).

Ignorance of *fact* eliminates moral responsibility because a person cannot be responsible for something that he or she cannot control.[98] Because people cannot control matters of which they are ignorant, they are not morally responsible for such matters. Negligently or deliberately created ignorance is an exception to this principle because such ignorance can be controlled. Insofar as we can control the extent of our ignorance, we become morally responsible for it and so also for its injurious consequences. Ignorance of the relevant *moral standards* generally also removes responsibility. It eliminates a person's responsibility because one is not responsible for failing to meet obligations of whose existence he or she is genuinely ignorant. Yet if our ignorance of moral standards is due to choosing not to know those standards, we are responsible for our ignorance and its injurious consequences.

The third condition for moral responsibility is that the person must act of his or her own free will. A person acts of his or her own free will when the person acts deliberately or purposefully and is not forced to act by some uncontrollable mental impulse or external force. In other words, a person acts of his or her own free will when he or she is not forced to act by some internal or external force over which he or she has no control. A person is not morally responsible, for example, if he or she causes an injury because he or she lacked the power, skill, opportunity, or resources to prevent the injury. A person is also not morally responsible when he or she is physically forced to do something that injures another person. Nor is a person morally responsible when his or her mind is so psychologically impaired that he or she cannot control his or her actions. An employee, for example, may injure a fellow worker when a machine he thought he knew how to operate suddenly swings out of his control. A manager who is highly stressed may be so overcome by rage at a subordinate that she cannot control her actions. An engineer who is part of a committee may be unable to prevent the other committee members from making a decision that the engineer feels will result in injury to other parties. In all of these cases, the person is not morally responsible for the wrong or the injury that may result. The person is not responsible because he or she did not deliberately choose the action or was forced to act as he or she did. Mental impairments or external forces eliminate a person's responsibility. They eliminate responsibility because a person cannot be morally responsible for something over which the person had no control.

Thus, three circumstances completely eliminate a person's moral responsibility for an action:

1. The person did not cause the action.
2. The person did not know what he or she was doing.
3. The person did not act freely.

***Quick Review 1.20***
**When a Person Is Morally Responsible for an Injury**

- The person caused or helped cause the injury, or failed to prevent it when he or she could and should have.
- The person did so knowing what he or she was doing.
- The person did so of his or her own free will.

## 1.5.2: Mitigating Factors

Besides the three circumstances that *eliminate* responsibility, three mitigating factors can *reduce* one's responsibility, including the following:

1. Circumstances that minimize but do not completely remove a person's involvement in an act (these affect the degree to which the person *caused* the wrongful injury)
2. Circumstances that leave a person somewhat uncertain about what he or she is doing (these affect the person's *knowledge*)
3. Circumstances that make it difficult but not impossible for the person to avoid doing what he or she did (these affect the extent to which the person acted freely)

However, the extent to which these three factors reduce a person's responsibility for a wrong depends on a fourth factor: the seriousness of the wrong.

***Quick Review 1.21***
**Moral Responsibility Mitigation**

**It Is Mitigated by . . .**

- Minimal contribution
- Uncertainty
- Difficulty

**It Is NOT Mitigated by . . .**

- The cooperation of others
- Following orders

## 1.5.3: Moral Responsibility: Essential Points

It may be helpful to summarize the essential points of this somewhat long and complicated discussion of moral responsibility.

1. An individual is morally responsible for an injury when
   a. the person caused the injury or failed to prevent it when he or she could and should have done so
   b. the person knew what he or she was doing
   c. the person acted of his or her own free will
2. Moral responsibility is completely eliminated (excused) by the absence of any one of these three conditions: causality, knowledge, and freedom.

### Factors That Reduce a Person's Responsibility for a Wrong

To clarify the mitigating factors, we will discuss each of them in turn.[99]

**Interactive**

**Level of Contribution**

**Certainty or Uncertainty**

Second, circumstances can produce uncertainty about a variety of matters. A person may be fairly convinced that doing something is wrong, yet may have doubts about some important facts. Or the person may have doubts about the moral standards involved or about how seriously wrong the action is.

**Example**
Suppose that a manager tells an office worker to carry proprietary information to a competitor. The office worker might feel fairly sure that doing so is wrong, yet may also have some genuine uncertainty about how serious the matter is. Such uncertainties can lessen the person's moral responsibility for the wrongful act.

**Coercion or Threat**

**Seriousness of Wrong**

3. Moral responsibility for a wrong or an injury is mitigated by the following factors:
   a. minimal contribution to the act (although minimal contribution does not mitigate if the person has a specific duty to prevent the wrong)
   b. uncertainty
   c. coercion or threat
   d. how serious the wrong is (the more serious the wrong, the less the other three factors mitigate)

Critics have contested whether all of the mitigating factors we have discussed above really affect a person's responsibility. Some have claimed that evil may never be done no matter what personal pressures are exerted on a person.[100] Other critics have claimed that I am as responsible when I refrain from stopping a wrong as I am when I perform the wrong myself. They have argued that *passively allowing* something to happen is morally no different from *actively causing* it to happen.[101] If these critics are correct, then mere passive involvement in something does not mitigate moral responsibility. Although neither of these criticisms seems correct, the reader should make up his or her own mind on the matter.

When we are accused of being responsible for some wrongdoing, either by others or by ourselves, we often resort to rationalization. We hope that the rationalization will somehow excuse what we have done (i.e., that it will eliminate or diminish our responsibility). However, unlike the three conditions of moral responsibility (causality, knowledge, and freedom), many rationalizations do not affect responsibility for wrongdoing. Some popular rationalizations that we ourselves may use include the following:

> "Everybody does it!" "There's no rule against it!" "If I didn't do it, somebody else would." "The company owed it to me!" "There are worse things!" "I was just following orders." "My boss made me do it!" "That's not my job!" "They had it coming to them!" "People like that deserve what they get."

Some of these rationalizations, in special circumstances, may excuse an injury we inflicted. However, for the most part, they are inadequate attempts to escape a responsibility that, in reality, is ours.

## 1.5.4: Responsibility for Corporate Actions

Within the modern corporation, responsibility for a corporate act is often distributed among many cooperating parties. Corporate acts normally are brought about by the actions or omissions of many different people. A number of people may cooperate so that their linked actions and omissions jointly produce the corporate act. For example, the members of an executive committee may vote to carry out a fraud that none of them could carry out alone. Or one team of managers designs a car, another team tests it, and a third team builds it. Or a manager may order something illegal and employees carry out that order. One group may knowingly defraud buyers and another group silently enjoys the resulting profits. One person may supply the means and another person carries out the act. One group does the wrong and another group conceals it. The possible variations on cooperation in evil are endless.

Who is morally responsible for such jointly produced acts when the acts themselves are evil? The traditional view is that each person who knowingly and freely cooperates to produce a corporate act is morally responsible for the act.[102] In this view, when a person needs others to bring about a wrongful corporate act, his situation is no different from that of a person who needs an instrument to commit a wrong. For example, if I want to shoot a person, I have to rely on my gun to work; or if I want to defraud my company, I may have to rely on others to do their part. In both cases, if I knowingly and freely bring about the wrong, even though I rely on other things or people, I am fully morally responsible for the wrong. I am responsible even though this responsibility is shared with others.

This traditional view of the individual's responsibility for corporate acts has been criticized. Critics claim that when the members of a corporation bring about a corporate act, the act is the responsibility of the corporation, not the individuals who make up the corporation.[103] For example, we normally credit the manufacture of a defective car to the corporation that made it and not to the individual engineers involved in its manufacture. The law also often attributes the acts of a corporation's managers to the corporation and not to the managers as individuals (as long as the managers acted within their authority). However, traditionalists reply that although the law sometimes attributes acts to corporations, this legal fact does not change the moral reality behind all corporate acts. The reality is that individuals had to carry out the particular actions that brought about the corporate act. Since individuals are morally responsible for the intended consequences of their actions, anyone who intentionally cooperates with others to bring about a corporate act is morally responsible for that act.[104]

Some claim, however, that when a subordinate acts on the orders of a legitimate superior, the subordinate is absolved of responsibility for that act. Only the superior is morally responsible for the wrongful act although the subordinate was the one who carried it out. The loyal agent's argument discussed above was based on this claim. That argument says that if an employee loyally does what the company ordered him or her to do, then the company, not the employee, should be held responsible. Several years ago, the managers of a company that makes computer parts told employees to falsify a government report. The report would falsely state that the computer parts the company sold to the government had been tested for defects when in fact they had not.[105,106] Some employees objected to falsifying the government reports. Yet when the managers insisted it was an order and that the company wanted it, the employees complied. When the fraud was discovered, the employees argued that they were not morally responsible because they were just following orders.

The idea that following orders somehow absolves me of any blame for what I do is mistaken. As we have seen, I am morally responsible for an injury when I meet three conditions: I caused it, I knew what I was doing, and I did it of my own free will. So when I knowingly and freely cause an injury, the fact that I was following orders does not change the reality that I fulfilled these three conditions. So it necessarily follows that I am morally responsible for the injury. This is not to say that it is always easy to refuse to follow orders. In fact, it is often extremely difficult and can carry great personal costs. As the Milgram experiment showed, most people are willing to obey the orders of an authority even when they know they are being ordered to do something wrong. Even so, when I know that if I follow an order, I will be cooperating with evil, I must do everything I can to summon the strength and courage to refuse.

## On the Edge

### Gun Manufacturers and Responsibility

On December 14, 2012, Adam Lanza, opened fire inside Sandy Hook Elementary School, and in less than 5 minutes killed 20 first-grade children and 6 adults.[107] In 2014 the families of three of the children sued the manufacturer of the gun Lanza used. The three 6-year-old victims were Jesse Lewis, who liked riding horses and whose last meal was an egg sandwich and hot chocolate; Dylan Hockley, whose favorite color was purple and who liked looking at the moon; and Benjamin Wheeler, who wanted to be an architect, a paleontologist, or a lighthouse keeper. Lanza was able to kill 26 people in 5 minutes because he used the AR-15, a semiautomatic rifle manufactured by Bushmaster Firearms International. The lawsuit filed by the families stated the AR-15 was designed as a military weapon for the U.S. Army and was designed for killing people. James Holmes had earlier used the same gun to kill 12 people in a Colorado movie theater; Jacob Roberts had used one to kill two people in a shopping mall in Portland, Oregon; and John Zawahri used one to kill 5 people at Santa Monica College in California. According to the families, Bushmaster knew the weapon was designed to kill people, yet the company introduced the rifle into the consumer marketplace anyway. Consequently, they argued, Bushmaster was ultimately responsible for the killings and so should be made to pay punitive damages for their deaths.

#### WRITING PROMPT

**Journal: Do Companies Bear Direct Responsibility?**

1. Is Bushmaster morally responsible for the 26 deaths at Sandy Hook Elementary School? Why or why not?
2. Are gun manufacturers morally responsible for any deaths caused by the use of their guns? Explain.
3. Are manufacturers of other products ever morally responsible for deaths caused by the use of their products? Why or why not?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Web Resources

Readers who want to conduct online research on the topic of business ethics might want to begin by accessing the following websites. The website of Santa Clara University's Markkula Center for Applied Ethics has outstanding articles and hundreds of annotated links to other web resources on ethics at *http://www.scu.edu/ethics*. Larry Hinman's Ethics Updates at the University of San Diego also has a large collection of articles and links to numerous topics in ethics at *http://ethics.sandiego.edu/*. The Essential Information organization provides links to numerous organizations and data resources that deal with CSR at *https://www.essentialinformation.org*. Corporate Watch has information on various companies and issues related to business ethics at *http://www.corpwatch.org*, as do Resources for Activists at *http://www.betterworldlinks.org*, World Watch Institute at *http://www.worldwatch.org*; and Mallen Baker's website on CSR at *http://www.mallenbaker.net/*.

#### SHARED WRITING

**The Place of Ethics and Moral Standards**

1. "Ethics has no place in business." Expand upon this statement, providing a rationale for your assumptions and conclusions.
2. In your judgment, did the managers of Merck (Module 1.1.1) have a moral obligation to spend the money needed to develop the drug for river blindness? Can you state the general moral standard or standards on which you base your judgment? Are you willing to apply the "consistency requirement" to your moral standard or standards? Why or why not?

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit **0 characters | 140 minimum**

#### SHARED WRITING

**Moral Behavior and Moral Development**

1. Read again the account of BFGoodrich in Module 1.2.1, and consider the roles of Lawson and Vandivier. Explain any obstacles to moral behavior that you see operating in the BFGoodrich situation, and support your views with ethical arguments.
2. "Kohlberg's views on moral development show that the more morally mature a person becomes, the more likely it is that the person will obey the moral norms of his or her society." Deconstruct this statement from an ethical perspective.

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit **0 characters | 140 minimum**

# Case Study 1.1: Slavery in the Chocolate Industry[1]

In 2012, CNN published a series of investigations as part of its "Freedom Project," which found that "child labor, trafficking and slavery are rife" in the chocolate industry. The CNN investigations revealed that large numbers of children were being held as slaves on cocoa farms in Ivory Coast, a small nation on the western coast of Africa.

Forty-five percent of the chocolate we consume in the United States and in the rest of the world is made from cocoa beans grown and harvested on farms in Ivory Coast. Few realize that a portion of Ivory Coast cocoa beans that goes into most of the chocolate we eat was grown and harvested by children who work as slaves. The slaves are boys between 12 and 16—but sometimes as young as 9—kidnapped from villages in surrounding nations and sold to the cocoa farmers by traffickers. The farmers whip, beat, and starve the boys to force them to do the hot, difficult work of clearing the fields, harvesting the beans, and drying them in the sun. The boys work from sunrise to sunset. Some are locked in at night in windowless rooms where they sleep on bare wooden planks. Far from home, unsure of their location, unable to speak the language, isolated in rural areas, and threatened with harsh beatings if they try to get away, the boys rarely attempt to escape their nightmare situation. Those who try are usually caught, severely beaten as an example to others, and then locked in solitary confinement. Every year unknown numbers of these boys die or are killed on the cocoa farms that supply our chocolate.

The plight of the enslaved children was first widely publicized at the turn of the twenty-first century when True Vision, a British television company, took videos of slave boys working on Ivory Coast farms and made a documentary depicting the sufferings of the boys. In September 2000, the documentary was broadcast in Great Britain, the United States, and other parts of the world. The U.S. State Department, in its *Year 2001 Human Rights Report*, estimated that about 15,000 children from the neighboring nations of Benin, Burkina Faso, Mali, and Togo had been sold into slavery to labor on Ivory Coast cocoa farms.

Although slavery is illegal in Ivory Coast and the minimum age of employment is 14, the laws are poorly enforced. Open borders, a shortage of enforcement officers, widespread poverty, and the willingness of local officials to accept bribes from people trafficking in slaves all contribute to the problem. In addition, prices for cocoa beans in global markets have been depressed most years since 1996. As prices declined, the already impoverished cocoa farmers—who earn less than \$2 per day on average—turned to slavery to cut their labor costs. Although prices began to improve during the early years of the twenty-first century, cocoa prices fell again in 2004 and remained low until the summer of 2010, when they again began to rise. The poverty that motivated many Ivory Coast cocoa farmers to buy children trafficked as slaves was aggravated by other factors besides low cocoa prices. Working on small isolated farms of one to three acres, cocoa farmers cannot communicate among themselves nor with the outside world to learn what cocoa is selling for. Consequently, they are at the mercy of a local middleman, a "traitant" or "pisteur," who drives out to the farms, buys the farmers' cocoa for half of its current market price, and hauls it away in his truck. Unable to afford trucks themselves, the farmers must rely on the middlemen to get their cocoa to market. The traitant takes the cocoa beans to a warehouse in a nearby large town where they are combined with the beans harvested on other farms, and where the major exporters, such as Archer Daniels Midland (ADM) and Cargill, purchase the cocoa beans to export to their processing plants.

Chocolate is a \$13 billion industry in the United States, where Americans consume over 3 billion pounds each year. The names of the four largest U.S. chocolate manufacturers—all of whom use the morally "tainted" cocoa beans from Ivory Coast in their products—are well known: Hershey Foods Corp. (maker of Hershey's milk chocolate, Reeses, and Almond Joy), Mars, Inc. (maker of M&Ms, Mars, Twix, Dove, and Milky Ways), Nestlé USA, (maker of Nestlé Crunch, Kit Kat, Baby Ruth, and Butterfingers), and Kraft Foods (which also uses chocolate in its baking and breakfast products). Less well known, but a key part of the industry, are the names of ADM Co., Barry Callebaut, and Cargill Inc., all of whom serve as middlemen who buy the cocoa beans from Ivory Coast, grind and process them, and then sell the processed cocoa to the chocolate manufacturers.

## Pressure Leads to Action

That many farmers in Ivory Coast use slave boys to farm their cocoa beans was already known to American chocolate-makers when media reports first began publicizing the issue at the beginning of the twenty-first century. In 2001, the Chocolate Manufacturers Association, a trade group of U.S. chocolate manufacturers (whose members include Hershey, Mars, Nestlé, and others) admitted to newspapers that they had been aware of the use of slave boys on Ivory Coast cocoa farms for some time. Pressured by various antislavery groups, the Chocolate Manufacturers Association stated on June 22, 2001, that it "condemned" "these practices" and agreed to fund a "study" of the situation.

On June 28, 2001, U.S. Representative Eliot Engel sponsored a bill in the U.S. House of Representatives that aimed at setting up a labeling system that would inform consumers whether the chocolate they were buying was "slave-free" (i.e., guaranteed not to have been produced by slave children). The measure passed the House by a vote of 291 to 115. However, when U.S. Senator Tom Harkin introduced the same bill in the Senate, it met resistance. The U.S. chocolate industry—led by Mars, Hershey, Kraft Foods and ADM and with the help of lobbyists Bob Dole and George Mitchell—mounted a major lobbying effort to fight the "slave-free" labeling system. The companies argued that a labeling system would not only hurt their own sales, but in the long run could hurt poor African cocoa farmers by reducing their sales and lowering the price of cocoa, which would add to the very pressures that led them to use slave labor in the first place. As a result of the industry's lobbying, the "slave-free" labeling bill was never approved by the Senate and so never became law. Nevertheless, Representative Engel and Senator Harkin threatened to introduce a new bill that would

### Cocoa Production in Ivory Coast

Forty-five percent of the chocolate on the world market today is made from cocoa beans grown in Ivory Coast. A portion of those cocoa beans was grown and harvested by children who work as slaves.

Interactive

A farmer works with cocoa beans at a farm in southwest Ivory Coast. Cocoa, the main ingredient of chocolate, is a highly profitable crop in West Africa. Ivory Coast leads the world in production and export of the cocoa beans, supplying 33 percent of cocoa produced in the world.




prohibit the import of cocoa produced by slave labor, unless the chocolate companies voluntarily eliminated slave labor from their production chains.

The members of the Chocolate Manufacturers Association and the World Cocoa Foundation, caught in the spotlight of media attention, announced on October 1, 2001, that they intended to put in place a system that would eliminate "the worst forms of child labor," including slavery. In spring 2002, the Chocolate Manufacturers Association and the World Cocoa Foundation as well as the major chocolate producers—Hershey's, M&M Mars, Nestlé, and World's Finest Chocolate—and the major cocoa processors—Blommer Chocolate, Guittard Chocolate, Barry Callebaut, and ADM—all signed an agreement to establish a system of certification that would verify and certify that the cocoa beans they used were not produced by the use of child slaves. Known as the "Harkin-Engel Protocol," the agreement also said the chocolate companies would fund training programs for cocoa bean farmers to educate them about growing techniques, while explaining the importance of avoiding the use of slave labor. The members of the Chocolate Manufacturers Association also agreed to "investigate" conditions on the cocoa farms and establish an "international foundation" that could "oversee and sustain efforts" to eliminate child slavery on cocoa farms. In July 2002, the first survey sponsored by the Chocolate Manufacturers Association concluded that some 200,000 children—not all of them slaves—were working in hazardous conditions on cocoa farms and that most of them did not attend school.

Unfortunately, in 2002, Ivory Coast became embroiled in a civil war that continued until an uneasy peace was established in 2005 and finalized in 2007. Rebel forces, however, continued to control the northern half of the country. Reports claimed that much of the money funding the violence of both the government and rebel groups during these years came from sales of cocoa, and that buyers of "blood chocolate" from Ivory Coast were supporting this violence.

## Far from Achieving Goals

The 2005 deadline the major chocolate companies and their associations had set came and passed without the promised establishment of a certification system to ensure cocoa beans were not being produced by slave children. At this point, the chocolate companies amended the protocol to give themselves more time by extending their own deadline to July 2008, saying that the certification process had turned out to be more difficult than they thought it would, particularly with the outbreak of a civil war. Although the companies did not establish a certification system while the civil war raged, they did manage to secure enough cocoa beans to keep their chocolate factories going at full speed throughout the war.

By early 2008, the companies had still not started work on establishing a certification system or any other method of ensuring that slave labor was not used to produce the cocoa beans they used. On February 15, 2008, *Fortune* magazine reported that child slavery in Ivory Coast was still a continuing problem and that the chocolate companies were doing virtually nothing to eliminate it. The companies issued a new statement in which they extended to 2010 their deadline for complying with their promise to establish a certification system. According to the companies, they had been investing several million dollars a year into a foundation that was working on the problem of child labor. However, the investigative reporter who wrote the 2008 *Fortune* article stated that the foundation had only one staff member working in Ivory Coast. Moreover, the activities of that lone staff member were limited to giving “sensitization” workshops to local people, during which he would explain that child labor is a bad thing. The foundation was also helping a shelter that provided housing and education to homeless street children. The *Fortune* reporter found no evidence that anything was being done to develop the promised certification system. By now monitoring and certification systems had been developed and were being used on fair trade and organic cocoa farms in other parts of the world. Although some of these systems had been functioning for several years, the chocolate companies who sourced their cocoa from Ivory Coast seemed unable or uninterested in learning from their example.

On September 30, 2010, the Payson Center at Tulane University issued a report on the progress that had been made on the certification system the chocolate industry had promised to establish, as well as on the progress the industry had made regarding its promise to eliminate “the worst forms of child labor” from Ivory Coast cocoa farms. The report was commissioned by the U.S. Department of Labor, which had been asked by Congress to assess progress on the “Harkin-Engel Protocol,” and which gave Tulane University an initial grant of $4.3 million in 2006 and an additional $1.2 million in 2009 to compile the report. According to the report, “Industry is still far from achieving its target to have a sector-wide independently verified certification process fully in place . . . by the end of 2010.” The report found that between 2002—the date of the original agreement—and September 2010, the industry had managed to contact only about 95 (2.3 percent) of Ivory Coast’s cocoa farming communities, and that to complete its “remediation efforts,” it would have to contact an additional 3,655 farm communities. While the Tulane group confirmed that forced child labor was being used on the cocoa farms, it also found that no industry efforts to “remediate” the use of forced labor “are in place.” Two video documentaries—*The Dark Side of Chocolate* and *Chocolate: The Bitter Truth*—reported on the continuing use of enslaved children on Ivory Coast farms in 2010. Representatives of the chocolate companies interviewed in the films denied the problem or claimed they did not know anything about it.

By the middle of 2010, it was clear that the companies would again fail to meet their deadline. So on September 13, 2010, they signed yet another agreement promising now to reduce “the worst forms of child labor in the cocoa sectors of Cote d’Ivoire [Ivory Coast] and Ghana . . . by 70 percent in aggregate” by the year 2020. This time, they agreed to work with the U.S. Department of Labor, Senator Harkin’s Office, and the Government of Ghana to achieve this goal.

The problem of certification remained unresolved as 2011 began. The manufacturers and distributors buying Ivory Coast cocoa beans seemed unable to find a way to “certify” that slavery was not used to harvest the cocoa beans they purchased. Representatives of the chocolate companies argued that the problem of certification was difficult because there are more than 600,000 cocoa farms in Ivory Coast, most of them small family farms located in remote rural regions that are difficult to reach and that lack good roads and other infrastructure. Critics, however, pointed out that these difficulties did not seem to pose any obstacles to obtaining cocoa beans from those same farms.

In February 2011, fighting between the rebels in the north and the Ivory Coast government in the south broke out again for a brief period in a dispute over who was the legitimate winner of the 2010 presidential election. The fighting ended in April 2011, when one of the candidates finally conceded the election, allowing the other candidate, Alassane Ouattara, to be declared the legitimate president. The fighting, however, provided the chocolate companies with another reason for being unable to implement a certification system.

## Mixed Responses

Although the industry still seemed to be dragging its feet, some companies had begun to develop their own responses to the call for a certification system. Hershey, for example, announced in 2012 that it had asked the Rainforest Alliance (an NGO headquartered in New York with offices around the world) to implement a certification system for its Dagoba and Bliss lines of chocolate products. In 2013 Hershey announced that by 2020 its entire cocoa supply would come from certified farms, and in 2014 it reported that 18% of its cocoa supply was certified by the Rainforest Alliance or other NGOs. Nestlé announced that by 2014 the cocoa used in its Kit Kat candy would be certified by UTZ Certified (an NGO headquartered in Amsterdam that provides traceability services for palm oil, tea, and cocoa). Kraft/Cadbury announced that, like Hershey, it was working to have the Rainforest Alliance certify its cocoa.

With the new presidency of Alassane Ouattara, the government of Ivory Coast also began to try to deal with the problem of child slavery and child labor. In 2012, the government launched a “National Action Plan Against Trafficking, Exploitation, and Child Labor” and created a Joint Ministerial Committee for “the Fight against Trafficking, Exploitation, and Child Labor." But the Committee lacked resources. Only 25 government labor inspectors worked on child labor, and total funds budgeted to fight child labor were only the equivalent of US$588,566. Because of the lack of funds and vehicles, no labor inspections were carried out in the agricultural sector. The national police of the Ministry of Justice was charged with enforcing criminal laws against child trafficking and forced child labor, but in 2012 only five police officers were assigned to the anti-trafficking unit, and they had to share one vehicle and only investigated seven cases that year; five additional officers were hired in 2013.

In the United States, three former child slaves sued Nestlé, ADM, and Cargill, claiming that the companies knew that the farmers supplying their cocoa were using child slaves, yet the companies continued to support the farmers by buying their cocoa; although they controlled the Ivory Coast cocoa market, the suit claimed, the companies had failed to use their control to stop slavery and instead facilitated it. The three former slaves based their lawsuit on the Alien Tort Statute, a federal law that allows foreigners to sue companies that participate in violations of their human rights. Although a district court initially dismissed the case, in 2014, the 9th Circuit Court of Appeals overruled the district court and allowed the case to proceed. The three former slaves charged that they were trafficked as children into Ivory Coast and forced to work for 14 hours a day on cocoa farms. According to the lawsuit, they were fed scraps and frequently whipped and beaten. One said he saw guards cut open the feet of children who tried to escape.

While some cocoa is now being certified as "slave-free," the great majority of the cocoa sourced from Ivory Coast is not. The cocoa beans tainted by the labor of slave boys are, therefore, still being quietly mixed together in bins and warehouses with cocoa beans harvested by free paid workers, so that the two are indistinguishable. From there, they still make their way into the now tainted chocolate candies that Hershey's, M&M Mars, Nestlé, and Kraft Foods make and that we buy here and in Europe. Without an effective system of certification, much of the chocolate we eat that is made from West African (Ivory Coast and Ghana) cocoa probably contains a portion of tainted chocolate made from beans harvested by enslaved children.

## WRITING PROMPT

**Journal: What Are Your Views on the Nature of Wrong?**

1. What are the systemic, corporate, and individual ethical issues raised by this case?
2. In your view, is the kind of child slavery discussed in this case absolutely wrong no matter what, or is it only relatively wrong (i.e., if one happens to live in a society such as ours that disapproves of child slavery)? Explain your view and why you hold it.
3. Who shares in the moral responsibility for the slavery occurring in the chocolate industry?
4. Consider the bill that Representative Engel and Senator Harkin attempted to enact into a law, but which never became a law because of the lobbying efforts of the chocolate companies. What does this incident show about the view that "to be ethical it is enough for businesspeople to follow the law"?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Case Notes

1. Sudarsan Raghavan and Sumana Chatterjee, "Child Slavery and the Chocolate Trade," *San Jose Mercury News*, June 24, 2001, p. 1A; Stop Child Labor, "There's Nothing Sweet about Child Slave Labor in the Cocoa Fields," *The Child Labor Coalition*, accessed April 26, 2004, at http://www.stopchildlabor.org; Sharon LaFraniere, "Africa's World of Forced Labor in a 6 Year–Old's Eyes," *New York Times*, October 29, 2006; Rageh Omaar, "The World of Modern Child Slavery," *BBC News*, March 27, 2007, http://news.bbc.co.uk/2/hi/programmes/this_world/6458377.stm; Christian Parenti, "Chocolate's Bittersweet Economy," *Fortune*, February 15, 2008; Payson Center for International Development and Technology Transfer Tulane University, *Fourth Annual Report: Oversight of Public and Private Initiatives to Eliminate the Worse Forms of Child Labor in the Cocoa Sector in Cote d'Ivoire and Ghana*, September 30, 2010, accessed March 10, 2011 at http://www.childlabor-payson.org/Final%20Fourth%20Annual%20Report.pdf.

# **Case Study 1.2:** Aaron Beam and the HealthSouth Fraud

In 2015, Richard M. Scrushy's website described him as a "Speaker, Businessman, Entrepreneur." The website does not mention that he is also a convicted felon and that only two years earlier he had finished spending six years and ten months in a federal prison plus three years of supervised probation as his sentence for being found guilty of bribery, conspiracy, and mail fraud. The website also describes him as "a business visionary [with] a successful business career" and "the HealthSouth mogul . . . [who] served as Chairman and Chief Executive Officer of HealthSouth for nearly twenty years." The website omits any mention of the fact that he lost all his money when he was ordered by a judge to pay $2.87 billion in damages because he "knew of and actively participated in the fraud" that nearly destroyed HealthSouth.

HealthSouth was founded by Richard Scrushy and Aaron Beam. Although Scrushy was the company's main founder and leader, much of what became known as the "HealthSouth fraud" was organized and carried out by Aaron Beam.

Aaron Beam was born in November 1943 and grew up in Shreveport, Louisiana. In 1967, he graduated from Louisiana State University with a degree in business. After serving in the Navy, he took accounting courses at the University of Houston and passed the Certified Public Accountant (CPA) exam in 1978. With his CPA in hand, he took a job at Lifemark Corporation, a company that owned and managed several hospitals. There he met Richard Scrushy, whom he described as a "charismatic" leader, an engagingly "charming" person, and a "brilliant" businessman. At Lifemark, Scrushy had worked his way up to the position of chief operating officer after having taught briefly in the respiratory therapy program of the University of Alabama and at Wallace State Community College. In 1983 Lifemark was purchased by American Medical International, and Scrushy invited Beam to join him in starting HealthSouth, a new company that would provide medical rehabilitation services to hospitals and their outpatients in Birmingham, Alabama. Scrushy believed that they would be able to provide rehabilitation therapy to patients at lower costs than regular hospitals, and so hospitals would be glad to send their patients to them for rehabilitation. He would turn out to be right.[2]

The two founded the company in 1984, with Scrushy as CEO and Beam as chief financial officer (CFO). Beam later said that Scrushy ran the company like a "dictator," and with a self-assurance that intimidated people and sometimes made Aaron and others fearful of contradicting him. Scrushy, he said, was "almost a cult-like figure" who inspired intense loyalty and whom people eagerly followed, willingly carrying out his confident orders.[3] Another employee said Scrushy "had boundless energy" and "was a great motivator" who worked "so hard himself, it was almost like you couldn't let him down."[4]

From the beginning, Scrushy and Beam both knew the company had to appear profitable to satisfy investors and lenders and to later succeed in issuing and selling company stock to the public. Although the company was doing reasonably well, Scrushy told Beam that he should do whatever he could to make their financial reports look even better. Although Beam was reluctant at first, he felt both pressured and awed by Scrushy and eventually moved some of the company's startup costs from the "expenses" column to the "capital investments" column, which made their net profits look larger.[5] While he realized doing so might be "a little" misleading, Beam felt it was technically within the bounds of accounting rules and that investors would be sophisticated enough to understand what was happening. He described the move to himself as "aggressive accounting," but definitely "not fraudulent."

In 1986, the company successfully went public, and both Scrushy and Beam as well as their investors made a great deal of money. Moreover, the company continued to expand rapidly, and revenues continued to climb upward just as quickly. With his new riches, Beam was able to buy a beach house, a condo in the French Quarter of New Orleans, a private plane, fancy cars, and $30,000 worth of Hermès ties. Everywhere he went, he was known and respected. When he walked into a restaurant he could see people pointing him out, while others came up to meet him or talk to him, telling him what a wonderful job he was doing. "I was a rock star," he later said, and it was all "pretty heavy stuff." [6]

Scrushy also celebrated his new wealth. He had divorced his first wife and married his second, a woman named Karen with whom he had four children and a passionate but stormy relationship. He bought two Cessna jets, Lamborghini and Rolls Royce cars, 10 yachts, expensive artwork, and several multimillion-dollar houses. He also built himself an estate with a 20-room 14,000 square-foot mansion and a helicopter pad. He made lavish donations to charities, gave money to schools that gratefully named buildings after him, and made such a large gift to a local community college that it named a whole campus the "Richard M. Scrushy Campus." In high school, Scrushy had taught himself to play the guitar and had played in garage bands; now he recruited several professional musicians, formed a country music group named Dallas County Line, and with himself as lead singer, cut a CD and financed a world tour for the group.

## Hiding a Shortfall to Appear Profitable

Over the next 10 years the HealthSouth company grew into a $3 billion Fortune 500 company. With 22,000 employees, it was the nation's largest provider of rehabilitation, surgery, and therapy outpatient services. Beam continued using "aggressive accounting" practices in the company's financial reports. When the company expanded to other locations, he had some of the costs capitalized instead of being expensed, and sometimes the added revenues from the new locations were listed as revenue growth from the company's previous locations. Instead of writing off unpaid receivables, Beam just kept them on the books as company "assets." He continued to reassure himself with the thought that "astute investors knew what we were doing and saw it as financial gamesmanship and not outright fraud."[7]

Part way through the second quarter of 1996, Scrushy and Beam realized that the company, for the first time, would fall short of meeting Wall Street analysts' expectations of quarterly revenue by about $50 million. The two men were sure this was a one-time event and that the company would return to meeting analysts' targets the following financial quarter, like it had for the past 40 quarters. However, at the time, the company was negotiating a new credit agreement with a syndicate of 32 lenders from around the world, and while the banks had agreed to extend HealthSouth a line of credit totaling $1.25 billion, they had also made clear that the company had to provide them with favorable quarterly financial statements.[8] Scrushy assured Beam that if the banks got wind of the shortfall, that information would cripple the company they had worked so hard to build. So Beam had to do everything he could to keep as much information about the shortfall as possible from leaking out of the company. If they could just get through the quarter, Scrushy felt, then everything would be okay.[9]

Agreeing with Scrushy's assessment of the situation, Beam decided to fix the company books "this one time." Beam convinced two of the people working for him in the finance department to come in on the plan: Bill Owens, the company controller, and Mike Martin, the company treasurer. With the help of a few other employees, they went through the earnings reports that each of the dozens of HealthSouth clinics scattered around the country turned in to company headquarters each financial quarter. They carefully inflated the numbers by inserting many small additional revenue entries throughout each report. Then they consolidated the reports into a single corporate report.[10] The numerous fictitious additions they made on the reports were all small because they knew the external auditors would only check the validity of large revenue entries, and were highly unlikely to check the many small fictitious entries they were making.[11] Moreover, Scrushy had earlier told Beam that he did not allow the company's own internal auditors access to the corporate general ledgers, which is where the fraud was being carried out.

Although he realized these actions violated generally accepted accounting principles, Beam felt that what he was doing was for the good of everyone in the company. If the company failed, a lot of people would be hurt. Anyway, he was only going to do it just this one time.

Unfortunately, the following quarter company earnings again fell short of Wall Street expectations. This time Scrushy did not have to persuade Beam. After the first time, Beam later said, it had become "a little easier going down that road."[12] The fraud proceeded much like it had the previous quarter, except that more people were brought into the scheme. Ken Livesay, the assistant controller, helped by downloading all of the clinic reports from around the country to his computer and figuring out the gap between the company's true earnings and what Wall Street expected—about $70 million this time.[13] He reported these figures to Bill Owens and Mike Martin. Then Beam, Owens, Martin, Livesay, and a few others worked their way through the clinics' reports, inserting enough fictitious revenue entries to fill in the gap. Because earnings kept falling short of expectations, the process had to be repeated each quarter. Eventually, more finance personnel were added to the group until it grew to about 15 people who started referring to themselves as "the family."

By 1997 HealthSouth was the largest rehabilitation services company in the industry and, with a total of $106 million in compensation, Scrushy was the third-highest-paid CEO in America. A year earlier his second wife had divorced him and now he married his third, Leslie, with whom he had two more children. He became an active member of the Guiding Light Church to which he made sizable donations, and he and his wife eventually began hosting a daily evangelical television show that was broadcast from the church.

Although he was now hardly hesitating to tamper with the company reports, Beam still felt anguished and guilty and found it difficult to sleep. Later he admitted that he did not have the "ethical bearing" that he should have had to stand up to Scrushy. He should, he said, have had the "courage" to say, "no, this is wrong."[14] He felt that he had crossed a line somewhere and now found himself doing things he could not deal with.

Ashamed of what he was now so willingly doing, Beam decided to retire from the company in 1997. He bought several acres of land in the country and there he and his wife built their 5,000 square-foot "dream house." Beam assumed that the company's earnings would eventually improve and that it would once again do well enough to stop having to falsify its financial reports. He was wrong.

## Investigation and Outcome

The fraudulent accounting at HealthSouth continued for six more years, until 2003 when the FBI began investigating whether Scrushy might be part of an insider trading scheme. As part of its investigation, the FBI interviewed Weston Smith, who had replaced Beam as CFO. Smith had little to say about the insider trading scheme; instead, he informed the surprised investigators about the fraud that had been going on at HealthSouth.

By the time the government stepped in and prosecuted HealthSouth's executives in 2003, HealthSouth's earnings had been overstated by $2.7 billion. In 2005, saying he did not know that fraudulent entries were being inserted into the books, and in spite of being accused by Beam, Smith, Martin, Owens, Livesay, and others of having known about the scheme, Scrushy was declared innocent of any criminal wrongdoing by a jury. Beam and the other members of "the family" were not so lucky. He and 15 other HealthSouth employees who had helped carry out the fraud were fined and jailed or placed on probation.

Although Scrushy was not convicted of any wrongdoing in the HealthSouth fraud, in 2006 he was found guilty of paying $500,000 in bribes to Alabama Governor Don Siegelman in exchange for a seat on a state hospital regulatory board. Scrushy was sentenced to seven years in prison for the bribe, a sentence he began serving in 2007. Scrushy believed that government prosecutors had filed the bribery charges against him in retaliation for their inability to secure his conviction in the HealthSouth trial, but his lawyers failed to win the appeals they filed on Scrushy's behalf. In 2009, while serving his jail sentence, Scrushy lost a $2.8 billion civil lawsuit brought against him by the company's shareholders; at the end of that trial, the judge said that it was clear to him that "Scrushy knew of and actively participated in the fraud." Scrushy's bank accounts were seized and his houses, boats, cars, and other remaining property were auctioned off to pay the $2.8 billion judgment against him. Distraught by the outcome of the lawsuit which left his wife and children penniless, Scrushy continued to maintain his innocence in both the HealthSouth fraud and in the Siegelman bribe case. His wife remained loyal to him and brought their children to visit him every week while he served his prison sentence. Both his wife and his former pastor at the Guiding Light Church continued to believe in Scrushy's innocence.

Although he could have received up to 30 years in jail and been fined up to $1 million, Beam spent only three months in a federal prison and paid $285,000 in fines and another $250,000 in lawyer's fees. After he was released from prison in 2006, Beam said his experience had taught him some hard lessons, but he still blamed Scrushy for much of what had happened. Scrushy, he later said, was a "sociopath" with a large ego who had little empathy for others and who could "intimidate people." People like Scrushy, he suggested, become managers in many major companies where they ask employees to do things they know are wrong, Employees need to "have some moral character," he said, to resist being influenced by such managers and to avoid being led "down a path that you shouldn't go." [15]

Aaron Beam now runs a lawn service called Green Beam Lawn Service in Alabama, using a lawnmower he bought by bartering 50 of his last remaining Hermès ties. He no longer has numerous employees working for him but, he says, "I'm living my life honestly" and that has given him "a lot of peace of mind." While he has to mow lawns in the Alabama heat for no more than about $50 a lawn, the money he makes, he says, is money he knows he's earned and so is able to "sleep well at night." [16]

Scrushy served out his prison term and was released from prison on July 25, 2012, and began his three years of supervised probation that included providing 500 hours of community service. In November 2014, a judge ruled that he did not have to serve the final eight months of his probation and Scrushy was finally completely free.

Scrushy moved to Houston, Texas, where he now offers his services as an inspirational speaker and experienced businessman. His personal website, richardscrushy.com, makes no mention of the HealthSouth fraud nor of his bribery conviction. Instead, it describes him as a "business visionary" who has a "powerful" record of accomplishment as a "dynamic risk taking entrepreneur."[17]

## WRITING PROMPT

**Journal: Evaluate Moral Responsibility at HealthSouth**

1. Which of the "obstacles" to moral behavior do you see at work in Aaron Beam's behavior and thinking? In Richard Scrushy's?
2. Explain how Beam might have used the loyal agent's argument to defend his actions. Do you think that in Beam's situation, the loyal agent's argument might have been valid? Explain.
3. In terms of Kohlberg's views on moral development, at what stage of moral development would you place Beam? Explain. At what stage would you place Scrushy?
4. Was Beam *morally responsible* for engaging in the "aggressive accounting" methods he used? Was his responsibility *mitigated* in any way? Was he *morally responsible* for changing the clinic reports to increase the company's earnings? Was his responsibility for this *mitigated*? Were those who *cooperated* in his actions morally responsible for those actions? Was their responsibility mitigated? Do you think Scrushy was morally responsible for the accounting fraud? Explain each of your answers.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Case Notes


2. Seth Fox, "A World Unraveled," *Business Report*, August 1, 2006, http://www.bus.lsu.edu/accounting/faculty/lcrumbley/unraveled.htm; John Helyar, "The Insatiable King Richard. He Started as a Nobody. He Became a Hotshot CEO. He Tried to Be a Country Star. Then It All Came Crashing Down. The bizarre Rise and Fall of HealthSouth's Richard Scrushy," *Fortune*, July 7, 2003.
3. Jeanine Ibrahim, "American Greed," *CNBC* [Producer's Notes], accessed September 3, 2010, at http://www.cnbc.com/id/27087295; Jimmy DeButts, "Crossing the Line: HealthSouth CFO Aaron Beam Speaks Out," *Birmingham Business Journal*, October 2, 2009.
4. Helyar, "The Insatiable King Richard."
5. Fox, "A World Unraveled."
6. University of Texas News, "Auditors Get an Insider's View of Corporate Fraud," April 12, 2010, accessed September 3, 2010, at http://www.utdallas.edu/news/2010/4/12-2391_Auditors-Get-an-Insiders-View-of-Corporate-Fraud_article.html.
7. Aaron Beam, *HealthSouth: The Wagon to Disaster* (Fairhope, AL: Wagon Publishing, 2009).
8. U.S. Department of Justice, "Former HealthSouth Chief Financial Officer Aaron Beam Charged with Ban Fraud," news release, April 24, 2003, http://www.justice.gov/opa/pr/2003/April/03_crm_255.htm.
9. Steve Chiotakis, "How HealthSouth Started a Fraud," *American Public Media Marketplace*, January 6, 2010, accessed September 3, 2010, at http://marketplace.publicradio.org/display/web/2010/01/06/am–scrushy/.
10. "Accountant Describes How HealthSouth Fraud Happened," *USA Today*, January 28, 2005.
11. John A. MacDonald, "Video Depositions Fill Much of Afternoon in First Day of Richard Scrushy Civil Trial," *Birmingham News*, May 11, 2009.
12. Beam, *HealthSouth: The Wagon to Disaster*.
13. Jay Reeves, "Ex–HealthSouth Exec Details Fraud," *Seattle Times*, February 24, 2005.
14. University of *Texas News*, "Auditors Get an Insider's View of Corporate Fraud."
15. Aaron Beam, "Aaron Beam, Former Chief Financial Officer of HealthSouth," posted on the Aaron Beam website, accessed September 3, 2010, http://www.aaronbeam.net/bio.html.
16. Chiotakis, "How HealthSouth Started a Fraud."
17. http://richardscrushy.com


# Summary

1. Ethics is the study of the moral standards that we and others hold, and it aims at developing standards that are reasonable and can be justified. Moral standards are standards that involve serious wrongs or benefits; should be preferred to other standards and to self-interest; are not established by authority figures; are felt to be universal; are based on impartial considerations; and are associated with special emotions (such as guilt and remorse) and vocabulary (such as *obligation, rights, justice*). From the age of three, we seem to be able to distinguish moral from nonmoral standards.
2. Business ethics is a particular kind of ethics: it is the study of the moral standards that should guide business activities, and it aims to develop standards that are reasonable to apply in business. Some argue that ethics does not belong in business because free markets automatically produce ethical behavior, because managers have an obligation to serve their companies regardless of ethics, and because as long as managers follow the law they will behave ethically. All of these arguments, however, are based on false assumptions. Moreover, there are many legitimate reasons to think that ethics should be brought into business. They include the following: ethics applies to all human activities; business needs ethics to survive; ethics is consistent with profit-seeking; customers, employees, and people in general care about ethics in business; studies show that ethics does not lower profits but seems to enhance them. Furthermore, several factors have created new ethical questions for business people; for

example, new information technologies create risk, threaten privacy, and introduce new forms of property; developments in nanotechnology, biotechnology, and genetic engineering create new risks to human health; and the rise of globalization has brought both large benefits and large threats to nations around the world.

3. An important objection to studying ethics is based on the theory of ethical relativism. Ethical relativism is the theory that there are no ethical standards that are absolutely true and that apply or should be applied to people of all societies. Instead, ethical relativism holds, each society has its own distinct ethical standards, and the members of any society should follow whatever standards their own society happen to hold. However, ethical relativism appears to be a flawed theory. First, some moral standards are found in all societies, namely those that are required for any society to function. Second, even if societies do differ in their moral views, this does not logically show that none of these views should be held by all people everywhere. Third, relativism implies that we must each accept the standards of our own society; but why should we conform to whatever our society (or a majority) believes?
4. Some have noted that since people acquire their moral standards as children and carry these into adulthood, studying ethics as an adult will do nothing to improve our moral standards. However, many studies show that people's moral views keep developing into adulthood. Lawrence Kohlberg's studies, for example, provided evidence that people's moral abilities move from a preconventional, to a conventional, and on to a postconventional level of development. Carol Gilligan's studies suggested that people, particularly women, might also move through a similar sequence of development, focused on becoming better at caring and being responsible for others and oneself.
5. A key part of moral development is improving one's moral reasoning abilities. Moral reasoning consists of the mental reasoning processes through which we determine what our moral standards are, and judge whether our behaviors, institutions, or policies accord with or violate our standards. At a minimum, moral reasoning should be logical; should rely on evidence that is accurate, relevant, and complete; and should be consistent.
6. To behave ethically, a person must (1) recognize when a situation requires moral reasoning, something that moral disengagement can influence; (2) make a judgment about what the ethical course of action is, which can be influenced by biased views about the world, others, and oneself; (3) decide to do what is ethical, which can be influenced by moral seduction and an organization's culture; and (4) carry out one's decision, which can be influenced by weakness of will and one's belief about the locus of control of one's actions.
7. Finally, it is important to understand that there is a difference between reasoning about whether an act or injury is morally wrong, and determining whether a person is morally responsible for a wrongful act or injury. Whether a person is morally responsible or culpable for a wrongful act or injury depends on three factors: (1) whether the person caused or helped to cause the act/injury or failed to prevent it when he or she could and should have; (2) whether the person knew what he or she was doing; and (3) whether the person acted according to his or her own free will. Depending on how seriously wrong a person's action was, the person's moral responsibility for it can be mitigated if the person's contribution to the action was minimal, if the person was uncertain about what he or she was doing, or if the person was subject to forces that made it extremely difficult not to act. Moral responsibility is not mitigated by the fact that one did not act alone, or that one was following orders.

## Chapter 2

# Ethical Principles in Business

Even when buying vegetables at a farmer's market, customers expect to be treated with honesty, fairness, and respect.

## Learning Objectives

**2.1** Examine the foundations of moral decision-making in business

**2.2** Detail the concept of utilitarianism and how it is applied to business decisions

**2.3** Examine a rights-based approach to business ethics

**2.4** Explain justice and fairness as key ethical principles

**2.5** Analyze an ethic of care as applied to business decisions and practices

**2.6** Evaluate an approach to business ethics that combines four main moral standards

**2.7** Relate virtue ethics to moral decision-making in business

**2.8** Differentiate unconscious and conscious moral decision-making processes and implications

Over the past several centuries, a number of approaches to moral decision-making have emerged. Each approach employs distinct moral concepts, and each emphasizes aspects of ethical behavior that are neglected or at least not emphasized by the others. The purpose of this chapter is to explain the most important of these approaches to making moral judgments of the kind that are made in the business world.

## 2.1: Approaches to Moral Decision-Making

**OBJECTIVE: Examine the foundations of moral decision-making in business**

Each approach to moral decision-making is based on specific concepts and weighs and employs information in its own way. We will identify the strengths and weaknesses of each approach and explain how using moral decision-making can clarify the ethical issues that confront us in business. We will begin by looking at how one company, Unocal, dealt with a series of moral decisions it had to make. As we will see, several of the approaches to ethics that we will discuss in this chapter were invoked by the various stakeholders who were swept up in Unocal's moral controversy.

### 2.1.1: Unocal and Burma

Toward the end of the twentieth century, governments that wanted to develop their country's oil or natural gas resources often sought out Union Oil Company of California (Unocal) to do the work and share the profits. The company had operations and expertise in all aspects of the petroleum business. According to Roger C. Beach, chief executive officer (CEO) of the company until 2002, "What every government likes about Unocal is one-stop shopping—one group able to take the whole project from development to the marketing end."[1]

In the early 1990s, the government of Burma invited Unocal to participate in a joint venture to develop a natural gas field called the Yadana gas field, located 150 feet underwater in the Andaman Sea, and about 120 miles from Burma's shores. Geologists believed the field contained more than 5 trillion cubic feet of natural gas, enough to produce natural gas continuously for about 30 years.[2] If Unocal agreed to participate in the proposed joint venture, revenues from the project would be shared among Unocal and the other members of the venture, which included a French oil company named Total, a Thai company named the PTT Exploration & Production Co. (PTTEP), and the Myanmar Oil and Gas Enterprise (MOGE), a company that was wholly owned by Burma's government. It was believed that the project would yield $200 to $400 million a year in revenues, and Unocal estimated that its share, depending on how much it invested in the project, would be between $50 and $100 million a year. Over the anticipated 30-year life of the project, revenues could total about $1.5 to $3 billion for Unocal.

To participate in the project, Unocal would have to sign an agreement that made Total, the French company, responsible for overall coordination of the project, for building the wells at the Yadana gas field site, and for extracting the gas. Unocal would construct and operate a 254-mile pipeline to carry the gas from the Yadana gas field to the border of Thailand, which had agreed to buy the project's natural gas. Most of the pipeline would lie under the ocean, but the final 39 miles would cross over southern Burma through a region inhabited by the Karen, a minority ethnic group whose relationship to the government was hostile. PTTEP, the Thai company, would build the infrastructure to distribute the gas within Thailand. MOGE, the company owned by Burma's government, would agree to "assist by providing security protection and rights of way and such easements as may be requested by" the companies with which it partnered.[3] Although its partner companies would construct the project, MOGE would use Burma's army to establish security and to ensure that land was cleared and rights of way secured for the passage of the pipeline through Burma. MOGE would also have the army build roads and other facilities along the pipeline route, such as base camps, buildings, barracks, fences, airplane landing strips, river docks, and helipads.

**ASSESSING BENEFITS TO REGION AND COMPANY** If the project went forward, it would provide significant benefits to Burma as well as Thailand. Burma was then, and remains today, an extremely poor country. With a population of 51 million on a landmass about the size of Texas, Burma's annual gross domestic product (GDP) was approximately $200 to $300 per person, and inflation regularly ran between 10 and 30 percent. About 23 percent of the population lives below minimum subsistence levels, and 60 percent have no access to safe water. Burma suffers a high infant mortality rate (95 deaths for every 1,000 live births) and a low life expectancy (53 years for males and 56 for females). The revenues the natural gas project would reap, therefore, could provide much-needed social benefits to the impoverished people of Burma. Although Thailand was not an impoverished country, it needed additional sources of energy to support its rapidly developing economy. Thailand expected that the natural gas from the Yadana gas field would enable it to expand its industries and would improve the lives of its citizens. It would also enable it to reduce its use of fuel oil, which, although cheap, produces large quantities of air pollutants and is a significant contributor to global warming.

The Burmese project appealed to Unocal for several reasons beyond the attractive revenue stream it promised. These reasons were as follows:

- Burma's labor force was cheap, plentiful, and relatively educated.
- Burma was rich in natural gas reserves, and it had oil and other untapped resources that presented major opportunities for future development.
- Burma occupied a strategic location that could serve as a door to markets in China, India, and other countries in Southeast Asia.
- Burma had a relatively stable political climate primarily because the Burmese government worked hard to secure law and order. However, that government and its methods of ensuring security presented a problem.

**MILITARY DICTATORSHIP** The Burmese government, which in effect would be one of Unocal's partners in the joint venture, was a military dictatorship accused of continuous violations of the human rights of its people. In 1988, after crushing major countrywide prodemocracy demonstrations, Burma's military seized power and installed the 19-member State Law and Order Restoration Council (SLORC) as head of the government. SLORC, which was made up of army generals, imposed martial law on the entire country. SLORC in 1992 was led by General Than Shwe, described as "a modest man with simple tastes and no signs of the cruelty and corruption endemic in his family and regime."[4] Nevertheless, he was also known as "a skilled manipulator" who was "cold and humorless" and "slow to make decisions" but "ruthless and brutal" in carrying them out. Possessing a "plump, sullen face," he was "despised and feared," yet "possessed no charisma to inspire loyalty."[5] In 1990, SLORC allowed a general election to take place, but when the regime's major opponents won the election, SLORC nullified the elections, placed opposition leader Aung San Suu Kyi under house arrest, and tortured and imprisoned her followers. The daughter of a revered hero in Burma's 1940s struggle for liberation, Aung San had a "deep respect for human rights [and] commitment to non-violence" and combined "fearlessness" and "impressive courage" with "high ideals" and "humility."[6] A journalist noted that Aung San "represents everything that [the Generals and their wives] are not—she is beautiful, intelligent, sophisticated, highly-educated and well-traveled."[7]

The ruling military junta did not just violate the political rights of its people. The U.S. State Department, in its 1991 *Country Reports on Human Rights Practices*, wrote that the SLORC army maintained law and order through "arrests, harassment, and torture of political activists . . . Torture, arbitrary detentions, and compulsory labor persisted . . . Freedom of speech, the press, assembly, and association remain practically nonexistent."[8] Many other groups accused SLORC of human rights abuses, particularly against minority groups, including the Karen, who had periodically fielded rebel groups against Burma's military regime. Amnesty International, in an August 1991 report on Burma, wrote that the ruling Burmese army

> continues to seize arbitrarily, ill-treat and extra-judicially execute members of ethnic and religious minorities in rural areas of the country. The victims . . . include people seized by the [army] and compelled to perform porterage—carrying food, ammunition and other supplies—or mine-clearing work.[9]

**DECISION TO GO FORWARD DESPITE RISKS** Unocal's managers were aware of the reports the U.S. State Department and other groups had published, but in order to check out the situation for themselves, they hired a consulting firm, the Control Risk Group. The Control Risk Group traveled to Burma on behalf of Unocal, interviewed a number of parties, and shortly after issued its report. The report of the consulting firm warned: "Throughout Burma the government habitually makes use of forced labor to construct roads . . . In such circumstances Unocal and its partners will have little freedom of maneuver."[10]

Despite the risks, Unocal's management decided to participate in the project. Unocal's executives felt that the benefits, both to the company as well as to the people of Burma and of Thailand, outweighed the potential costs. In December 1992, therefore, Unocal agreed to join the joint venture and paid $8.6 million to buy into the project. That investment gave Unocal a 28.3 percent stake in the project and its direct revenues, while Total held a 31.2 percent stake; Thailand's PTTEP held a 25.5 percent stake; and the Burmese government (MOGE) held a 15 percent stake.[11]

Unocal began working on the pipeline immediately. The period between 1993 and 1996 was devoted to preparing the way for the pipeline by clearing land and building roads, camps, housing, and other facilities. Actual construction of the pipeline began in 1996 and was completed in 1998. By 2000, gas was flowing through the pipeline to Thailand. During the initial years of the project, Unocal's share of gas revenues was about $75 million a year. Those revenues were projected to increase and to continue for the course of the 30-year contract. Unocal's total gain was expected to reach at least $2.2 billion dollars.

**HUMAN RIGHTS IN BURMA** Throughout the time of preparation and construction of the pipeline, human rights groups—including Human Rights Watch and Amnesty International—issued numerous reports claiming that the Burmese army was using forced labor and brutalizing the Karen population in order to provide security for Unocal workers and equipment. Roads, buildings, and other structures, they reported, were being built with the use of forced labor recruited from local Karen groups by the Burmese military, and hundreds of Karen were being forced to clear the way for the pipeline and to provide slave labor for the project. Moreover, they claimed, Unocal was aware of this and aware of the brutal methods the army used to provide security for Unocal workers and equipment.[12]

Unocal had, in fact, hired another consultant in 1995 to investigate whether conditions on the Yadana gas field project were as bad as the human rights groups were alleging. The consultant reported the following in a letter to Unocal officials:

> [E]gregious human rights violations . . . are occurring now, in southern Burma . . . the most common [of which] are forced relocation without compensation of families from land near/along the pipeline route; forced labor to work on infrastructure projects supporting the pipeline, . . . and imprisonment and/or execution by the army of those opposing such actions.[13]

Unocal defended its participation in the project by arguing that, together with the other companies, it had instituted a number of programs that provided significant benefits to the people around the pipeline region. In a "background" paper published on its website, Unocal summarized these benefits, including a "multimillion-dollar socioeconomic development program" that had helped "thousands of families" living within the pipeline region. Health care was "significantly improved," and new educational opportunities, new "transportation infrastructure," and countless new opportunities for small businesses were realized. As a result of these programs, Unocal stated, by 2000 infant mortality had dropped from Myanmar's average rate of 95 deaths per 1,000 live births, to 31 deaths per 1,000 live births in the pipeline region. And by 2002 the rate had fallen to only 13 deaths per 1,000 live births.[14]

Unocal's claims were verified by several groups, including the Collaborative for Development Action (CDA), an independent group headquartered in Massachusetts. After three visits to the pipeline region, the CDA reported in February 2004 that "the number of people benefitting from the Socio-Econ Program is steadily increasing."[15] Although "the program has mainly benefitted the middle class," this "middle class has grown, relatively, wealthy" and the program was refocusing on "programs for the poorer people in the corridor." The CDA noted, however, that "the educated middle-class" still wanted "freedom" and a government "based on a constitution."[16]

Unocal also pointed out that it had provided 7,551 paid jobs to Burmese workers during construction and would continue to employ about 600 Burmese workers for the life of the project. The company looked on these Burmese workers as its own employees and tried to provide them and their families with benefits that it felt it owed them as their employer. Moreover, by 2004, the project was delivering 500 to 600 million cubic feet of gas per day to Thailand, benefiting that nation's rapidly expanding economy, providing an efficient and reliable source of energy, and enabling Thailand to use cleaner-burning natural gas to fuel its electrical plants.

**CRITICISMS AND CONTINUANCE** Critics argued that Unocal was supporting the unjust military regime and its brutal violations of the rights of Burmese citizens. They pointed out that direct revenues from the project provided millions of dollars a year to the Burmese government, and taxes, royalties, bonuses, and other fees added substantial additional amounts. That money enabled the military to remain in power and helped to finance the regime's human rights abuses, including torture, rape, murder, and forced labor. Earth Rights International (ERI), a nongovernmental organization (NGO) comprising lawyers and other professionals who fought against human rights violations in many parts of the world, estimated that the military regime's cumulative share of revenues from the Yadana gas field project by 2009 would total about $4.6 billion. ERI claimed it had evidence proving that much of that money was going into offshore bank accounts owned by Burmese generals, while public expenditures on health and education remained the lowest in the region and poverty continued to be widespread. Therefore, Unocal was also helping the wealthy military leaders become even richer, while most Burmese citizens remained mired in poverty. The company was thereby worsening the already highly unequal and unjust distribution of wealth and power in Burma. In 2004 the U.S. State Department wrote:

> Citizens still did not have the right to criticize or change their government . . . Security forces continued to carry out extrajudicial killings. Disappearances continued, and security forces raped, tortured, beat, and otherwise abused prisoners and detainees.[17]

In 2005, Chevron Corporation purchased Unocal for $16.2 billion and assumed Unocal's stake in the Yadana gas field project. According to critics, Chevron continued Unocal's practices and policies. In a 2009 report, *Total Impact*, ERI wrote:

> [E]vidence collected through 2009 attests to the ongoing violent abuses committed by the Burma Army providing security for the companies and the project. Abuses include extrajudicial killings, torture, and other forms of ill-treatment; widespread and systematic forced labor; and violations of the rights to freedom of movement and property.

**A MORAL DEBATE: RIGHTS AND JUSTICE** The debate over whether Unocal should have begun and then continued its participation in the Yadana gas field project was a moral debate. The debate was not about what the law required. The requirements of the Burmese government's laws were clear and Unocal complied fully with those laws. Instead, the debate centered on whether the government itself was morally legitimate, whether its actions were morally acceptable, and whether a company should help support the government that was carrying out those actions. The arguments on both sides of these issues appealed to ethical considerations. They appealed, in fact, to four basic kinds of ethical standards:

- rights
- justice
- utilitarianism
- caring

In addition, the debate invoked the virtues and vices of various people involved in Burma's struggle for freedom.

Those who argued that it was unethical for Unocal to have invested in Burma's Yadana gas field project and unethical for it to continue to participate in the project argued that the company was actively supporting government policies that violated the rights of the Burmese people. Specifically, the company was supporting violations of the Burmese people's **right** to participate in the political life of their nation, to speak freely, to come and go as they wanted, to unionize, and to associate with one another. They argued, also, that Unocal's participation in the project was unjust because it enabled the military oppressors of Burma to enrich themselves at the expense of the majority of the Burmese people who remained impoverished. The project unjustly distributed its benefits to the military leaders who did not deserve those benefits, and it distributed its burdens on those who should not have been forced to carry those burdens.

These arguments were appeals to two distinct kinds of ethical principles:

- Judgments about **justice** are based on ethical principles that identify just and unjust ways of distributing benefits and burdens among the members of a society.
- Judgments about human **rights** are based on ethical principles that advocate respect for people's freedom and well-being.

**A MORAL DEBATE: UTILITARIANISM, CARING, AND VIRTUE** The arguments that Unocal managers used to defend their participation in the project also appealed to other ethical concepts. They argued that if the company stayed in Burma, the Burmese people living near the pipeline would be better off because the company would provide them with economic and social benefits that would allow them to have richer and more satisfying lives. While these advantages benefited primarily the people living near the pipeline, that was the area in which the critics alleged that most of the maltreatment was going on. On the other hand, they argued, if the company left, those Burmese citizens would be deprived of the many economic benefits the company provided, Unocal's own stockholders would be deprived of the gains the project promised, and if Unocal's exit forced the project to shut down, Thailand would be deprived of the natural gas its people needed. In these arguments, Unocal's managers were relying on an approach to ethics called *utilitarianism*, which says that we should maximize the good and minimize the bad.

In addition, Unocal's managers also argued that they took special care of their Burmese workers and that the company's special responsibility for the well-being of its workers implied that it should not abandon them. These additional considerations are closely linked to an ethic of care, which emphasizes the value of human relationships and of caring for the well-being of those who are dependent on us.

Finally, embedded in the debate were references to the moral virtues and vices of various persons involved in Burma's struggles. For example, General Than Shwe, head of SLORC, was described as being "cold," "ruthless and brutal," and a "skilled manipulator." Aung San Suu Kyi, the leader of the opposition, was described as being "fearless" and "courageous," as having "high ideals" and "humility," and as being "committed to nonviolence." The character traits attributed to these people are examples of the kind of virtues that are encouraged and the vices that are discouraged by an **ethic of virtue**.

These five kinds of approaches to moral judgments—justice, rights, utilitarianism, an ethic of care, and an ethic of virtue—are the most important types of approaches to ethics studied by moral philosophers. As the case of Unocal in Burma demonstrates, these approaches are the common and natural ways we discuss and debate the ethics of our decisions.

***Quick Review 2.1***
**Five Questions to Moral Decisions**

- Is the decision just?
- Does the decision respect people's rights?
- Does the decision maximize the good and minimize the bad?
- Does the decision express caring?
- Does the decision flow from virtue and not from vice?

# 2.2: Utilitarianism: Weighing Social Costs and Benefits

**OBJECTIVE: Detail the concept of utilitarianism and how it is applied to business decisions**

We begin our study of the various approaches to ethical decision-making by looking at the approach to which the managers of Unocal appealed: utilitarianism. **Utilitarianism** is a general term for the view that actions and policies should be evaluated on the basis of the benefits and costs they produce for everyone in society who is affected by those actions or policies.

Specifically, utilitarianism holds that the morally right course of action in any situation is the one that, when compared with all other possible actions, will produce the greatest balance of benefits over costs for everyone affected. This approach is sometimes referred to as a *consequentialist* approach to ethics because it focuses on whether the consequences of our actions are good or bad.

## 2.2.1: Utilitarianism and Ford Motor Company's Pinto

To get a clearer understanding of how utilitarianism works, let's look at another situation where this approach was a basic consideration in a business decision that had a dramatic impact on the lives of many people.

During the last decades of the twentieth century, Ford Motor Company began losing market share to Japanese companies who were making compact, fuel-efficient cars. Gas shortages had made such cars particularly attractive to consumers. Lee Iaccoca, Ford's president at the time, decided to attempt to regain the company's share of the market by quickly developing and marketing a small car called the Pinto.[18] Iaccoca was determined that the Pinto would be on the market within two years instead of the typical four years.

Because the Pinto was a rush project, styling considerations dictated engineering design to a greater degree than usual. In particular, Pinto's styling required that the gas tank be placed behind the rear axle that had protruding bolts. In that position, the tank could be punctured by the rear-axle bolts if a rear-end collision pushed it against the axle. When an early model of the Pinto was crash-tested, it was found that, when struck from behind at 20 miles per hour or more, the gas tank would sometimes break open. Gas would then spray out and enter the passenger compartment as well as under and around the car. In a real accident, stray sparks could explosively ignite the spraying gasoline and fire might engulf and burn the occupants, particularly if, as often happened in accidents, the doors jammed, trapping the victims.

Nonetheless, Ford managers decided to go ahead and manufacture the Pinto without changing the gas-tank design. They had several reasons for their decision, including the following:

- The design met all the legal and government standards then in effect. At the time, government regulations required that a gas tank only remain intact in a rear-end collision of less than 20 miles per hour.
- Ford managers knew that the car was comparable in safety to several of the small cars other companies were making and quickly putting on the market.
- According to an internal cost-benefit study Ford conducted, modifying the Pinto would be more costly to customers (and ultimately to society) than leaving its design unchanged. The study stated that approximately 12.5 million of the autos would eventually be built. Modifying the gas tank of each car by surrounding it with a rubber bladder to contain any gasoline leaks, it said, would cost about $11 a unit so the total cost of modifying all the vehicles would be about $137.5 million.

**UTILITARIANISM IN FORD'S DECISION** Ford managers used a utilitarian analysis in their cost-benefit study. They reduced costs and benefits primarily to economic costs and benefits (such as medical costs, loss of income, and car damages), which were measured in monetary terms. Benefits and costs do not have to be measured in monetary terms. Some utilitarians have argued, for example, that an action's benefits should be measured by the amount of happiness or satisfaction the action produces, and its costs in terms of the amount of unhappiness or dissatisfaction it produces.

It is important to understand that Ford's managers were not saying that making no changes to the Pinto's gas tank would save them money. That is, their claim was not that leaving the design unchanged was in Ford's best interests (recall that the buyers of the Pinto would ultimately pay the costs, whether the design was changed or not). If that had been their claim, then it would have been based on self-interest and not on utilitarian ethics. Their claim, instead, was that their decision to leave the car's design unchanged was best for *everyone in society who would be affected by that decision*. Ford's assertion was that from society's point of view, and considering the best interests of everyone affected, it was better to stay with the original design. Utilitarianism is not a theory of calculated selfishness. It is a theory that says that we should strive to do what is best for everyone in society, and that we do what is best for everyone when we take into account all the beneficial and costly consequences of our actions and choose the action with the greatest net benefits or lowest net costs.

Many business analysts hold that the best way to evaluate the ethics of a business decision—or any other decision—is by relying on this kind of utilitarian analysis of the decision's social costs and social benefits.[19] Several government agencies, many legal theorists, numerous moralists, and a variety of business analysts advocate versions of utilitarianism.[20] As we saw earlier, Unocal managers used this approach to justify its decision to participate in Burma's Yadana gas field project. Let us turn now to look more closely at this popular approach.

**Social Costs and Benefits: Ford's Analysis**

Interactive

Costs | Benefits | Analysis

The total costs of modifying all the Pintos Ford planned to build were simple to calculate:

$11 x 12.5 million autos = $137 million

What benefits would customers derive from the $137 million they would have to pay if the Pinto's gas tank were modified?

## 2.2.2: Traditional Utilitarianism

British philosophers Jeremy Bentham (1748–1832) and John Stuart Mill (1806–1873) are generally considered the founders of traditional utilitarianism.[21] Bentham and Mill both sought an objective basis for making ethical judgments. They wanted to develop an ethical principle that could provide a publicly acceptable basis for determining the best social policies, as well as the ethically best courses of action. The most promising approach to such an objective decision-making ideal, they believed, was one based on the objectively ascertainable beneficial and harmful consequences of actions. The right action from an ethical point of view, they argued, would be the one that had the most beneficial consequences for society or that at least minimized the harmful consequences. Bentham once expressed this idea by saying that an action is right when it produces "the greatest good for the greatest number." Mill expressed the idea in the following words: "actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness."[22]

Both Bentham and Mill proposed, then, that when faced with a decision, we should consider all the courses of action that are available to us and estimate the good and bad consequences of each course of action. The right course of action is the one that will produce the greatest amount of good for everyone when compared with all the other alternative courses of action; but if every available course of action does more harm than good, then the right action will be the one that will produce the least harm. The Ford managers, for example, when deciding what to do about the Pinto's design, assumed that they had two courses of action available to them: to leave the car's design unchanged or to modify it. They then estimated the costs and benefits of each of these two courses of action. Both courses of action, it turned out, would impose costs on their customers. So they chose the one with the lowest total costs, which was to leave the design unchanged.

We can use the term *utility* to refer to the result of combining the beneficial and costly consequences of an action. So we can say that for the utilitarian, the right course of action is the one that produces the greatest positive or least negative amount of utility. Thus, the utilitarian approach can be summarized as follows:

> An action is right from an ethical point of view, if and only if, the net sum of utilities produced by that action is greater than the net sum of utilities produced by any other action the agent could have performed in its place.

Note that the utility of an action can be positive or negative; that is, an action can have either beneficial consequences or harmful or costly consequences. The beneficial consequences of an action may include any desirable good (pleasures, health, lives, satisfactions, knowledge, happiness) produced by the action, while its harmful or costly consequences may include any of its undesirable evils or harms (such as pain, sickness, death, dissatisfaction, ignorance, unhappiness). The beneficial consequences of an action constitute its positive utility, while its costly consequences comprise its negative utility. To determine the net sum of utilities produced by an action, then, we must subtract its negative utility from its positive utility. The morally right action according to utilitarianism is the action that produces the most positive utility or—when all the available courses of action produce only negative utility—the least negative utility.

Notice, also, that the utilitarian principle assumes that we can measure and add together the quantities of benefits produced by an action and then measure and subtract from those benefits the quantities of harms or costs the action will produce. In other words, utilitarianism assumes that any benefits or costs an action produces can be measured on a common quantitative scale and then added to or subtracted from each other.[23] The satisfactions that an improved work environment imparts to workers, for example, might be equivalent to 500 positive units of utility, whereas the resulting bills that arrive the next month might be equivalent to 700 negative units of utility. Therefore, the total or net utility of this act (improving the work environment) would be 200 units of *negative* utility.

***Quick Review 2.2***
**The Utilitarian Principle**

- An action is right from an ethical point of view, if and only if, the net sum of utilities produced by that action is greater than the net sum of utilities produced by any other action the agent could have performed in its place.

**MISTAKES IN THINKING ABOUT UTILITARIANISM** There are three important misconceptions to watch out for when using utilitarianism. Almost everyone has them when they first start thinking about utilitarianism, so it is important to be aware of them from the start.[24]

## Ethical Application

### Four Steps in Utilitarian Reasoning and Ford's Decision

To determine, then, how I should behave in a particular situation according to utilitarianism, I must do four things. First, I must determine what alternative actions are available to me in that situation. The Ford managers, as we saw, assumed that they had two alternatives: to redesign the Pinto or to leave it as originally designed. Second, for each available action, I must estimate the direct and indirect benefits and costs that the action will probably produce for each and every person affected by the action in the future. Ford's calculations of the costs and benefits their customers would have to bear if the Pinto design were changed, and those they would bear if it were not changed, are examples of such estimates. Third, for each action I must subtract the costs from the benefits to determine the net utility of each action. The Ford managers undertook this kind of calculation when they computed the net social costs and benefits of leaving the Pinto's design unchanged, as well as the net social costs and benefits of modifying it. Fourth, the action that produces the greatest sum total of utility must be chosen as the ethically appropriate course of action. The Ford managers, for example, decided that the course of action that would impose the lowest costs compared with their only other alternative was to leave the Pinto design unchanged.

**UTILITARIANISM APPLIED TO A REAL-WORLD PROBLEM** Lawrence Summers, director of the National Economic Council for President Barack Obama, wrote a memo in 1991 (while chief economist of the World Bank) claiming that the world's welfare would improve if more of the waste of rich countries were sent to poor countries. Summers gave four arguments for this claim:

1. Clearly, it will be best for everyone if pollution is shipped to the country where its health effects will have the lowest costs. The costs of "health impairing pollution" depend on the wages lost when pollution makes people sick or kills them. So the country with the lowest wages will be the country where the health effects of pollution will be lowest. Therefore, with "impeccable" "economic logic" we can infer that it will be best for everyone if we dump our toxic waste in the lowest wage countries.

### Common Misconceptions

Benefits versus costs, utility, and consequences are the three areas in which most questions that reflect misconceptions about utilitarianism arise.

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**Is the Right Action One Whose Benefits Outweigh Its Costs?**

**Does the Right Action Produce the Most Utility for the Person Performing It?**

When the utilitarian principle says that the right action for a particular occasion is the one that produces more utility than any other possible action, it does not mean that the right action is the one that produces the most utility for *the person performing* the action. Rather, an action is right if it produces the most utility for *all persons* affected by the action, including, of course, the person who performed the action. John Stuart Mill, who felt that happiness or pleasure is the only true benefit that actions produce, and unhappiness or pain the only true harm, wrote:

> The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness . . . The happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned. As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator. In the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility: "To do as you would be done by," and "to love your neighbor as yourself," constitute the ideal perfection of utilitarian morality.

**Do We Consider Only Direct and Immediate Consequences?**

2. Adding more pollution to an environment that is already highly polluted has worse health effects than putting that same pollution into a clean environment where it can disperse. So we can reduce the harm pollution causes by transferring it out of highly polluted cities such as Los Angeles and dumping it into countries in Africa that "are vastly under-polluted." Doing so will make better use of those countries' clean air quality, which we now are using "vastly inefficiently," and it will improve "world welfare."
3. The same pollution will cause more harm in a country where people have "long life-spans," than in a country where people die young. When people have "long life-spans," they survive long enough to get diseases, such as prostate cancer, that people who die young do not get. So pollution will cause more diseases such as prostate cancer in countries where people have long lives than countries where people die young. It follows that we can reduce the diseases pollution causes by moving pollution out of rich countries where people have long lives, and dumping it into poor countries where people die young.
4. Pollution can cause "aesthetic" damage, such as dirty-looking air, that "may have very little direct health impact." Since the wealthy are willing to pay more for clean-looking air than the poor, clean-looking air is worth more to the wealthy than to the poor. So it should be possible for people in wealthy countries to find people in poor countries who are willing to trade their clean air for the money the wealthy are willing to offer. This kind of trade will be "welfare enhancing" for both parties.

### Should Companies Dump Their Wastes in Poor Countries?

A utilitarian cost-benefit analysis on one side of the world can result in profound environmental changes on the other side.[25]

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Economist Lawrence Summers, director of President Obama's National Economic Council until 2010, raised the controversial utilitarian question about sending more waste from rich countries to poor countries.

**WRITING PROMPT**

**Analyze This Argument**

1. Explain which parts of the reasoning in this memo a utilitarian would have to accept and which parts a utilitarian could reject.
2. Assuming that the four arguments are correct, do you agree or disagree with the conclusion that those in rich countries should ship their waste to poor countries (perhaps by paying poor countries to take them)? Explain why or why not.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## 2.2.3: The Advantages of Utilitarianism

Although it can be easily misunderstood and misused, utilitarianism is an attractive ethical theory in many ways.[26]

**UTILITARIANISM AND ECONOMICS** Utilitarian views have also been highly influential in economics.[27] A long line of economists, beginning in the nineteenth century, argued that economic behavior could be explained by assuming that human beings always attempt to maximize their utility and that the utilities of commodities can be measured by the prices people are willing to pay for them. With these and other simplifying assumptions (such as the use of indifference curves), economists were able to derive the familiar supply and demand curves of sellers and buyers in markets and explain why prices in a perfectly competitive market gravitate toward an equilibrium. More important, economists were also able to demonstrate that a system of perfectly competitive markets would lead to a use of resources and price variations that would enable consumers to maximize their utility (defined in terms of Pareto optimality) through their purchases.[28] On utilitarian

### The Primary Benefits of Utilitarianism

Interactive

**Advocates Policies That Provide the Greatest Benefits**

For one thing, it matches fairly nicely the views that we tend to advocate when discussing the choice of government policies and public goods. Most people agree, for example, that when the government is trying to determine on which public projects it should spend tax monies, the proper course of action would be for it to adopt those projects that objective studies show will provide the greatest benefits for the members of society at the least cost. Of course, this is just another way of saying that the proper government policies are those that would have the greatest measurable utility for people—or, in Bentham's words, those that will produce "the greatest good for the greatest number."

**Impartially Considers Everyone's Interests**

**Explains Why Some Activities Are Right and Some Are Wrong**

grounds, therefore, these economists concluded that such a system of markets is better than any other alternative.

Utilitarianism is also the basis of economic **cost-benefit analysis**.[29] This type of analysis is used to determine the desirability of investing money in a project (such as a dam, a factory improvement, a financial investment, or a public park). It entails figuring out whether the project's present and future economic benefits outweigh its costs and comparing this finding to the costs and benefits of other ways of investing the money. To calculate these costs and benefits, discounted monetary prices are estimated for all the effects the project will have on present and future populations. Carrying out these sorts of calculations is not always an easy matter, but various methods have been devised for determining the monetary prices of even such intangible benefits as the beauty of a forest (e.g., we might ask how much people pay to see the beauty of a similar privately owned park). If the monetary benefits of a certain public project exceed the monetary costs and if the excess is greater than the excess produced by any other feasible project, then the project should be undertaken. In this form of utilitarianism, the concept of utility is restricted to monetarily measurable costs and benefits. We should note, however, that some forms of cost-benefit analysis depart from what utilitarianism strictly requires. Some forms of cost-benefit analysis hold that all projects whose benefits outweigh their costs should be pursued. However, utilitarianism holds that in any given situation, only one action is ethically right: that one action whose benefits outweigh its costs by more than all other available courses of action.

As well, we can note that utilitarianism fits nicely with a value that many people prize: efficiency. **Efficiency** can mean different things to different people, but for many it means operating in the manner that produces the most from a given amount of resources, or that produces a desired output with the lowest resource input. Such efficiency is precisely what utilitarianism advocates because it holds that one should always adopt the course of action that will produce the greatest benefits at the lowest cost. If we read "desired output" in the place of "benefits" and "resource input" in place of "cost," utilitarianism implies that the right course of action is always the most efficient one.

***Quick Review 2.3***
**Utilitarianism . . .**

- Matches well with our moral evaluations of public policies
- Appears intuitive to many people
- Helps explain why some actions are generally morally right and others are generally morally wrong
- Influences economics

## 2.2.4: Utilitarianism's Measurement Problems

One major set of problems with utilitarianism is centered on the difficulties of trying to measure utility.[30]

Even Mill and Bentham, the two founders of utilitarianism, seem to have moved between claiming that happiness is the only true good and unhappiness the only true evil, and claiming that pleasure is the only true good and pain the only true evil. To make things even more confusing, Bentham seems to have thought that all pleasures were essentially the same and differed only in their quantity, while Mill objected that there were different kinds of pleasures and some kinds were qualitatively better or more valuable than others. Other utilitarians subsequently argued that other things are true goods, such as knowledge, truth, beauty, or love. These are good, they have

### Issues That Complicate Measurement

Precise definitions of benefits and costs is at the heart of three issues with utilitarianism.[31, 32, 33, 34, 35]

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**Utility Is Subjective and Comparisons Difficult**

How can the utilities that different actions have for different people be measured and compared as utilitarianism requires? Suppose you and I would both enjoy getting a certain job: How can we figure out whether the utility you would get out of having the job is more or less than the utility I would get out of having it? Each of us may be sure that he or she would benefit most from the job, but because we cannot get "into each other's skin," we have no objective way of making this judgment. Comparative measures of the values things have for different people cannot be made, the critics argue, so there is no way of knowing whether utility would be maximized by giving me the job or by giving you the job. If we cannot know which actions will produce the greatest amounts of utility, then we cannot apply the utilitarian principle.

**Some Benefits and Costs Seem Impossible to Measure**

**Benefit and Costs Themselves Can Be Unclear**

argued, regardless of whether they lead to pleasure or happiness. This lack of agreement about what things are truly beneficial or good creates difficult problems when we are dealing with controversial decisions that involve consequences on which different people place very different values.

Suppose a bank must decide, for example, whether to extend a loan to the manager of a local pornographic theater or to the manager of a gay men's bar. One group of people may see the increased enjoyment of pornography connoisseurs or the increased enjoyment of gay men as beneficial for society. A conservative religious group, however, may see these enjoyments as harmful and, hence, as costs.

**ARE ALL GOODS COMMENSURABLE?** The utilitarian assumption that all benefits are measurable implies that all benefits can be traded for equivalents of each other. In other words, all goods are commensurable: for a given quantity of one good, there is some quantity of any other good that you should see as equal in value to the first good. For example, suppose that for you, the enjoyment of eating two slices of pizza right now has the same value as the enjoyment of a half hour of listening to your favorite music right now. Then, you should be willing to trade one for the other (at least right now) since they are for you at the present moment equal in value. Utilitarianism says that what is true of pizza and music is true of everything. Since the value of each good can be measured, we should be able to measure the value of given amounts of our enjoyment of X and the value of given amounts of our enjoyment of Y, no matter what goods X and Y are. Therefore, once we measure the value of a certain amount of enjoyment of X, we should be able to determine how much enjoyment of Y will have the same value as that amount of enjoyment of X. Once we know how much enjoyment of X is equal to a given amount of enjoyment of Y, we should be willing to trade one for the other, no matter what X and Y are. Utilitarianism implies, then, that we should be willing to trade any one good for some quantity of any other good. All goods, in other words, are commensurable with each other.

Critics say that this implication shows that utilitarianism is a false theory. For example, utilitarianism would imply that if you enjoy spending time with your child (or your parents or your lover), and you also enjoy drinking beer, then you should be willing to trade all the time you will ever spend enjoying your child (or your parents or your lover) for some quantity of the enjoyment you get from drinking beer. On this point, critics have argued, utilitarianism has led us to a mistaken and ridiculous conclusion: Who would ever agree to trade all the time they will ever have enjoying their child (or parents or lover) for the enjoyment of some quantity of beer? There are some **noneconomic goods**—such as the enjoyment of love, freedom, health, and parenthood—that we would not be willing to trade for any amount of the enjoyment of economic goods because noneconomic goods cannot be measured in quantitative economic terms.[36] For example, no matter how much money you would offer me, I would never be willing to trade away all the hours of enjoyment my child will give me for the enjoyment of that amount of money. Critics of utilitarianism claim that the enjoyment of some things just cannot be traded for our enjoyment of other things. There are values that are "incommensurable" with each other because they cannot be measured on a common quantitative scale.

Critics of utilitarianism contend that these problems undercut whatever claims utilitarian theory makes to provide an objective basis for making ethical decisions. In too many cases, they say, there are no objective quantitative measures of the goods we prize and too many differences of opinion over what should be counted as good.[37] One way of resolving these problems is to arbitrarily accept the valuations of one social group or another. Yet this in effect bases utilitarian cost-benefit analysis on the subjective biases and tastes of that group.

***Quick Review 2.4***
**Utilitarianism's Measurement Problems**

- It is difficult to determine how much utility an action produces for different people.
- Some benefits—such as life and health—seem impossible to measure.
- Disagreements exist over what is a benefit and what is a cost.
- Not all goods are commensurable.

## 2.2.5: Utilitarian Replies to Measurement Objections

A defender of utilitarianism has an array of replies ready to counter the measurement objections we outlined above. Jeremy Bentham, as we saw earlier, was one of the two main founders and defenders of utilitarianism. In his view, all the benefits produced by an action were reducible to pleasure, and all the costs reducible to pain. Therefore, he proposed seven quantifiable criteria that could be used to measure and compare the values of all pleasures and pains:

> The value of a pleasure or pain . . . will be greater or less, according to [seven] circumstances; to wit: . . . (1) its intensity, (2) its duration, (3) its certainty or uncertainty, (4) Its

propinquity or remoteness, (5) its fecundity, (6) its purity, and one other; to wit: (7) its extent; that is, the number of persons . . . who are affected by it.

***Quick Review 2.5***
**How Utilitarians Respond to Measurement Objections**

- Use estimates if exact measurements are unavailable.
- Assign greater value to intrinsic goods than to instrumental goods.
- Assign greater value to satisfying needs than satisfying wants.
- Use monetary values.

## 2.2.6: Utilitarian Problems with Rights and Justice

The utilitarian will grant that the problems of measurement are real enough. Yet that same utilitarian may insist that we can at least partially solve those problems by the various measurement methods. There are, however, other significant criticisms of utilitarianism.

The major difficulty with utilitarianism, according to some critics, is that it is unable to deal with two kinds of moral issues: those related to rights and those related to justice.[39] That is, the utilitarian principle implies that certain actions are morally right when, in fact, they are unjust or violate people's rights.

### Alternative Ways to Measure Utility

Bentham's method of measuring utility, called "felicific calculus," has not convinced all utilitarians who have, instead, turned to other ways of dealing with the problem of measuring utility. Some arguments for and against alternative ways of measurement are outlined here.[38]

Interactive

**Using Estimates**

The utilitarian may argue that, although utilitarianism ideally requires accurate quantifiable measurements of all costs and benefits, this requirement can be relaxed when such measurements are not possible. Utilitarianism merely insists that the consequences of any projected act be expressly stated with as much clarity and accuracy as is humanly possible, and that all relevant information concerning these consequences be presented in a form that will allow them to be systematically compared and impartially weighed against each other. Expressing this information in quantitative terms would make such comparisons and weightings easier. However, where quantitative data are unavailable, one may legitimately rely on shared and common-sense judgments of the comparative values things have for most people. For example, we know that, by and large, cancer is a greater injury than a cold, no matter who has the cancer and who has the cold. Similarly, a steak has a greater value as food than a peanut, no matter whose hunger is involved.

1 of 5 Previous Next

The following examples may serve to indicate the sort of difficult counterexamples critics pose for utilitarianism. We start with a counterexample related to the issue of human rights.

## Ethical Application

### Counterexample: The Murderous Heir

Suppose that your uncle has an incurable and painful disease, so that he is quite unhappy; but he does not choose to die. Although he is hospitalized and will die within a year, he continues to run his chemical plant. Because of his misery, he deliberately makes life miserable for his workers and has insisted on not installing safety devices in his chemical plant, although he knows that as a result, at least one worker will lose his life each year. You are your uncle's only living relative and know that upon his death, you will inherit his business and will be wealthy and immensely happy. As the new owner, you intend to prevent any future loss of life at the plant by installing the needed safety devices. At the same time, you are cold-blooded and correctly judge that you could secretly murder your uncle without being caught and without your happiness being at all affected by it afterward. If it is possible for you to murder your uncle without in any way diminishing anyone else's happiness, then according to utilitarianism, you have a moral obligation to do so. By murdering your uncle, you are trading his life for the lives of the workers, and you are gaining your happiness while doing away with his unhappiness and pain—the gain is obviously on the side of utility. However, the critics of utilitarianism claim in evaluating this example that it seems quite clear that the murder of your uncle would be a gross violation of his right to life. Utilitarianism has led us to approve an act of murder that is an obvious violation of an individual's most important human right.

**JUSTICE AND UTILITARIANISM** Utilitarianism can also go wrong, according to critics, when it is applied to situations that involve justice. The counterexample in here on subsistence wages illustrates this point.

Utilitarianism looks only at how much utility is produced in a society and fails to take into account how that utility is distributed among the members of society. To see more clearly how utilitarianism ignores considerations of justice and rights, let's return to consider how Ford's managers dealt with the Pinto design.

## Ethical Application

### Counterexample: Subsistence Wages

Suppose that subsistence wages force a small group of migrant workers to continue doing the most undesirable agricultural jobs in an economy, but those low-wage jobs produce immense amounts of satisfaction for the vast majority of society's members because they enjoy cheap vegetables and savings that allow them to indulge other wants. Suppose also that the amounts of satisfaction thereby produced, when balanced against the unhappiness and pain imposed on the small group of farm workers, results in a greater net utility than would exist if everyone had to share the burdens of farm work. Then, according to the utilitarian criterion, it would be morally right to continue this system of subsistence wages for farm workers. However, to the critics of utilitarianism, a social system that imposes such unequal sharing of burdens is clearly immoral and offends against justice. The great benefits the system may have for the majority do not justify the extreme burdens that they impose on a small group. The shortcoming this counterexample reveals is that utilitarianism allows benefits and burdens to be distributed among the members of society in any way whatsoever, as long as the total amount of benefits is maximized. In fact, some ways of distributing benefits and burdens (like the extremely unequal distributions involved in this counterexample) are unjust, regardless of how great the store of benefits such distributions produce.

**THE PINTO DECISION: CONCLUSION** Had Ford's managers decided to change the Pinto design and add $11 to the cost of each Pinto, they would have forced all the buyers of the Pinto to share in paying the $137 million that the design change would cost. Each buyer would pay an equal share of the total costs of changing this aspect of the Pinto design. However, by not changing the Pinto design, the Ford managers were in effect forcing the 180 people who would die to absorb all the costs of this aspect of the Pinto design. So we can ask: Is it more just to have 180 buyers bear all the costs of the Pinto design by themselves, or is it more just to distribute the costs equally among all buyers? Most would say that distributing the costs equally is more just.

When Ford's managers decided to make no change to the Pinto design, they were not only making the Pinto cheaper but also building a car with a certain amount of risk (to life). Those who drove the Pinto would be driving a car that posed a greater risk to life than they might have reasonably believed it posed. It is possible that drivers of the Pinto would have gladly accepted this slightly added risk to life in exchange for the lower price of the car. However, they had no choice in the matter because they did not know the car carried this added risk.

So we can ask: Do people have the right to know what they are buying when they choose to purchase a product? Do people have a right to choose whether to have more risk added to their lives? If so, it would seem that the makers of the Pinto violated the basic right of customers to freely choose for themselves whether to accept a riskier car in return for a lower price.

The Pinto case makes clear that utilitarianism seems to ignore certain important aspects of ethics. Considerations of justice (which look at how benefits and burdens are distributed among people) and rights (which look at individual entitlements to freedom of choice and well-being) seem to be ignored by an analysis that looks only at the costs and benefits of decisions.

***Quick Review 2.6***
**Criticisms of Utilitarianism**

- Critics say not all values can be measured.
- Utilitarians respond that monetary or other common-sense criteria can measure everything.
- Critics say utilitarianism fails with rights and justice.

## 2.2.7: Utilitarian Replies to Objections on Rights and Justice

To deal with the sorts of counterexamples that critics of traditional utilitarianism have offered, utilitarians have proposed an important and influential alternative version of utilitarianism called **rule-utilitarianism**.[40] The basic strategy of the rule-utilitarian is to limit utilitarian analysis to the evaluation of moral rules. According to the rule-utilitarian, when trying to determine whether a particular action is ethical, one is never supposed to ask whether that particular action will produce the greatest amount of utility. Instead, one is supposed to ask whether the action is required by the correct moral rules that everyone should follow. If the action is required by such rules, then one should carry out the action. What are the "correct" moral rules? It is only this second question, according to the rule-utilitarian, that is supposed to be answered by reference to maximizing utility. The correct moral rules are those that would produce the greatest amount of utility if everyone were to follow them. The example in "Ethical Application." may make this clear.

### Ethical Application

#### Price-Fixing and Rule-Utilitarianism

Suppose I am trying to decide whether it is ethical for me to fix prices with a competitor. According to the rule-utilitarian, I should not ask whether this particular instance of price-fixing will produce more utility than anything else I can do. Instead, I should first ask myself: What are the correct moral rules with respect to price-fixing? Perhaps I might conclude, after some thought, that the following list of rules includes all the candidates:

1. Managers are never to meet with competitors for the purpose of fixing prices.
2. Managers may always meet with competitors for the purpose of fixing prices.
3. Managers may meet with competitors for the purpose of fixing prices when they are losing money.

Which of these three rules is the correct moral rule? According to the rule-utilitarian, the correct moral rule is the one that would produce the greatest amount of utility for everyone affected. Let us suppose that after analyzing the economic effects of price-fixing, I conclude that within our economic and social circumstances, people would benefit much more if everyone followed Rule 1 than if everyone followed Rule 2 or 3. If this is so, then Rule 1 is the correct moral rule concerning price-fixing. Now that I know what the correct moral rule on price-fixing is, I can go on to ask a second question: Should I engage in this particular act of fixing prices? To answer this second question, I only have to ask: What is required by the correct moral rule? As we have already noted, the correct moral rule is never to fix prices. Consequently, even if on this particular occasion, fixing prices actually would produce more utility than not doing so, I am, nonetheless, ethically obligated to refrain from fixing prices because doing so goes against the correct moral rule from which everyone in my society would most benefit.

**TWO PARTS OF RULE-UTILITARIANISM** The theory of rule-utilitarianism has two parts, which we can be summarized as follows:

1. An action is right from an ethical point of view if and only if the action would be required by a correct moral rule.
2. A moral rule is correct if and only if the total utility produced if everyone were to follow that rule is greater than the total utility produced if everyone were to follow some alternative rule.

Thus, according to the rule-utilitarian, the fact that a certain action would maximize utility on one particular occasion does not show that it is right. For the rule-utilitarian, the flaw in the counterexamples that the critics of traditional utilitarianism offer is that in each situation, the utilitarian criterion is applied to particular actions and not to rules. The rule-utilitarian would argue that we must use the utilitarian criterion to find out what the correct moral rule is in each situation and then evaluate the particular actions involved in the counterexample only in terms of this rule. Doing this allows utilitarianism to escape the counterexamples undamaged.

### Ethical Application

#### Back to the Murderous Heir and Subsistence Wages Counterexamples

The counterexample involving the rich uncle and the murderous heir, for example, is a situation that deals with killing a sick person. In such situations, the rule-utilitarian might argue, it is clear that a moral rule that forbids killing without the due process of law will, in the long run, produce greater utility for society than other kinds of rules. Therefore, such a rule is the correct moral rule to apply to the case. It would be wrong for the heir to kill his uncle because doing so would violate a correct moral rule, and the fact that murder would, on this particular occasion, maximize utility is irrelevant.

The counterexample dealing with subsistence wages versus cheap vegetables, the rule-utilitarian would argue, should be treated similarly. It is clear that a rule that forbade unnecessary subsistence wages in societies would in the long run result in more utility than a rule that allowed them. Such a rule is the correct moral rule to invoke when asking whether paying subsistence wages is morally permissible. In terms of this rule, the practice of paying subsistence wages would be ethically wrong, even if the practice would maximize utility on a particular occasion.

**CRITICISM OF RULE-UTILITARIANISM** The ploy of the rule-utilitarian, however, has not satisfied the critics of utilitarianism, who have pointed out an important difficulty in the rule-utilitarian position. They say that rule-utilitarianism is traditional utilitarianism in disguise.[41] These critics argue that rules that allow (beneficial) exceptions will produce more utility than rules that do not allow any exceptions. However, once a rule allows these exceptions, the critics claim, it will allow the same injustices and violations of rights that traditional utilitarianism allows. Some examples may help us see more clearly what these critics mean. The critics claim that if a rule allows people to make an exception whenever an exception will maximize utility, then it will produce more utility than a rule that allowed no exceptions. For example, more utility would be produced by a rule that says, "People are not to be executed without due process *except when doing so will produce more utility than not doing so*," than would be produced by a rule that simply says, "People are not to be executed without due process." The first rule will *always* maximize utility, whereas the second rule will maximize utility only *most of the time* (because the second rule would require due process even when setting due process aside would produce more utility). Because the rule-utilitarian holds that the correct moral rule is the one that produces more utility, he or she must hold that the correct moral rule is the one that allows exceptions when exceptions will maximize utility. Once the exception clause is made part of the rule, the critics point out, then applying the rule to an action will have exactly the same consequences as applying the traditional utilitarian criterion directly to the action because the utilitarian criterion is now part of the rule.

In the case of the sick uncle and murderous heir, the rule that "people are not to be killed without due process *except when doing so will produce more utility than not doing so*" will now allow the heir to murder his uncle exactly as traditional utilitarianism did before. Similarly, more utility would be produced by a rule that says, "subsistence wages are prohibited *except in those situations where they will maximize utility*" than would be produced by a rule that simply says, "subsistence wages are prohibited." Therefore, the rule that allows exceptions will be the "correct" one. However, this "correct" rule will now allow the society we described earlier to institute wage slavery exactly as traditional utilitarianism did. Rule-utilitarianism, then, is a disguised form of traditional utilitarianism, and the counterexamples that set difficulties for one seem to set similar difficulties for the other.

Many rule-utilitarians do not admit that rules produce more utility when they allow exceptions. Because human nature is weak and self-interested, they claim, humans would take advantage of any allowable exceptions, and this would leave everyone worse off. Other utilitarians refuse to admit that the counterexamples of the critics are correct. They claim that if killing a person without due process really would produce more utility than all other feasible alternatives, then all other alternatives must have greater evils attached to them. If this is so, then killing the person without due process really would be morally right. Similarly, if in certain circumstances subsistence wages really are the least (socially) injurious means to use to get a job done, then in those circumstances, subsistence wages are morally right exactly as utilitarianism says.

Thus, utilitarianism faces two main difficulties:

1. It asks us to measure values that are difficult—perhaps impossible—to quantify.
2. It seems unable to deal adequately with questions of rights and justice.

A third issue we have hardly discussed but which we should mention is that utilitarianism assumes that decision makers—such as the Ford managers designing the Pinto—need not consult the people their decisions touch: if a manager's decision will maximize utility, it is morally right even if those affected are not consulted. Critics object that it is morally wrong when people are given no say in decisions that affect their lives.

## 2.3: Rights and Duties

**OBJECTIVE: Examine a rights-based approach to business ethics**

We discussed in Module 2.1.1 how the Unocal managers defended their decision to invest in, and continue to operate, the Yadana gas field project in Burma by appealing to a utilitarian justification. Unocal's critics rejected this utilitarian justification and appealed to a different view. The critics argued that it was wrong for Unocal to participate in the Yadana project because by doing so, the company was helping Burma's military regime violate the moral rights of its people. Specifically, critics argued, Unocal was helping Burma's military government violate the Burmese people's right to participate in the political life of their nation, their right to speak freely and to come and go as they wanted, and their right to unionize and associate with one another. Other basic human rights were violated, critics claimed, when soldiers cleared the way for Unocal by forcing local workers into slave labor, raped several female workers, and imprisoned anyone who opposed their actions.

We will turn now to examining the approach to ethical decision-making that the critics of Unocal took. As we will see, this approach to ethics is not only different from the utilitarian approach that Unocal's managers took but also in some ways opposed to the utilitarian approach. We will begin our discussion of the rights-based approach to ethics by looking at a controversy in which that approach was at the center.

## 2.3.1: Human Rights and Walt Disney Company's Supplier

On May 17, 2009 a 17-year-old boy, Yiu Wah, who had been hired at the age of 15, was crushed and killed while trying to clear a jammed machine in the factory of a Chinese supplier that was making products for the Walt Disney Company, the world's second-largest media conglomerate.[42] Witnesses claimed that the use of child labor was a human rights violation that was common at the factory of Disney's supplier.

This was not the first time that Walt Disney Company had been accused of having human rights violations in its supply chain. On March 3, 2004, executives of Walt Disney were confronted by a group of stockholders concerned about the company's human rights record in China. In addition to owning several theme parks, television and radio networks (ABC, Disney Channel, ESPN), and film studios, Walt Disney markets merchandise based on its characters and films, including toys, apparel, watches, consumer electronics, and accessories. Much of this merchandise is manufactured in China in factories that contract with Disney to produce the merchandise according to Disney's specifications. The Congressional-Executive Commission on China, a group established by the U.S. Congress in 2001, reported in 2003, however, that

> China's poor record of protecting the internationally recognized rights of its workers hasn't changed significantly in the past year. Chinese workers can't form or join independent trade unions, and workers who seek redress for wrongs committed by their employers often face harassment and criminal charges. Moreover, child labor continues to be a problem in some sectors of the economy, and forced labor by prisoners is common.[43]

In its March 2003 *Country Reports on Human Rights Practices*, the U.S. State Department said China's economy also made massive use of forced prison labor.[44] China's prisons contained large numbers of political dissidents who were forced to engage in unpaid, exhausting, and dangerous labor to "reform" or "reeducate" them. Factories often purchased materials made in these prisons and then incorporated them into their own products.

Even earlier, in 2001, the Hong Kong Christian Industrial Committee had made on-site undercover visits to a dozen of Walt Disney's Chinese factories and reported that it found "excessively long hours of work, poverty wages, unreasonable fines, workplace hazards, poor food and dangerously overcrowded dormitories." Another report issued in 2002 by the National Labor Committee, entitled, "Toys of Misery," noted horrific working conditions in the nineteen Disney factories the committee investigated. According to the report, not only were workers paid substandard wages, but they "face long hours of forced overtime that leave them with two or three hours of sleep a night," and "they are exposed constantly to chemicals that make them sick." In 2004, the National Labor Committee reissued its report, now entitled "Toys of Misery, 2004," in which they found that Disney factories were still engaged in the kind of practices they had found two years earlier.

Concerned by these reports on conditions in Chinese factories and that the factories might be using materials made by forced labor, a group of stockholders urged all Disney stockholders to vote in favor of having the company adopt 11 "principles." These principles were based on a widely accepted and thorough set of human and labor rights standards. The six most important principles were as follows:

1. No goods or products produced within our company's facilities or those of suppliers shall be manufactured by bonded labor, forced labor, within prison camps or as part of reform-through-labor or reeducation-through-labor programs.
2. Our facilities and suppliers shall adhere to wages that meet workers' basic needs, fair and decent working hours, and at a minimum, to the wage and hour guidelines provided by China's national labor laws.
3. Our facilities and suppliers shall prohibit the use of corporal punishment, any physical, sexual or verbal abuse or harassment of workers.
4. Our facilities and suppliers shall use production methods that do not negatively affect the worker's occupational safety and health.
5. Our facilities and suppliers shall not call on police or military to enter their premises to prevent workers from exercising their rights.
6. We shall undertake to promote the following freedoms among our employees and the employees of our suppliers: freedom of association and assembly,

including the rights to form unions and bargain collectively; freedom of expression, and freedom from arbitrary arrest or detention . . . [45]

Disney's managers did not want to endorse these human rights principles because the company already had a code of ethics and already inspected factories to ensure compliance with its code. Critics, however, responded that Disney's code was too narrow, that it was not enforced, that its inspection system was flawed, and that if the company did not adopt human rights principles, it would likely continue to have problems. Subsequent events seemed to support the critics. In 2005, 2006, and 2007, Students and Scholars against Corporate Misbehavior published reports on the human rights violations and sweatshop conditions their investigations had discovered in a large number of Chinese factories making toys for Disney.[46] China Labor Watch, a workers' rights group, released a report in 2007 detailing "brutal" conditions in several Chinese factories making toys for Disney.[47] In 2008, the National Labor Committee reported on a Chinese factory that was making Disney toys, but that was actually a sweatshop noted for abusing the rights of its workers.[48] In 2009 came the announcement of the terrible death of 17-year-old Yiu Wah.

## 2.3.2: The Concept of a Right

The ethical controversy over the treatment of Yiu Wah and other young people in factories making Disney toys was centered on the concept of a right. The concept of a *right* has played a crucial role in many of the ethical controversies businesses face. Employees, for example, argue that they have a "right to equal pay for equal work"; managers assert that unions violate their "right to manage"; investors complain that taxation violates their "property rights"; and consumers claim that they have a "right to know." Moreover, many historic documents employ the notion of a right. The U.S. Constitution enshrines a long Bill of Rights, defined largely in terms of the duties the federal government has to not interfere in certain areas of its citizens' lives. The Declaration of Independence was based on the idea that "all men . . . are endowed by their Creator with certain unalienable rights . . . among these are life, liberty, and the pursuit of happiness." In 1948, the United Nations adopted a "Universal Declaration of Human Rights" which claimed that "all human beings" are entitled, among other things, to the following:

- The right to own property alone as well as in association with others . . .
- The right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment . . .
- The right to just and favorable remuneration ensuring for [the worker] and his family an existence worthy of human dignity . . .
- The right to form and to join trade unions . . .
- The right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay . . .[49]

The concept of a right and the correlative notion of duty, then, lie at the heart of much of our moral discourse. This section is intended to provide an understanding of these concepts and of some of the major kinds of ethical principles and methods of analysis that underlie their use.

### On the Edge

### Working for Eli Lilly & Company

Before a newly discovered drug is approved for sale, the U.S. Food and Drug Administration (FDA) requires that it be tested on healthy humans to determine whether it has dangerous side effects.[50] Unfortunately, most healthy people will not take an untested substance that is not intended to cure them of anything and that may have crippling or deadly effects. Test subjects can die, and they can suffer paralysis, organ damage, and other chronically debilitating injuries. Eli Lilly, a large pharmaceutical company, however, discovered a group of "volunteers" willing to take untested drugs for only $85 a day plus free room and board: homeless alcoholics desperate for money recruited in soup kitchens, shelters, and jails. Since tests run for months, the men can make as much as $4,500—a hefty sum to someone surviving on handouts. The tests provide enormous benefits for society, and many tests might not be performed at all but for the pool of homeless alcoholics. Moreover, providing the men with a warm bed, food, and good medical care before sending them out drug- and alcohol-free and with money in their pockets seems beneficial. The FDA requires that participants in such medical tests must give their "informed consent" and make a "truly voluntary and uncoerced decision." Some question whether the desperate circumstances of hungry, homeless, and penniless alcoholics allow them to make a truly voluntary and uncoerced decision. When asked, one homeless man hired to participate in a test said he had no idea what kind of drug was being tested on him even though he had signed an informed-consent form.

#### WRITING PROMPT

**What Is an Uncoerced Decision?**

1. Discuss Eli Lilly's practice from the perspectives of utilitarianism and rights.
2. In your judgment, is the policy of using homeless alcoholics for test subjects morally appropriate?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

**DEFINITION OF A RIGHT**

**In general, a *right* is an individual's entitlement to something.**[51]

A person has a right when that person is entitled to act in a certain way or is entitled to have others act in a certain way toward him or her.

The entitlement may derive from a legal system that permits or empowers the person to act in a specified way or that requires others to act in certain ways toward that person; the entitlement is then called a *legal right*. The U.S. Constitution, for example, guarantees all citizens the right to freedom of speech, and commercial statutes specify that each party in a valid contract has a right to whatever performance the contract requires from the other person. Legal rights are limited, of course, to the particular jurisdiction within which the legal system is in force.

Entitlements can also derive from a system of moral standards independently of any particular legal system. The right to work, for example, is not guaranteed by the U.S. Constitution, but many argue that it is a right that all human beings possess. Such rights, which are called **moral rights** or **human rights**, are based on moral norms and principles that specify that all human beings are permitted or empowered to do something or are entitled to have something done for them.

*Moral or human rights*, unlike legal rights, are usually thought of as being universal insofar as they are rights that all human beings of every nationality possess to an equal extent, simply by virtue of being human beings.

Unlike legal rights, moral rights are not limited to a particular jurisdiction. If humans have a moral right not to be tortured, for example, then this is a moral right that human beings of every nationality have, regardless of the legal system under which they live.

Rights are powerful devices whose main purpose is to enable the individual to choose freely whether to pursue certain interests or activities and to protect those choices. In our ordinary discourse, we use the term *right* to cover a variety of situations in which individuals are enabled to make such choices in very different ways.

***Quick Review 2.7***
**Characteristics of Rights**

- A right is an individual's entitlement to something.
- Legal rights are derived from a legal system and confer entitlements only on individuals who live where that legal system is in force.
- Moral or human rights are entitlements that moral norms confer on all people everywhere; they possess them simply by virtue of being human beings.

**CAN A RIGHT BE VIOLATED WITHOUT INJURY?** Notice that although violations of people's rights often involve the infliction of injuries on those people, still a person's rights can be violated without the person being injured or hurt in any obvious way. This aspect of rights is one of the ways in which rights considerations differ from utilitarian considerations, since wrongdoing in utilitarianism always involves the infliction of injuries.

## Ethical Application

### Two Violations of Rights without Injury

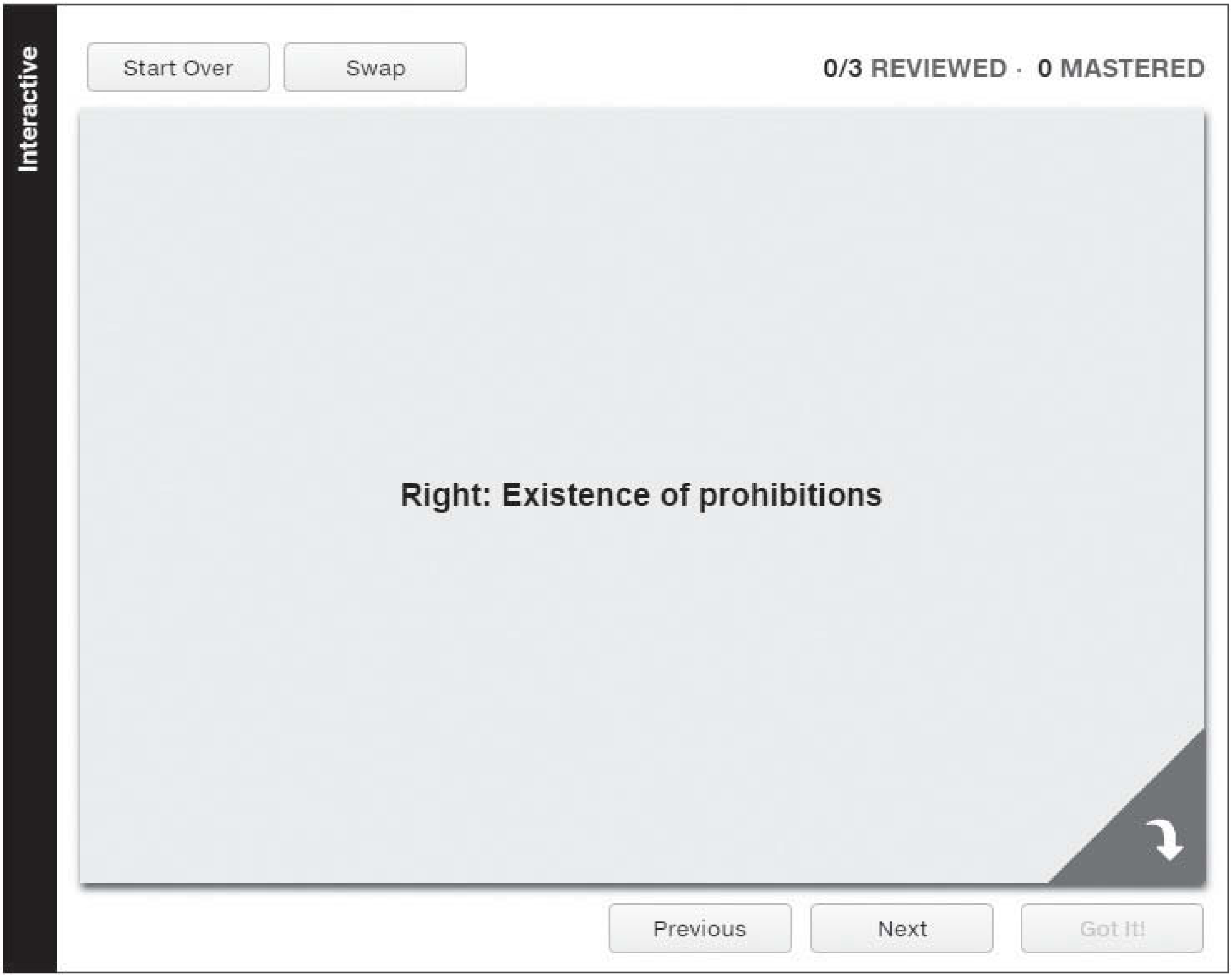
To see how rights can be violated without injury, let's first take an example based on the right to privacy, which, for the sake of the example, we will assume is a right everyone has. Suppose, then, that one day a couple was involved in activities that they (and we) considered private and that they would feel ashamed about if they thought that anyone else knew they engaged in those activities. They do these things only when they feel certain that no one can see them because they are behind locked doors and drawn window shades. However, one day you manage to climb a tree and with powerful binoculars trained on a tiny tear in their window shades, you manage to look inside their house and see what they are doing. Although what you see disgusts you, you continue to look at them inside their house for some time, and then climb down from your tree and go home. Afterward you never tell anyone, and you never have any kind of contact with the couple again nor have any impact on their lives of any kind, and the couple never find out you saw them. They blissfully continue to feel for the rest of their lives that no one else knew what they did that day and they never experience the slightest discomfort or pain or injury of any kind from what transpired on that day. It is clear that you violated the rights of the couple—their right to privacy—yet the couple apparently experienced no injury of any sort from you.

Let's take another example, this one concerning property rights: your friend, Joe, owns a large diamond worth hundreds of thousands of dollars that he keeps in his house in a safe with a combination lock. You discover the combination to the safe and take the diamond without Joe's knowledge. You use the diamond as collateral to borrow $10,000, which you invest in the stock market and which you manage to turn into $100,000. With this money, you redeem the diamond and replace it in Joe's safe, completely unchanged in any way. You never tell Joe and he never finds out; moreover, what you did never affects him in any way whatsoever, nor does it ever affect your interactions or friendship with him. It is clear again, that here you have violated your friend's rights, yet he has suffered no injury.

The two examples show that a person's rights—either privacy or possessions—can be violated, then, even when the person is not injured or hurt in any obvious way. From

### Different Uses of the Term *Right*

The term *right* can be used differently, depending on the situation.




a rights' perspective, a person can be wronged without being hurt. Notice, also, that this implies that when rights violations are concerned, it is a mistake for a person to say that he or she did nothing wrong because "no one was hurt." The absence of "hurt" does not by itself show that no one's rights were violated.

**THE MOST IMPORTANT MORAL RIGHTS** The most important moral rights—and those that will concern us in this chapter—are rights that impose prohibitions or requirements on others and allow or empower individuals to pursue certain interests or activities. These moral rights (we mean these kinds of rights when we use the term *moral rights*) identify activities or interests that the individual is empowered to pursue, or must be left free to pursue, or must be helped to pursue, as the individual chooses. They protect the individual's pursuit of those interests and activities within the boundaries specified by the rights. The right to freedom of religion, for example, identifies religious activities as protected activities that individuals must be left free to pursue as they choose.

***Quick Review 2.8***
**Moral Rights . . .**

- Can be violated even when "no one is hurt"
- Are correlated with duties others have toward the person with the right
- Provide individuals with autonomy and equality in the free pursuit of their interests
- Provide a basis for justifying one's actions and for invoking the protection or aid of others
- Focus on securing the interests of the individual unlike utilitarian standards, which focus on securing the aggregate utility of everyone in society

### Key Features of Moral Rights

The most important moral rights have three key features that define their enabling and protective functions.[52, 53, 54]

**Interactive**

**Tightly Correlate with Duties**

Moral rights are tightly correlated with duties because one person's moral right can be defined—at least partially—in terms of the moral duties other people have toward that person. To have a moral right necessarily implies that others have certain duties toward the bearer of that right. The moral right of freedom of religion, for example, can be defined in terms of the moral duties other people have to not interfere in my chosen form of religious worship. The moral right to a suitable standard of living (assuming that this is a moral right) can be defined in terms of the duty that governments (or some other agents of society) have to ensure a suitable standard of living for their citizens. Duties, then, are generally the other side of moral rights: if I have a moral right to do something, then other people have a moral duty not to interfere with me when I do it. If I have a moral right to have someone do something for me, then that other person (or group of persons) has a moral duty to do it for me. Thus, moral rights impose correlative duties on others—either duties of noninterference or duties of positive performance.

In some cases, the correlative duties imposed by a right may fall not on any specific individual, but on all the members of a group. For example, if a person has the "right to work" (a right mentioned in the United Nations Universal Declaration of Human Rights), this does not necessarily mean that any specific employer has a duty to provide that person with a job. Rather, it means that all the members of society, through their public agencies, have the duty of ensuring that jobs are available to workers.

**Provide Autonomy and Equality in the Pursuit of Interests**

**Provide a Basis for Justifying Actions**

**MORAL RIGHTS AND UTILITARIANISM** Because moral rights have these three key features, they provide bases for making moral judgments that differ substantially from utilitarian standards.

First, moral rights express the requirements of morality from the point of view of the *individual*, whereas utilitarianism expresses the requirements of morality from the point of view of *society as a whole*. Moral standards concerned with rights indicate what is due to the individual from others, promote the individual's welfare, and protect the individual's choices against encroachment by society. Utilitarian standards promote society's aggregate utility, and they are indifferent to the individual's welfare except insofar as it affects this social aggregate.

Second, moral rights limit the validity of appeals to social benefits and to numbers. That is, if a person has a right to do something, then it is wrong for anyone to interfere, even if a large number of people might gain much more utility from such interference. If I have a right to life, for example, then it is morally wrong for someone to kill me even though many others might gain much more from my death than I will ever gain from living. If the members of a minority group have a right to free speech, then the majority must leave the minority free to speak, even if the majority is much more numerous and intensely opposed to what the minority will say.

Although rights generally override utilitarian standards, they are not immune from all utilitarian considerations: if the utilitarian benefits or losses imposed on society become great enough, they might be sufficient to breach the protective walls the right sets up around a person's freedom to pursue individual interests. In times of war or major public emergencies, for example, it is generally acknowledged that civil rights may legitimately be restricted for the sake of "the public welfare." The property rights of factory owners may be restricted to prevent pollution that is imposing major damages on the health of others. The more important the interest protected by a right, the larger the utilitarian trade-offs must be. Rights erect higher walls around more important interests, and so the level of social benefits or costs needed to breach the walls must be greater.

**NEGATIVE AND POSITIVE RIGHTS** A large group of rights called *negative rights* are rights that can be defined wholly in terms of the duties others have to not interfere in certain activities of the person who holds a given right.[55] For example, if I have a right to privacy, this means that every other person, including my employer, has the duty not to invade my private affairs. If I have a right to use, sell, or destroy my personal business assets, this means that every other person has the duty not to prevent me from using, selling, or destroying my business property as I choose.

In contrast, *positive rights* do more than impose negative duties. They also imply that some other agents (perhaps society in general) have the positive duty of providing the holders of the right with whatever they need to pursue what the right guarantees.[56] For example, if I have a right to an adequate standard of living, this does not mean merely that others must not interfere with this right; it also means that if I am unable to provide myself with an adequate income, then I must be provided with such an income (perhaps by the government). Similarly, the right to work, the right to an education, the right to adequate health care, and the right to social security are all rights that go beyond noninterference to also impose a positive duty of providing people with something when they are unable to provide it for themselves.

Seventeenth and eighteenth century writers of manifestos (such as the U.S. Declaration of Independence and the Bill of Rights) often appealed to negative rights, particularly when they wanted to protect individuals against the power of kings, queens, and emperors. On the other hand, until the twentieth century, people only occasionally invoked positive rights (the right to be protected from violence by the state, for example, is one positive right that was widely accepted long before the twentieth century). Positive rights became more important in the twentieth century when society increasingly provided the necessities of life for its members who were unable to provide for themselves. These included the right to an education and the right to social security. The United Nations Universal Declaration of Human Rights is influenced by this trend when it provides for the rights "to food, clothing, housing, and medical care." The change in the meaning of the phrase "the right to life" is another indication of the rising importance of positive rights. The eighteenth century interpreted the "right to life" as the negative right not to be killed (this is the meaning the phrase has in the Declaration of Independence). Today, however, the phrase has been reinterpreted to refer to the positive right to be provided with the minimum necessities of life.

Much of the debate over moral rights has concentrated on whether negative or positive rights should be given priority. This matter is the crux of the debate over whether government efforts should be restricted to protecting property and securing law and order (i.e., protecting people's negative rights) or whether government should also provide the needy with jobs, job training, housing, medical care, and other welfare benefits (i.e., provide for people's positive rights). So-called conservative thinkers have claimed that government efforts should be limited to enforcing negative rights and not expended on providing positive rights.[57] So-called liberals or progressives, in contrast, hold that positive rights have as strong a claim to being honored as negative rights and, consequently, government has a duty to provide for both.[58] Liberal thinkers have also pointed out that the right to have the government provide citizens with protection of their property, and the right to have government provide law and order are both positive rights. Therefore, the idea that government should only enforce negative rights and not provide for people's positive rights is incoherent because the government can enforce negative rights only if it provides protective services.

***Quick Review 2.9***
**Negative and Positive Moral Rights**

- Negative rights require others leave us alone.
- Positive rights require others help us.

**CONTRACTUAL RIGHTS AND DUTIES** Contractual rights and duties (sometimes called *special rights and duties* or *special obligations*) are the limited rights and correlative duties that arise when one person enters an agreement with another person.[59] For example, if I contract to do something for you, then you are entitled to my performance. You acquire a contractual *right* to whatever I promised, and I have a contractual *duty* to perform as I promised. Contractual rights and duties are distinguished as follows:

1. Contractual rights and duties are attached to *specific* individuals, and correlative duties are imposed only on other *specific* individuals. If I agree to do something for you, everyone else does not acquire new rights over me, nor do I acquire any new duties toward them.
2. Contractual rights arise out of a specific transaction between particular individuals. Unless I actually make a promise or enter some other, similar arrangement with you, you do not acquire any contractual rights over me.

3. Contractual rights and duties depend on a publicly accepted system of rules that define the transactions that give rise to those rights and duties.[60] Contracts, for example, create special rights and duties between people only if these people recognize and accept a system of conventions that specifies that, by doing certain things (such as signing a paper), a person undertakes an obligation to do what the person has agreed to do. When a person goes through the appropriate actions, other people know that person is taking on an obligation because the publicly recognized system of rules specifies that such actions count as a contractual agreement. Because the publicly recognized system obligates or requires the person to do what is agreed to, or suffer the appropriate penalties, everyone understands that the person can be relied on to keep the contract and that others can act in accordance with this understanding.

Without the institution of contract and the rights and duties it can create, modern business societies could not operate. Virtually every business transaction at some point requires one of the parties to rely on the word of the other party to the effect that the other party will pay later, will deliver certain services later, or will transfer goods of a certain quality and quantity. Without the social institution of contract, individuals in such situations would be unwilling to rely on the word of the other party, and the transactions would never take place. The institution of contracts provides a way of ensuring that individuals keep their word, and this, in turn, makes it possible for business society to operate. Employers, for example, acquire contractual rights to the services of their employees in virtue of the work contract that employees enter, and sellers acquire contractual rights to the future cash that credit buyers agree to give them.

Contractual rights and duties also provide a basis for the special duties or obligations that people acquire when they accept a position or role within a legitimate social institution or an organization. For example, married parents have a special duty to care for the upbringing of their children, doctors have a special duty to care for the health of their patients, and managers have a special duty to care for the organization they administer. In each of these cases, there is a publicly accepted institution (such as a familial, medical, or corporate institution) that defines a certain position or role (such as parent, doctor, or manager) on which the welfare of certain vulnerable persons (such as the parents' children, the doctor's patients, or the manager's corporate stakeholders) depends. Society attaches to these institutional roles special duties of caring for these vulnerable dependents and protecting them from injury—duties that the people who enter the role know they are expected to fulfill. When a person freely enters the role knowing what duties society attaches to the acceptance of the role, that person in effect enters an agreement to fulfill those duties. The existence of a system of contractual obligations ensures that individuals fulfill these agreements by laying on them the public obligations that all agreements carry. As a result, these familial, medical, and corporate institutions can continue to exist, and their vulnerable members are protected against harm. We should recall here that a person's institutional duties are not unlimited. In Chapter 1, we noted that as a "loyal agent," the manager's duties to care for the corporation are limited by the ethical principles that govern any person. Similarly, a doctor cannot kill some patients to obtain vital organs for other patients whom he or she has a duty to care for.

What kind of ethical rules govern contracts? The system of rules that underlies contractual rights and duties has been traditionally interpreted as including several moral constraints:[61]

1. Both of the parties to a contract must have full knowledge of the nature of the agreement they are entering into.
2. Neither party to a contract must intentionally misrepresent the facts of the contractual situation to the other party.
3. Neither party to the contract must be forced to enter the contract under duress or coercion.
4. The contract must not bind the parties to an immoral act.

Contracts that violate one or more of these four conditions have traditionally been considered void.[62] The basis of these sorts of conditions is discussed next.

***Quick Review 2.10***
**Contractual Rights and Duties . . .**

- Are created by specific agreements and conferred only on the parties involved
- Require publicly accepted rules on what constitutes agreements and what obligations agreements impose
- Underlie the special rights and duties imposed by accepting a position or role in an institution or organization
- Require (1) the parties know what they are agreeing to, (2) no misrepresentation, (3) no duress or coercion, (4) no agreement to an immoral act

## 2.3.3: A Basis for Moral Rights: Immanuel Kant

How do we know that people have rights? This question can be answered in a fairly straightforward way when it is asked about legal rights: a person has legal rights because the person lives within a legal system that guarantees those rights. However, what is the basis of moral rights?

Some utilitarians have suggested that utilitarian principles can provide a basis for moral rights. They have argued that people have moral rights because having moral rights maximizes utility. It is doubtful, however, that utilitarianism provides an adequate basis for moral rights. To say that someone has a moral right to do something is to say that person is entitled to do it, regardless of the utilitarian benefits it provides for others. Utilitarianism cannot easily support such a nonutilitarian concept.

A more satisfactory foundation for moral rights is provided by the ethical theory developed by Immanuel Kant (1724–1804).[63] Kant, in fact, attempted to show that there are certain moral rights and duties that all human beings possess, regardless of any utilitarian benefits that the exercise of those rights and duties may provide for others.

Kant's theory is based on a moral principle that he called the *categorical imperative* and that requires that everyone should be treated as a free person equal to everyone else. That is, everyone has a moral right to such treatment, and everyone has the correlative duty to treat others in this way. Kant provided more than one way of formulating this basic moral principle; each formulation serves as an explanation of the meaning of this basic moral right and correlative duty.

**THE FIRST FORMULATION OF KANT'S CATEGORICAL IMPERATIVE** Kant's first formulation of the categorical imperative is as follows: "I ought never to act except in such a way that I can also will that my maxim should become a universal law."[64]

A *maxim* for Kant is the reason a person in a certain situation has for doing what he or she plans to do.

A maxim would "become a universal law" if every person in a similar situation chose to do the same thing for the same reason. Kant's first formulation of the categorical imperative, then, comes down to the following principle:

> An action is morally right for a person in a certain situation if, and only if, the person's reason for carrying out the action is a reason that he or she would be willing to have every person act on, in any similar situation.

An example may help clarify what Kant's principle of the categorical imperative means. Suppose that I am trying to decide whether to fire an employee because I do not like the employee's race. According to Kant's principle, I must ask myself whether I would be willing to have any employer fire any employee whenever the employer does not like the race of the employee. In particular, I must ask myself whether I would be willing to be fired myself should my employer not like my race. If I am not willing to have everyone act in this way, even toward me, then it is morally wrong for me to act in this way toward others. A person's reasons for acting, then, must be "reversible"; one must be willing to have all others use those reasons even against oneself. There is an obvious similarity, then, between Kant's categorical imperative and the so-called *golden rule*: do unto others as you would have them do unto you.

Kant noted that sometimes it is not even possible to *conceive* of having everyone act on a certain reason, much less be *willing* to have everyone act on that reason.[65] To understand this point, consider a second example. Suppose that I am thinking of breaking a contract because it has committed me to do something I do not want to do. Then, I must ask whether I would be willing to allow everyone to break any contract that they did not want to keep. However, it is impossible to even conceive of everyone making contracts they do not have to keep. Why? Because if everyone knew that they were allowed to break any contract they did not want to keep, then people would not bother to make contracts. Why would anyone make a contract that no one had to keep? Consequently, because it is impossible to conceive of a world in which people make contracts they do not have to keep, it is also impossible for me to be willing to have everyone make contracts they do not have to keep. How can I will something I cannot even conceive? It would be wrong, therefore, for me to break a contract simply because I do not want to keep it. A person's reasons for acting, then, must also be *universalizable*: it must be possible, at least in principle, for everyone to act on those reasons.

The first formulation of the categorical imperative, then, incorporates two criteria for determining moral right and wrong—universalizability and reversibility. These concepts can be defined as follows:

- *Universalizability*: The person's reasons for acting must be reasons that everyone could act on at least in principle.
- *Reversibility*: The person's reasons for acting must be reasons that the person would be willing to have all others use, even as a basis of how they treat him or her.

This formulation of Kant's categorical imperative is attractive for a number of reasons. One important reason is that it captures some of the ways we ordinarily determine moral right and wrong. Frequently, for example, we say to a person who has wrongly injured someone or who is about to wrongly injure someone: "How would you like it if he did that to you?" or "How would you like it if you were in her place?" When we say this, we are appealing to something like reversibility. We are saying that an action cannot be right if it does not pass the test of reversibility, which is the basis of Kant's categorical imperative. On the other hand, we may say to the person who is considering doing something wrong: "What if everybody did that?" When we ask this question, we are appealing to universalizability. We are, in effect, saying that it is wrong to do something if it does not pass the test of universalizability, which again, is what Kant's categorical imperative requires.

How did Kant argue for the categorical imperative? To begin with, consider that Kant's categorical imperative focuses on a person's interior motivations and not on the external consequences of his or her actions. Moral right and wrong, according to Kant, are distinguished not by what a person accomplishes, but by the reasons or motives the person has for doing what he or she does. Kant argued that an action "has no moral worth" if a person does the action *only* out of self-interest or *only* because it gives him or her pleasure. In other words, morality is neither about pursuing self-interest nor about doing what gives us pleasure; morality is about doing what is right whether or not it is in our self-interest and whether or not it makes us feel good. A person's action has "moral worth" then, only to the degree that it is *also* motivated by a sense of "duty," that is, a belief that it is the right way for all people to behave in similar circumstances. Therefore, Kant claimed, to be motivated by a sense of "duty" is to be motivated by reasons that a person believes everyone should act on when they are in similar circumstances. Consequently, Kant concluded, a person's action has "moral worth" (i.e., it is morally right) only to the extent that it is motivated by reasons that he or she would be willing to have every person act on when they are in similar circumstances. This consequence or conclusion is Kant's categorical imperative.

***Quick Review 2.11***
**Kant's First Formulation of the Categorical Imperative**

- We must act only on reasons we would be willing to have anyone in a similar situation act on.
- The categorical imperative requires universalizability and reversibility.
- Questions that test universalizability and reversibility are "What if everyone did that?" and "How would you like it if someone did that to you?"

**THE SECOND FORMULATION OF KANT'S CATEGORICAL IMPERATIVE** The second formulation Kant gave of the categorical imperative is this: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."[66] In other words, never treat people *only* as means, but always *also* as ends. What Kant implies by "treating humanity as an end" is that we should treat each human being as a free and rational person. This means two things:

1. Respect each person's freedom by treating that person only as she has freely and rationally consented to be treated.
2. Contribute to each person's ability to pursue those ends she has freely and rationally chosen to pursue.[67]

The phrase "freely and rationally" here refers to the kind of choices a person makes when her choices are not forced and she both knows and chooses what is in her best interests. On the other hand, to treat a person *only* as a means is to use the person as an instrument for advancing one's own interests, while disregarding the person's choices and interests. Such treatment *neither* respects her freedom to choose for herself what she will do *nor* contributes to her ability to pursue what she has freely and rationally chosen to pursue. Kant's second formulation of the categorical imperative, then, can be expressed in the following principle:

> An action is morally right for a person if, and only if, in performing the action, the person does not use others *only* as a means for advancing his or her own interests, but always (1) treats them as they have freely and rationally consented to be treated, and (2) contributes to their ability to pursue what they have freely and rationally chosen to pursue.

This version of the categorical imperative implies that human beings have a dignity that sets them apart from things such as tools or machines, and human dignity is incompatible with being manipulated, deceived, or otherwise unwillingly exploited to satisfy the self-interests of another. The principle in effect says that people should not be treated as objects incapable of free and rational choice. By this principle, an employee may legitimately be asked to perform the unpleasant (or even dangerous) tasks involved in a job if the employee freely and rationally consented to take the job knowing that it would involve these tasks. However, it would be wrong to subject an employee to health risks without the employee's knowledge. In general, deception, physical force, and secret manipulation fail to respect people's freedom to choose for themselves and are therefore unethical (unless, perhaps, a person first freely consented to have physical force used against him or herself).

Kant argued that making fraudulent contracts by deceiving others is wrong and that deliberately refraining from giving others help when they need it is also wrong. By deceiving a person into making a contract that the person would not knowingly choose to make, I am deliberately treating her in a way that she has not freely and rationally consented to be treated, and so I am only using her to advance my own interests. By intentionally refraining from helping another person when I see that person needs the help that I can provide, I fail to contribute to the person's ability to pursue the ends she has chosen to pursue.

The second formulation of the categorical imperative, according to Kant, is really equivalent to the first.[68] The first formulation says that what is morally right for me must be morally right for others: everyone is of equal value. Based on this idea, then, no person's freedom should be subordinated to that of others so that a person is used merely to advance the interests of others. Because everyone is of equal value, no one's freedom to choose can be sacrificed for the sake of the interests of others. Accepting this, of course, is what the second formulation of the categorical imperative requires. Both formulations come down to the same thing: people are to treat each other as beings who should be equally free to pursue what they themselves choose to pursue.

***Quick Review 2.12***
**Kant's Second Formulation of the Categorical Imperative**

- We must never use people only as a means to our ends, but always treat them as they freely and rationally consent to be treated and help them pursue their freely and rationally chosen ends.
- The categorical imperative is based on the idea that humans have a dignity that makes them different from mere objects.
- According to Kant, this formulation is equivalent to the first formulation.

**KANTIAN RIGHTS** A large number of authors have held that the categorical imperative (in one or the other of its formulations) explains why people have moral rights.[69] As we have seen, moral rights identify interests that all humans must be left free to pursue as they choose (or must be helped to pursue as they choose) and whose free pursuit must not be subordinated to the interests of others. That is precisely what both formulations of Kant's categorical imperative require in holding that people must be respected as free and rational in the pursuit of their interests. In short, *moral rights* identify the specific major areas in which we must deal with each other as free and rational persons, and Kant's *categorical imperative* implies that persons generally should deal with each other in precisely this way.

The categorical imperative, however, cannot by itself tell us what particular moral rights we have. To know what particular moral rights we have, the following two things are necessary:

1. We must determine what specific interests human beings have simply in virtue of being human beings.
2. We must determine which particular interests are so important that they merit being given the status of a right.

In light of Kant's two formulations of the categorical imperative, an interest would be considered important if

1. We would not be willing to have everyone (including ourselves) deprived of the freedom to pursue that interest.
2. The freedom to pursue that interest is necessary to live as free and rational beings.

For example, to establish that we have a right to free speech, we have to show that we have an interest in freedom of speech and that it is so important to us that we are not willing for everyone to be deprived of it and, moreover, it is needed if we are to live as free and rational persons. Many people have argued that freedom of speech is indeed critically important for several reasons:

- It protects us against government and other powerful parties.
- It lets wrongdoing and injustice be known.
- It enables us to govern ourselves.
- It allows us to determine the truth through discussion.
- It lets us express our true feelings and convictions.[70]

For these reasons, free speech seems to be so important that we would not be willing to have everyone (including ourselves) deprived of freedom of speech, and freedom of speech seems necessary if we are to live as free and rational beings. If this is true, then our interest in free speech is one that should be elevated to the status of a right and we can, therefore, conclude that humans have a moral right to freedom of speech. However, insofar as free speech conflicts with other human interests that are of equal or greater importance (such as our interest in not being harmed or libeled), the right to freedom of speech must be limited.

We have only sketched in the barest outline some of the rights that Kant's moral principles can support. A full justification of each of these rights requires a lot more in the way of qualifications, adjustments with other (conflicting) interests, and full supporting arguments. Crude as it is, however, this brief sketch provides some idea of how Kant's categorical imperative can explain and justify positive, negative, and contractual rights.

***Quick Review 2.13***
**Kant and Moral Rights**

- Kant's theory implies that individuals generally must be left equally free (or helped) to pursue their interests, while moral rights identify the specific interests individuals should be entitled to freely pursue (or be helped to pursue).
- An interest is important enough to become a right if (1) we would not be willing to have everyone deprived of the freedom to pursue that interest, and (2) the freedom to pursue that interest is needed to live as free and rational beings.

### Rights Defended Based on Kant's Categorical Imperative

Although later chapters of this text present various arguments in support of several particular rights, it might be helpful here to give a rough sketch of how some rights have been plausibly defended on the basis of Kant's two formulations of the categorical imperative.[71, 72, 73]

**Interactive**

**The Right to Have Basic Needs Met**

Human beings have a clear interest in being provided with the work, food, clothing, housing, and medical care they need to live on when they cannot provide these for themselves. Suppose we agree that we would not be willing to have everyone (especially ourselves) deprived of such help when it is needed and that such help is necessary if a person's capacity to choose freely and rationally is to develop and even survive. (We can hardly choose freely and rationally when we are starving, homeless, or sickly.) If so, then no individual should be deprived of such help. That is, human beings have *positive* moral or human rights to the work, food, clothing, housing, and medical care they need to survive when they cannot provide for themselves and these goods are available.

**The Right to Be Free from Interference**

**Contractual Rights**

**PROBLEMS WITH KANT'S THEORETICAL FRAMEWORK** Despite the attractiveness of Kant's theory, critics have argued that, like utilitarianism, it has important limitations and inadequacies.

***Quick Review 2.14***
**Criticisms of Kant**

- Both formulations of the categorical imperative are unclear.
- Rights can conflict, and Kant's theory seems unable to resolve such conflicts.
- Kant's theory implies certain moral judgments that may be mistaken.

## 2.3.4: Robert Nozick and the Libertarian Objection

Several **libertarian philosophers** have proposed important views on rights that are different from the ones we have previously discussed. Libertarian philosophers go beyond the general presumption that freedom from human constraint is usually good; they claim that such freedom is necessarily good and that all constraints imposed by others are necessarily evil except when needed to prevent the imposition of greater human constraints. The late philosopher Robert Nozick, for example, claimed that the only basic right that every individual possesses is the negative right to be free from the coercion of other human beings.[74]

### Criticisms and Counter-Criticisms of Kant's Theory

Clarity, balance of rights, and mistaken implications are all areas in which criticisms of Kant are made; however counter arguments have also developed. [75, 76, 77, 78, 79]

Interactive

**Less Than Clear**

Critics have traditionally pointed out that Kant's theory is not clear enough to always be useful. One difficulty lies in trying to determine whether one would (as the first formulation requires) "be willing to have everyone follow" a certain policy. Although the general thrust of this requirement is more or less clear, it sometimes leads to problems. For example, suppose I am a murderer: Would I then be willing to have everyone follow the policy that all murderers should be punished? In a sense, I would be willing to because I would want to be protected from other murderers. Yet, in another sense, I would not be willing because I do not want to be punished myself. Which sense is correct? It is also sometimes difficult to determine whether one person is using another "merely as a means" (as the second formulation states we should never do). Suppose, for example, that Ms. Jones, an employer, only pays minimum wage to her employees and refuses to install the safety equipment they want, yet she says she is "respecting their capacity to freely choose for themselves" because she is willing to let them work elsewhere if they choose. Is she then treating them merely as means or also as ends? Critics complain that Kant's theory is too vague to answer such questions. There are cases, then, where the requirements of Kant's theory are unclear.

**Does Not Clarify the Limits of Rights**

**Sometimes Proven Wrong by Counterexamples**

This negative right to freedom from coercion, according to Nozick, must be recognized if individuals are to be treated as distinct persons with separate lives, each of whom has an equal moral weight that may not be sacrificed for the sake of others. The only circumstance under which coercion may be exerted on a person is when it is necessary to keep that person from coercing others.

***Quick Review 2.15***
**Robert Nozick's Claims**

- He claimed the only moral right is the negative right to freedom, which implies that restrictions on freedom are unjustified except to prevent greater restrictions on freedom.
- He claimed the right to freedom requires private property, freedom of contract, free markets, and the elimination of taxes to pay for social welfare programs.
- Since the freedom of one person always restricts the freedom of others, Nozick's claim that restrictions on freedom are unjustified implies that freedom itself is unjustified.

## 2.4: Justice and Fairness

**OBJECTIVE: Explain justice and fairness as key ethical principles**

Those who criticized Unocal's decision to build the pipeline for Burma's Yadana gas field project did not argue only that Unocal was helping the military regime violate the moral rights of its citizens. Those critics also argued that Unocal was participating in an injustice. Specifically, they claimed, Unocal made it possible for Burma's top generals to further enrich themselves while most of the rest of

### Nozick's View of Kant's Theory

According to Robert Nozick, prohibiting people from coercing others constitutes a legitimate moral constraint that rests on "the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent." Thus, Nozick seemed to hold that Kant's theory supported his own views on freedom.[80, 81, 82]

**Interactive**

Nozick argued that the negative right to freedom from the coercion of others implies that people must be left free to do what they want with their own labor and with whatever products they manufacture by their labor. This claim, in turn, implies that people must be left free to acquire property, to use it in whatever way they wish, and to exchange it with others in free markets (as long as the situation of others is not thereby harmed or "worsened"). Thus, the libertarian view that coercive restrictions on freedom are immoral (except when needed to restrain coercion) is also supposed to justify the free use of property, freedom of contract, a free market system, and the elimination of taxes to pay for social welfare programs. However, there is no basis for any positive rights or for the social programs they might require.

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the Burmese population was mired in poverty. Unocal thereby worsened Burma's highly unequal and unjust distribution of wealth and power. We turn now to discuss an approach to ethics that focuses on the concept of justice. We begin by looking at a controversy in which the central ethical issue is one of justice.

## 2.4.1: Wages in the Fast Food Industry

In September 2014, thousands of fast food workers around the United States went on one-day strikes and demonstrated to protest the low wages paid by the largest fast food corporations, including McDonald's, Wendys, Burger King, Taco Bell, Kentucky Fried Chicken, and Domino's Pizza. Hundreds of fast food workers were arrested.[83] The strikes and protests had begun 21 months earlier in New York, then spread to Chicago, St. Louis, Detroit, and Kansas City. Then fast food workers in Los Angeles, Memphis, and Raleigh got involved. By August 2013, workers in 60 cities were participating in the one-day walkouts and marches. By the end of 2013, over 100 cities were involved, and by the middle of 2014, over 150 cities were involved. In many cities the protestors chanted the same refrain: "Hey, hey, what do you say, we demand fair pay." At a workers' rally in New York, organizers fired up the crowd with chants of "This is not about politics, it's about justice" and "Welcome to the capital of inequality."[84] *Time* magazine reported that the protests and strikes were "based on the idea that their wages are inherently unfair, perpetuate inequality, and fail to move them up the economic ladder."[85]

Cashiers and crew workers at McDonald's and some other large fast food companies make an average of $8.25 an hour before taxes; for the entire fast food industry, however, the average is $9.09. That is less than the hourly wages of workers in any other industry. Cafeteria workers, for example, get $10.31 an hour; retail workers in general merchandise stores get $11.20; and housekeepers get $12.68. Moreover, unlike other workers, the average fast food worker is not given 40 hours of work a week, but an average of just 24 hours a week. A fast food worker earning the average wage for the average hours earns less than $12,000 a year.[86] The protesting workers argued that the fast food companies should pay a "living wage" (i.e., a wage high enough to live on). Even if an employee was given 40 hours of work a week, McDonald's pay of $8.25 an hour would total only $16,500 a year before taxes, insufficient in most U.S. metropolitan areas to support a single person, let alone a family. Yet 68 percent of fast food workers are adults and a quarter of all fast food workers have children.[87] Not surprisingly, about 40 percent of fast food workers live in poverty, unable to provide themselves with adequate food, housing, health care, transportation, and other basic goods. To make ends meet while working for the fast food companies, more than half of all fast food workers rely on taxpayer-funded government assistance. A study found that the wages fast food companies paid their workers ended up costing U.S. taxpayers more than $7 billion a year in public assistance to make up for the companies' low wages.[88]

On a website called "McResource" (now discontinued) McDonald's unintentionally acknowledged its wages were not enough to live on.[89] The website offered employees economic advice and a sample budget. However, normal living expenses were more than a McDonald's wage could cover, so the budget assumed that a fast food worker would have a second full-time job to make up the difference. Besides advising workers to look for a second job, the website explained how to file for government assistance. Employees were also advised to break food into pieces to make it go further, sing to relieve stress, take at least two vacations a year, and give good tips to their masseuses, pool boys, and nannies. Ironically, the website also noted that fast food, although cheap, was an "unhealthy choice" because it is "high in calories, fat, saturated fat, sugar, and salt and may put people at risk for becoming overweight."[90]

The protesting workers were demanding that fast food wages be raised to $15.00 an hour. Some observers argued that those higher wages would mean substantially higher prices for fast food. Yet researchers at Purdue University found that raising wages to $15 an hour would cause only a 4.3 percent increase in fast food prices.[91] In Denmark, McDonald's pays starting workers over the age of 18 more than $20 an hour, yet the price of a Big Mac was only 35 cents more than in the United States.[92] In the United States, the wildly popular fast food company In-N-Out Burger, which has over 300 outlets in the Southwest, pays a starting hourly wage of $11 plus a complete benefits package (McDonald's gives its cashiers and crew workers virtually no benefits). While McDonald's charges $3.99 for its "Big Mac," In-N-Out" charges $3.40 for its equivalent, the "Double-Double." In fast food surveys, In-N-Out food is consistently ranked at the top, while McDonald's is at or near the bottom.

Numerous groups and individuals agreed that McDonald's wages—and fast food wages in general—were too low. Minnesota's congressman Keith Ellison stated: "In the richest country in the world, you should not be working full time and still be on food stamps."[93] One online blogger wrote that she was glad workers were "coming together at fast food stores to demand justice."[94] Another blogger wrote: "The fast food industry today in the U.S. is a veritable buffet of injustice."[95] An NGO stated on its website that it would "continue to stand with fast food and other low-wage workers in their fight for justice."[96]

Many people criticized the huge gap between fast food workers' wages and the salaries of fast food executives. A 2014 study found that "fast food workers earn the lowest average wage of all occupations" in the United States, while fast food executives are among "the best paid . . . anywhere in the economy."[97] In 2013, the average CEO in the fast food industry made $23,813,482. This wage was more than 1,200 times the total annual income of a fast food worker with a 40-hour week who made the average hourly wage of $9.09; it was 1,900 times the income of the worker who worked only the average number of weekly hours and earned the average wage. Between 2000 and 2013, the average income of fast food CEOs grew by 400 percent, while the average income of fast food workers grew by 0.3 percent. Commenting on these inequalities, an editorial stated: "bosses and stockholders living an extravagant lifestyle with the employees hardly or not getting by is simply an injustice."[98]

## 2.4.2: Standards of Justice and Fairness

As in the controversy over fast food wages, disputes in business often refer to *justice* or *fairness.* This is the case, for example, when one person accuses another of *unjustly* discriminating against him or her, showing *unjust* favoritism toward someone else, not shouldering a *fair* share of the burdens involved in some cooperative venture, or takes an unfairly large portion of a cooperative venture's benefits. Resolving disputes like these requires that we compare the benefits and burdens of each of the parties and ensure that both benefits and burdens are distributed in a way that is fair or just. Justice and fairness are essentially comparative. They are concerned with how the benefits and burdens one person receives compare with the benefits and burdens other similar persons receive or should receive, particularly when benefits and burdens are being distributed, when rules and laws are administered, when members of a group cooperate or compete with each other, and when people are punished for the wrongs they have done or compensated for the injuries they have suffered. In the controversy over the wages of fast food workers, for example, workers were said to be receiving too few benefits compared with the living wage they should receive and compared with the benefits others receive, such as fast food CEOs. Although the terms *justice* and *fairness* are used almost interchangeably, we tend to reserve the word *justice* for matters that are especially serious, although some authors have held that the concept of fairness is more fundamental.[99]

Standards of justice are generally taken to have more weight than utilitarian considerations.[100] If a society is unjust to many of its members, then we normally condemn that society, even if the injustices secure more utilitarian benefits for everyone. If we think that slavery is unjust, for example, then we condemn a society that uses slavery even if slavery makes that society more productive. Greater benefits for some cannot justify injustices against others. Nonetheless, we also seem to hold that if the social gains are sufficiently large, a certain level of injustice may legitimately be tolerated.[101] In countries with extreme deprivation and poverty, for example, we seem to hold that some degree of equality may be traded for major economic gains that leave everyone better off.

Standards of justice do not generally override the moral rights of individuals. Part of the reason for this is that, to some extent, justice is based on individual moral rights. The moral right to be treated as a free and equal person, for example, is part of what lies behind the idea that benefits and burdens should be distributed equally.[102] More important is the fact that, as we saw, a moral right identifies interests people have, the free pursuit of which may not be subordinated to the interests of others except where there are special and exceptionally weighty reasons. For the most part, the moral rights of some individuals cannot be sacrificed merely in order to secure a somewhat better distribution of benefits for others. However, correcting extreme injustices may justify restricting the rights of some individuals. Property rights, for example, might be legitimately redistributed for the sake of justice. We will discuss these kinds of trade-offs more fully in this chapter after we have looked at what *justice* means.

This section examines each of these three kinds of justice separately. The section begins with a discussion of a basic principle of **distributive justice** (equals should be treated as equals) and then examines several views on the criteria relevant to determining whether two persons are equal. We then turn to much briefer discussions of retributive and compensatory justice (see Table 2.1).

## 2.4.3: Distributive Justice

Questions of distributive justice arise when different people make claims on society's benefits and burdens and all the claims cannot be satisfied.[103] The central cases are those where there is a scarcity of benefits—such as food, housing, medical care, income, and wealth—as compared with the numbers and desires of the people who want these goods. The other side of the coin is that there may be too many burdens—unpleasant work, drudgery, substandard housing, health injuries of various sorts—and not enough people willing to shoulder them. If there were enough goods to satisfy everyone's desires and enough people willing to share society's burdens, then conflicts between people would not arise and distributive justice would not be needed.

When people want more benefits than society can provide, or fewer of the burdens that must be carried, they are forced to develop principles for allocating benefits and burdens in ways that are just and that resolve conflicts in a fair way. The development of such principles is the concern of distributive justice.

The fundamental principle of distributive justice is that equals should be treated equally and unequals treated unequally.[104] More precisely, the fundamental principle of distributive justice may be expressed as follows:

> Individuals who are similar in all respects relevant to the kind of treatment in question should be given similar benefits and burdens, even if they are dissimilar in other irrelevant respects; and individuals who are dissimilar in a relevant respect ought to be treated dissimilarly, in proportion to their dissimilarity.

### Ethical Application

#### Distributive Justice and Pay

If Susan and Bill are both doing the same work for me and there are no relevant differences between them or the work they are doing, then, in justice, I should pay them equal wages. However, if Susan is working twice as long as Bill and if length of working time is the relevant basis for determining wages on the sort of work they are doing, then, to be just, I should pay Susan twice as much as Bill. To urn to our earlier discussion, if fast food workers get paid less than other workers, and their work burdens are comparable to those of other workers who get paid significantly more, then, as several observers noted, their level of compensation is unjust.

**Table 2.1** Types of Justice

Issues involving questions of justice and fairness are usually divided into the following three categories.

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| Term | Description |
|---|---|
| Distributive justice | This basic type of justice is concerned with the fair distribution of society's benefits and burdens. In the controversy over fast food workers' wages, for example, the key issue was whether the low wages—that is, the benefits—fast food workers received were just in light of their needs and the burdens they carried, as well as whether the large inequality between the low earnings of workers and the high incomes of fast food executives were just. |
| Retributive justice | This type of justice refers to the just imposition of punishments and penalties on those who do wrong. A just penalty is one that in some sense is deserved by the person who does wrong. Retributive justice would be at issue, for example, if we were to ask whether it would be fair to penalize a worker for something he did, but did not do intentionally. |
| Compensatory justice | This type of justice concerns the just way of compensating people for what they lost when others wronged them. A just compensation is one that, in some sense, is proportional to the loss suffered by the person being compensated (such as loss of livelihood). |

Check Your Understanding

The fundamental principle of distributive justice, however, is purely formal.[105] It is based on the logical idea that we must be consistent in the way we treat similar situations. The principle does not indicate the "relevant respects" that can provide the basis for similarity or dissimilarity of treatment. For example, is race relevant when determining who should get a job? Most of us would say "no," but then, what characteristics are relevant when determining what benefits and burdens people should receive? We turn now to examine different views on the kinds of characteristics that may be relevant. Each of these views provides a material principle of justice; that is, a principle that gives specific content to the fundamental principle of distributive justice. For example, one simple principle that people often use to decide who should receive a limited or scarce good is the "first-come, first-served" principle that operates when waiting in line to receive something, as well as in the seniority systems used by businesses. The "first-come, first-served" principle assumes that being first is a relevant characteristic for determining who should be the first party served when not all can be served at once. The reader can undoubtedly think of many other such simple principles that we use. However, here we will concentrate on several principles that are often thought to be more fundamental than principles such as "first-come, first-served."

**JUSTICE AS EQUALITY: EGALITARIANISM** Egalitarians hold that no relevant differences exist among people that can justify unequal treatment.[106] According to the egalitarian, all benefits and burdens should be distributed according to the following formula:

> Every person should be given exactly equal shares of a society's or a group's benefits and burdens.

### Egalitarian Views on Equality

Egalitarians base their views on the proposition that all human beings are equal in some fundamental respect and that, in virtue of this equality, each person has an equal claim to society's goods. According to the egalitarian, this proposition implies that goods should be allocated to people in equal portions.[107, 108, 109, 110, 111, 112, 113]

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Equality has been proposed as a principle of justice not only for entire societies, but also within smaller groups or organizations. Within a family, for example, it is often assumed that over the course of their lives children should receive equal shares of the goods parents make available to them. In some companies and in some workgroups, particularly when the group has strong feelings of solidarity and is working at tasks that require cooperation, workers feel that all should receive equal compensation for their work. Interestingly, when workers in a group receive equal compensation, they tend to become more cooperative with each other and to feel greater solidarity with each other. Also interestingly, workers in countries such as Japan, which is characterized as having a more collectivist culture, prefer the principle of equality more than workers in countries such as the United States, which is characterized as having a more individualistic culture.

Equality has appeared to many to be as an attractive social ideal, and inequality as a defect. "All men are created equal," states the U.S. Declaration of Independence, and the ideal of equality has been the driving force behind the emancipation of slaves; the prohibition of indentured servitude; the elimination of racial, sexual, and property requirements on voting and holding public office; and the institution of free public education. People in the United States have long prided themselves on the lack of overt status consciousness in their social relations.

Despite their popularity, however, egalitarian views have been subjected to heavy criticisms. One line of attack has focused on the egalitarian claim that all human beings are equal in some fundamental respect. Critics claim that there is no quality that all human beings possess in precisely the same degree: human beings differ in their abilities, intelligence, virtues, needs, desires, and all other physical and mental characteristics. If this is so, then human beings are unequal in all respects.

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**JUSTICE BASED ON CONTRIBUTION: CAPITALIST JUSTICE** Some writers have argued that a society's benefits should be distributed in proportion to what each individual contributes to a society and/or to a group. The more a person contributes to a society's pool of economic goods, for example, the more that person is entitled to take from that pool; the less an individual contributes, the less that individual should get. The more a worker contributes to a project, the more that worker should be paid. According to this capitalist view of justice, when people engage in economic exchanges with each other, what a person gets out of the exchange should be at least equal in value to what the person contributed. Justice requires, then, that the benefits people receive should be proportional to the value of their contribution. In a more simple statement:

> Benefits should be distributed according to the value of the contribution the individual makes to a society, a task, a group, or an exchange.

The principle of contribution is perhaps the principle of fairness most widely used to establish salaries and wages in U.S. companies. In workgroups, particularly when relationships among the members of the group are impersonal and the product of each worker is independent of the efforts of the others, workers tend to feel that they should be paid in proportion to the work they have

### Ways to Measure the Contribution of an Individual

The main question raised by the contributive principle of distributive justice is how the value of the contribution of each individual is to be measured.[114, 115, 116, 117, 118]

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**Measured in Terms of Work Effort**

One long-lived tradition has held that contributions should be measured in terms of *work effort*. The more effort people put forth in their work, the greater the share of benefits to which they are entitled. The harder one works, the more one deserves. This assumption is behind the *Puritan ethic*, which held that individuals had a religious obligation to work hard at their *calling* (the vocation to which God summons each individual) and that God justly rewards hard work with wealth and success, while He justly punishes laziness with poverty and failure. In the United States, this Puritan ethic has evolved into a secularized **work ethic**, which places a high value on individual effort and which assumes that, whereas hard work does and should lead to success, loafing is and should be punished.

However, the following problems arise when effort is used as the basis of distribution:

- To reward a person's efforts without any reference to whether the person produces anything worthwhile through these efforts is to reward incompetence and inefficiency.
- If we reward people solely for their efforts and ignore their abilities and relative productivity, then talented and highly productive people will be given little incentive to invest their talent and productivity in producing goods for society. As a result, the welfare of society will decline.

**Measured in Terms of Productivity**

**Measured in Terms of Market Forces of Supply and Demand**

contributed.[119] Salespeople out on the road, or workers at individual sewing machines sewing individual garments or doing other piecework tend to feel that they should be paid in proportion to the quantity of goods they have individually sold or made. Interestingly, when workers are paid in accordance with the principle of contribution, this tends to promote among them an uncooperative and even competitive atmosphere in which resources and information are less willingly shared and in which status differences emerge.[120] Workers in countries that are characterized as having a more individualistic culture, such as the United States, like the principle of contribution more than workers in countries that are characterized as having a more collectivist culture, such as Japan.[121]

## On the Edge

### ExxonMobil, Amerada Hess, and Marathon Oil in Equatorial Guinea

People in West African countries, among the poorest in the world, survive on $1 a day and have a life expectancy of 46 years. In 2004, Equatorial Guinea had a GDP of $4,472 per person, the highest in West Africa. In 1995, Equatorial Guinea found oil off its coast, and by 2004, ExxonMobil, Amerada Hess, and Marathon Oil—all U.S. oil companies—were helping that West African country produce $4 billion of oil revenues a year. Equatorial Guinea's inexperienced government agreed to give 80 percent of these revenues to the oil companies that drilled the oil for them, although oil companies in developing nations usually take about 50 percent of revenues from oil projects. The oil companies channel—through Riggs Bank, a 2004 Senate report revealed—-hundreds of millions of dollars to Equatorial Guinea's president, T. Nguema, and his family for "land purchases," "security services," and "office leases." A Department of Energy report says that because Nguema and his family run the government, the 20 percent of oil revenues that go to the government are spent on "lavish personal expenditures," and so most oil money is "concentrated in the hands of top government officials while the majority of the population remains poor." If Nguema had not been paid, of course, the Equatorial Guinea government would never have approved the oil project. ExxonMobil says it has spent "$4 million," and Marathon Oil and Amerado Hess claim to have "invested millions of dollars" on schools; libraries; programs for the eradication of malaria, polio, and AIDS; health clinics; bridges; waterways; and electricity. A U.S. human rights report says Equatorial Guinea's government violates its citizens' rights of free speech; restricts the rights of the press, assembly, due process, association, religion, and movement; and uses torture, beatings, and other physical abuse against political opponents.[122]

WRITING PROMPT

**Evaluate the Behavior of the Oil Companies**

1. What would utilitarianism, rights theory, and justice say about the activities of ExxonMobil, Amerada Hess, and Marathon Oil in Equatorial Guinea?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

**JUSTICE BASED ON NEEDS AND ABILITIES: SOCIALISM** A large number of different kinds of socialism exist, so it is somewhat inaccurate to speak of "the" socialist position on distributive justice. Nonetheless, the dictum proposed first by Louis Blanc (1811–1882) and then by Karl Marx (1818–1883) and Nikolai Lenin (1870–1924) is traditionally taken to represent the socialist view on distribution: "From each according to his ability, to each according to his needs."[123] This socialist principle, then, can be paraphrased as follows:

> Work burdens should be distributed according to people's abilities, and benefits should be distributed according to people's needs.

The socialist principle is based first on the idea that people realize their human potential by exercising their abilities in productive work.[124] Because the realization of one's full potentiality is a value, work should be distributed in such a way that a person can be as productive as possible, and this implies distributing work according to ability. Second, the benefits produced through work should be used to promote human happiness and well-being. This idea means distributing benefits so that people's basic biological and health needs are met and then using what is left to meet people's other nonbasic needs. Perhaps most fundamental to the socialist view is the notion that societies should be communities in which benefits and burdens are distributed on the model of a family. Just as able family members willingly support the family, and just as needy family members are willingly supported by the family, so too the able members of a society should contribute their abilities to society by taking up its burdens while the needy should be allowed to share in its benefits.

As the example of the family suggests, the principle of distribution according to need and ability is used within small groups as well as within larger society. The principle of need and ability, however, is the principle that tends to be least acknowledged in business. Managers sometimes invoke the principle when they pass out the more difficult jobs among the members of a workgroup to those who are stronger and more able, but they often retreat when these workers complain that they are being given larger burdens without higher compensation. Managers also sometimes invoke the principle when they make special allowances for workers who seem to have special needs. (In fact, this principle was a key consideration when Congress passed the Americans with Disabilities Act.) However, managers rarely do so and are often criticized for showing favoritism when they do.

Nevertheless, there is something to be said for the socialist principle: needs and abilities certainly should be taken into account when determining how benefits and burdens should be distributed among the members of a group or society. Most people would agree, for example, that it is fair to provide people with special needs benefits that are not given to healthy persons who have all they need. Most people would also agree that individuals should be employed in occupations for which they are fitted, and that this means matching each person's abilities to a job as far as possible. Vocational tests in high school and college, for example, are supposed to help students find careers that match their abilities.

**JUSTICE AS FREEDOM: LIBERTARIANISM** In this section, we look at libertarian views on moral rights; libertarians also have some clear and related views on the nature of justice. The libertarian holds that no particular way of distributing goods can be said to be just or unjust apart

### Criticisms of the Socialist Principle

Two main criticisms of the socialist principle are that a worker's effort is not necessarily compensated proportionately, which would remove incentive, and that individual freedom is impossible. [125, 126]

**Interactive**

**Disconnect between Effort and Remuneration**

Opponents have pointed out that, under the socialist principle, there would be no relation between the amount of effort a worker puts forth and the amount of remuneration the worker receives (because remuneration would depend on need, not on effort). Consequently, opponents conclude, workers would have no incentive to put forth any work efforts at all, knowing that they will receive the same remuneration regardless of whether they work hard. The result, it is claimed, will be a stagnating economy with declining productivity (a claim, however, that does not seem to be borne out by the facts). Underlying this criticism is a deeper objection—namely, that it is unrealistic to think that entire societies could be modeled on familial relationships. Human nature is essentially self-interested and competitive, the critics of socialism hold, and so outside the family people cannot be motivated by the fraternal willingness to share and help that is characteristic of families. Socialists have usually replied to this charge by arguing that human beings are trained to acquire the vices of selfishness and competitiveness by modern social and economic institutions that inculcate and encourage competitive, self-interested behavior, but that people do not have these vices by nature. By nature, humans are born into families where they instinctively value helping each other. If these instinctive and "natural" attitudes continued to be nurtured, instead of being eradicated, humans would continue to value helping others even outside the family, and would acquire the virtues of being cooperative, helpful, and selfless. The debate on what kinds of motivations human nature is subject to is still largely unsettled.

**Obliteration of Individual Freedom**

from the free choices individuals make. Any distribution of benefits and burdens is just if it is the result of individuals freely choosing to exchange with each other the goods each person already owns. Robert Nozick suggested this principle as the basic principle of distributive justice:

> Burdens should be distributed to those who choose to take up those burdens, and benefits should be distributed to those who choose to produce those benefits (perhaps with the help of others who choose to help), and to those who are given those benefits by others who choose to give them benefits that were previously distributed to them (according to this principle) and that they have not yet consumed or given to others. [127]

Or, to express the libertarian principle of justice in simpler terms: "From each as they choose, to each as they are chosen." For example, if I choose to write a novel or carve a statue out of a piece of driftwood, then I should be allowed to keep the novel or statue if I choose to keep it. If I choose, I should be allowed to give it away to someone else or exchange it for another object with whomever I choose. In general, people should be allowed to keep everything they make and everything they are freely given. Obviously, according to this view, it would be wrong to tax one person (i.e., take the person's money) to provide welfare benefits for the needs of someone else.

Nozick's principle is based on the claim (which we have already discussed) that every person has a right to freedom from the coercion of others, which takes priority over all other rights and values. The only distribution that is just, according to Nozick, is one that results from free individual choices. Any distribution that results from an attempt to impose a certain pattern on society (e.g., imposing equality on everyone or taking from the "haves" and giving to the "have-nots") will therefore be unjust.

**CRITICISM OF LIBERTARIANISM** We have already noted some of the problems associated with the libertarian position in our discussion of Nozick's view of Kant's theory. Critics of libertarianism have raised additional concerns.

**JUSTICE AS FAIRNESS: JOHN RAWLS** The discussions in this chapter have suggested several different considerations that should be taken into account in the distribution of society's benefits and burdens: political and economic equality; a minimum standard of living; needs; ability; effort; and freedom. What is needed, however, is a comprehensive theory capable of drawing these considerations together and fitting them into a logical whole. John Rawls provided one approach to distributive justice that at least approximates this ideal of a comprehensive theory.[129]

Rawls's theory of justice is based on the assumption that conflicts involving justice should be settled by first devising a fair method for choosing the principles by which the conflicts are resolved. Once a fair method for choosing the principles is devised, the principles we choose by using that method should serve as our principles of distributive justice. Rawls proposed two basic principles that, he argued, we would select if we were to use a fair method of choosing principles to resolve our social conflicts.[130] The principles of distributive justice that Rawls proposed can be paraphrased by saying that the distribution of benefits and burdens in a society is just if and only if:

> Each person has an equal right to the most extensive basic liberties compatible with similar liberties for all

### Difficulties with Libertarianism

The major difficulty with libertarianism is that it enshrines a certain value—freedom from the coercion of others—and sacrifices all other rights and values to it without giving any persuasive reasons why this should be done.[128]

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**Enshrines One Value at the Expense of Others**

Opponents of the libertarian view argue that other forms of freedom must also be secured, such as freedom from ignorance and freedom from hunger. In many cases, these other forms of freedom override freedom from coercion. If a man is starving, for example, his right to be free from the constraints imposed by hunger is more important than the right of a satisfied man to be free of the constraint of being forced to share his surplus food. To secure these more important rights, society may impose a certain pattern of distribution even if this means that, in some cases, some people will have to be coerced into conforming to the distribution. Those with surplus money, for example, may have to be taxed to provide for those who are starving.

**Promotes Unjust Treatment of the Disadvantaged**

Social and economic inequalities are arranged so that they are both

**a.** To the greatest benefit of the least-advantaged persons
**b.** Attached to offices and positions open to all under conditions of fair equality of opportunity

Rawls indicated that Principle 1 is supposed to take priority over Principle 2 if the two of them ever come into conflict, and within Principle 2, part *b* is supposed to take priority over part *a*.

**RAWLS'S METHOD FOR EVALUATING MORAL PRINCIPLES** Rawls not only provided us with a set of principles of justice but also proposed a general method for evaluating the adequacy of any moral principles in a fair way. The method consists of determining what principles a group of rational self-interested persons would choose to live by if they knew they would live in a society governed by those principles, but they did not yet know what each of them would turn out to be like in that society.[135] We might ask, for example, whether such a group of rational self-interested persons would choose to live in a society governed by a principle that discriminates against blacks when none of them knows whether he or she will turn out to be a black person in that society. The answer, clearly, is that such a racist principle would be rejected and consequently, according to Rawls, the racist principle would be unjust. Thus, Rawls claimed that a principle is a morally justified principle of justice if, and only if, the principle would be acceptable to a group of rational self-interested persons who know they will live in a society governed by the principles they accept, but who do not know what sex, race, abilities, religion,

### Rawls's Principles of Distributive Justice

Rawls's principles of distributive justice are comprehensive and bring together the main considerations stressed by the other approaches to justice that we have examined.[131, 132, 133, 134]

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**Principle 1: Principle of Equal Liberty**

Essentially, this principle says that each citizen's liberties must be protected from invasion by others and must be equal to those of others. These basic liberties include the right to vote; freedom of speech and conscience, and the other civil liberties; freedom to hold personal property; and freedom from arbitrary arrest. If the **principle of equal liberty** is correct, then it implies that it is unjust for business institutions to invade the privacy of employees, pressure managers to vote in certain ways, exert undue influence on political processes by the use of bribes, or otherwise violate the equal political liberties of society's members. According to Rawls, moreover, because our freedom to make contracts would diminish if we were afraid of being defrauded or were afraid that contracts would not be honored, the principle of equal liberty also prohibits the use of force, fraud, or deception in contractual transactions and requires that just contracts should be honored. If this is true, then contractual transactions with customers (including advertising) should morally be free of fraud, and employees have a moral obligation to render the services they have justly contracted to their employer.

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interests, social position, income, or other particular characteristics each of them will possess in that future society.

Rawls referred to the situation of such an imaginary group of rational persons as the **original position**, and he referred to their ignorance of any particulars about themselves as the **veil of ignorance**.[136] The purpose and effect of saying that the parties to the original position do not know what particular characteristics each of them will possess is to ensure that none of them can protect his or her own special interests. Because they are ignorant of their particular qualities, the parties to the original position are forced to be fair and impartial and to show no favoritism toward any special group. They must look after the good of all.

According to Rawls, the principles that the imaginary parties to the original position accept will *ipso facto* turn out to be morally justified.[137] They will be morally justified because the original position incorporates three moral ideas of Kant that we saw earlier, which are as follows:

1. Reversibility (the parties choose principles that they will apply to themselves)
2. Universalizability (the principles must apply equally to everyone)
3. Treating people as ends (each party has an equal say in the choice of principles)

The principles are further justified, according to Rawls, because they are consistent with our deepest considered intuitions about justice. The principles chosen by the parties to the original position match most of the moral convictions we already have; where they do not, according to Rawls, we would be willing to change them to fit Rawls's principles once we reflect on his arguments.

Rawls also claimed that the parties to the original position would in fact choose his (Rawls's) principles of justice—that is, the principle of equal liberty, the difference principle, and the **principle of fair equality of opportunity**.[138] The principle of equal liberty would be chosen because the parties will want to be free to pursue their major special interests, whatever these special interests might be. In the original position, each person is ignorant of what special interests he or she will have, thus everyone will want to secure a maximum amount of freedom so that they can pursue whatever interests they have on entering society. The difference principle will be chosen because all parties will want to protect themselves against the possibility of ending in the worst position in society. By adopting the difference principle, the parties will ensure that even the position of the neediest is cared for. According to Rawls, the principle of fair equality of opportunity will be chosen because all parties to the original position will want to protect their interests should they turn out to be among the talented. The principle of fair equality of opportunity ensures that all have an equal opportunity to advance through the use of their own abilities, efforts, and contributions.

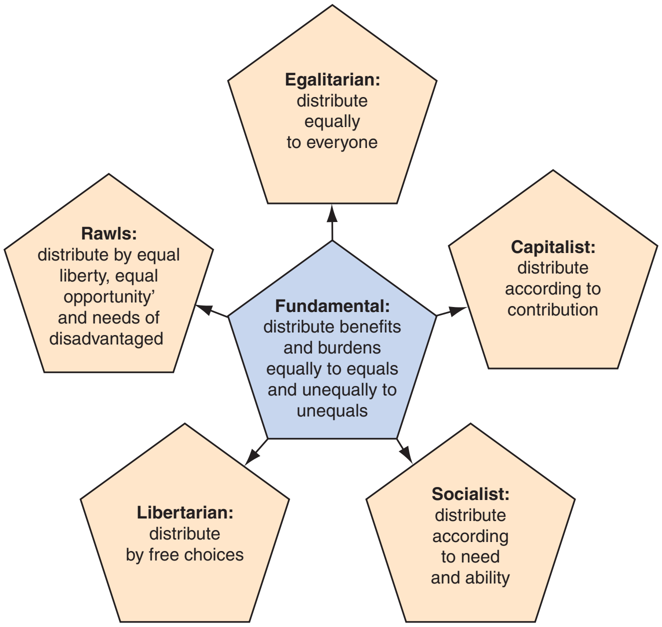
If Rawls was correct in claiming that the principles chosen by the parties to the original position are morally justified, and if he was correct in arguing that the parties to the original position would choose his principles, then it follows that his principles are in fact morally justified to serve as our own principles of justice. These principles would then constitute the proper principles of distributive justice.

**CRITICISM OF RAWLS** Critics have objected to various parts of Rawls's theory.[139] Some have argued that the original position is not an adequate method for choosing moral principles. According to these critics, the mere fact that a set of principles is chosen by the hypothetical parties to the original position tells us nothing about whether the principles are morally justified. Other critics have argued that the parties to the original position would not choose Rawls's principles at all. Utilitarians, for example, have argued that the hypothetical parties to the original position would choose utilitarianism and not Rawls's principles. Still other critics have claimed that Rawls's principles are mistaken because they are opposed to some of our basic convictions concerning what justice is.

Despite the many objections that have been raised against Rawls's theory, his defenders still claim that the advantages of the theory outweigh its defects. Those advantages, they claim, are as follows:

1. The theory preserves the basic values that have become embedded in our moral beliefs: freedom, equality of opportunity, and concern for the disadvantaged.
2. The theory fits easily into the basic economic institutions of Western societies; it does not reject the market system, work incentives, or the inequalities consequent on a division of labor. Instead, by requiring that inequalities work for the benefit of the least-advantaged and by requiring equality of opportunity, the theory shows how the inequalities that attend the division of labor and free markets can be compensated for and, thereby, made just.
3. The theory incorporates both the communitarian and individualistic strains that are intertwined in Western culture. The difference principle encourages the more talented to use their skills in ways that will rebound to the benefit of fellow citizens who are less well-off, thereby encouraging a type of communitarian or fraternal concern.[140] The principle of equal liberty leaves the individual free to pursue whatever special interests the individual may have.
4. The theory takes into account the criteria of need, ability, effort, and contribution. The difference principle distributes benefits in accordance with need, whereas the principle of fair equality of opportunity in effect distributes benefits and burdens according to ability and contribution.[141]

**Figure 2.1** Summary of Principles of Distributive Justice




5. The original position provides moral justification. The original position is defined so that its parties choose impartial principles that take into account the equal interests of everyone, and this, they claim, is the essence of morality.

See Figure 2.1 for a summary of the principles of distributive justice.

## 2.4.4: Retributive Justice

*Retributive justice* concerns the justice of blaming or punishing persons for doing wrong. Philosophers have long debated the justification of blame and punishment, but we need not enter these debates here. More relevant to our purposes is the question of the conditions under which it is just to punish a person for doing wrong.

Chapter 1 discussed some major conditions under which people should not be held morally responsible for what they did: ignorance and inability. These conditions are also relevant to determining the justice of punishing or blaming someone for doing wrong. If people do not know or do not freely choose what they are doing, they cannot justly be punished or blamed for it.

A second condition of just punishments is certitude that the person being punished actually did wrong. For example, many firms use more or less complex systems of due process that are intended to ascertain whether the conduct of employees was really such as to merit dismissal or some other penalty.[142] Penalizing an employee on the basis of flimsy or incomplete evidence is rightly considered an injustice.

A third condition of just punishments is that they must be consistent and proportioned to the wrong. Punishment is consistent only when everyone is given the same penalty for the same infraction; punishment is proportioned to the wrong when the penalty is no greater in magnitude than the harm that the wrongdoer inflicted.[143] It is unjust, for example, for a manager to be lenient toward favorite employees but harsh toward all others, or to impose harsh penalties for minor infractions of rules. If the purpose of a punishment is to deter others from committing the same wrong or to prevent the wrongdoer from repeating the wrong, then punishment should not be greater than what is necessary to achieve these aims.

## 2.4.5: Compensatory Justice

*Compensatory justice* concerns the justice of restoring to a person what the person lost when someone wronged him or her. We generally hold that when one person wrongfully inflicts losses on another person, the wrongdoer has a moral duty to compensate his or her victim for those losses. For example, if I maliciously destroy someone's property or steal it from him or her, I have an obligation to pay him or her whatever the property I destroyed or stole was worth.

There are no hard and fast rules for determining how much compensation a wrongdoer owes the victim. Compensatory justice requires that compensation should leave the victim as well-off as he or she would have been if the wrongdoer had not injured him or her. This would usually mean that the amount of compensation should equal the losses the wrongdoer inflicted on the victim. However, some losses are very hard to measure. If I maliciously injure someone's reputation, for example, how much compensation equals the loss of reputation? Some losses, moreover, cannot be restored at all: How can the loss of life or the loss of sight be compensated?

### Ethical Application

#### What Compensatory Justice Can There Be in the Pinto Case?

In situations such as the Ford Pinto case, where the injury is such that it is not possible to adequately compensate for the loss, we seem to hold that the wrongdoer should at least pay for all economically measurable past, present, and future monetary losses the victim suffers, plus a reasonable estimate of the value of intangible or nonquantifiable losses. These losses could arise from temporary or chronic pain, mental stress and suffering, disfigurement, impaired mental or physical abilities, loss of the enjoyment of life, loss of companionship, damaged reputation, etc.

**Table 2.2** Traditional Moralists on the Conditions for Compensation

Traditional moralists have argued that a person has a moral obligation to compensate an injured party only if the following three conditions are present.

Interactive

| Condition | Example |
|---|---|
| The action that inflicted the injury was wrong or negligent. | If by efficiently managing my firm I undersell my competitor and run him or her out of business, I am not morally bound to compensate him or her since such competition is neither wrongful nor negligent. However, if I steal from my employer, then I owe him or her compensation. Similarly, if I fail to exercise due care in my driving, then I owe compensation to those whom I injure. |
| The person's action was the real cause of the injury. | If a banker loans a person money and the borrower then uses it to cheat others, the banker is not morally obligated to compensate the victims; but if the banker defrauds a customer, the customer must be compensated. |
| The person inflicted the injury voluntarily. | If I injure someone's property accidentally and without negligence, I am not morally obligated to compensate the person (although I may be legally bound to do so, depending on how the law chooses to distribute the social costs of injury). However, if I deliberately burn down the house of a person I dislike, then I am bound to compensate the person for the losses I inflicted. |

Check Your Understanding

**WHEN TO COMPENSATE?** Not all injuries deserve compensation. Suppose, for example, that while on a crowded street doing nothing wrong, I am shoved against you and in spite of my best efforts to catch myself, my shove causes you to fall and injure yourself. Although I am the one who directly caused your injury, since I am not morally responsible for what happened, I am not obligated to compensate you. Under what conditions is a person bound to compensate a party he or she injures? See Table 2.2.

## 2.5: An Ethic of Care

**OBJECTIVE: Analyze an ethic of care as applied to business decisions and practices**

The concept of caring for others as an ethical precept has not been adequately captured by the moral views we have examined so far. The view that we have an obligation to show special care to individuals with whom we have valuable close relationships (particularly dependent relationships) is a key concept of the **ethic of care**, an approach to ethics that many feminist ethicists have recently advanced. We briefly discussed this approach to ethics earlier, when we noted the new approach to moral development worked out by psychologist Carol Gilligan. A morality of care "rests on an understanding of relationships as a response to another in their terms."[144] According to this "care" view of ethics, the moral task is not to follow universal and impartial moral principles, but instead to attend and respond to the good of particular individuals with whom we are in a valuable and close relationship.[145] The Malden Mills case presents an example of the ethic of care.

## 2.5.1: Malden Mills Company

At 8:00 P.M. on the night of December 11, 1995, an explosion near a boiler room rocked the Malden Mills factory in Lawrence, Massachusetts.[146] Fires broke out in the century-old brick textile factory. Fanned by winds, the fires quickly gutted three factory buildings, injuring 25 workers, destroying nearly all of the plant, and putting nearly 1,400 people out of work two weeks before Christmas.

Founded in 1906, Malden Mills, a family-owned company, was one of the few makers of textiles still operating in New England. Most other textile manufacturers had relocated to the South and then to Asia in their search for cheap, nonunion labor. The president and major owner of the company, Aaron Feuerstein, however, had refused to abandon the community and its workers, who he considered valuable assets and not an expense to be cut. Emerging from a brush with bankruptcy in 1982, Feuerstein had refocused the company on the pricier end of the textile market, where state-of-the-art technology and high-quality goods are more important than low costs. Shunning low-margin commodity fabrics such as plain polyester sheets, the company focused on a new synthetic material labeled *Polartec* that company workers had discovered how to make through trial and error during the early 1980s. The new material was a fleecy, lightweight, warm material that could wick away perspiration and that required precise combinations of artificial yarns, raising and shaving the pile, and weaving at specially invented (and patented) machines operated at exactly the right temperature, humidity, and speed. Workers had to develop special skills to achieve the correct weave and quality.

Several apparel companies soon recognized Polartec as the highest quality and most technically advanced fabric available for performance outdoor clothing. Patagonia, L.L Bean, Eddie Bauer, Lands' End, North Face, Ralph Lauren, and other upscale outfitters adopted the high-priced material. Polartec sales climbed from $5 million in 1982 to over $200 million by 1995. With additional revenues from high-quality upholstery fabrics, Malden Mills' revenues in 1995 had totaled $403 million, and its employees, who now numbered nearly 3,200, were the highest paid textile workers in the country. Feuerstein, who frequently provided special help to workers with special needs, kept an open-door policy with workers whom he tried to treat as members of a large family.

The morning after the December fire, however, with the factory in smoldering ruins, newspapers predicted that owner Aaron Feuerstein would do the smart thing and collect over $100 million that insurers would owe him, sell off the remaining assets, and either shut down the company or rebuild in a country where labor was cheaper. Instead, Feuerstein announced that the company would rebuild in Lawrence. In a move that confounded the industry, he promised that every employee forced out of work by the fire would continue to be paid full wages, receive full medical benefits, and be guaranteed a job when operations restarted in a few months. Rebuilding in Lawrence would cost over $300 million, and keeping 1,400 laid-off workers on full salaries for a period of up to three months would cost an additional $20 million. Feuerstein said,

> I have a responsibility to the worker, both blue-collar and white-collar . . . I have an equal responsibility to the community. It would have been unconscionable to put 3,000 people on the streets and deliver a death blow to the cities of Lawrence and Methuen. Maybe on paper our company is [now] worth less to Wall Street, but I can tell you it's [really] worth more.

How does the Malden Mills incident present a different ethical perspective? Consider that from a utilitarian perspective, Feuerstein had no obligation to rebuild the factory in Lawrence or to continue to pay his workers while they were not working. Moreover, relocating the operations of Malden Mills to a country where labor is cheaper would not only have benefited the company, it would also have provided jobs for workers who arguably are more in need than U.S. workers. From an impartial utilitarian perspective, then, more utility would have been produced by bringing jobs to workers in a poor nation than by spending the money to preserve the jobs of current Malden Mills employees in Lawrence, Massachusetts. It is true that the Malden Mills workers were close to Feuerstein and that over the years they had remained loyal to him and had built a close relationship to him. However, from an impartial standpoint, the utilitarian would say such personal relationships are irrelevant and should be set aside in favor of whatever maximizes utility.

A rights perspective would also not provide any support for the decision to remain in Lawrence nor to continue to pay workers full wages while the company rebuilt. Workers certainly could not claim to have a moral right to be paid while they were not working. Nor could workers claim to have a moral right to have a factory rebuilt for them. The impartial perspective of a rights theory, then, does not suggest that Feuerstein had any special rights-based obligations to his employees after the fire.

Finally, one could not argue that justice demanded that Feuerstein rebuild the factory and continue to pay workers while they were not working. Although workers were pivotal to the success of the company, the company had rewarded them by paying them very generous salaries over many years. Impartial justice does not seem to require that the company support people while they are not working, nor does it seem to require that Feuerstein rebuild a factory for them at considerable cost to himself. In fact, if one is impartial, then it seems more just to move the factory to a developing country where people are needier than to keep the jobs in the United States where people are relatively well-off.

## 2.5.2: Partiality and Care

The approaches to ethics that we have seen all assume that ethics should be impartial and that, consequently, any special relationships that one may have with particular individuals such as relatives, friends, or one's employees should be set aside when determining what one should do.[147] Some utilitarians have claimed, in fact, that if a stranger and your parent were both drowning and you could save only one of them, and if saving the stranger would produce more utility than saving your parent (perhaps the stranger is a brilliant surgeon who would save many lives), then you would have a moral obligation to save the stranger and let your parent drown.[148] Such a conclusion, many people have argued, is perverse and mistaken.[149] In such a situation, the special relationship of love and caring that you have with your parents gives you a special obligation to care for them in a way that overrides obligations you may have toward strangers. Similarly, in the Malden Mills incident, Feuerstein felt he had a special obligation to take care of his workers precisely because they were dependent on him and had built concrete relationships with him, helping him build his business and create the revolutionary new fabrics that gave Malden Mills its amazing competitive advantage in the textile industry. This obligation toward his workers, who had a special relationship with Feuerstein and who were dependent on him, it could be argued, overrode any obligations he may have had toward strangers in developing countries.

**MORAL DEMANDS IN AN ETHIC OF CARE** Compassion, concern, love, friendship, and kindness are all sentiments or virtues that normally manifest in an ethic of care. Thus, an ethic of care emphasizes the following two moral demands:

1. We each exist in a web of relationships and should preserve and nurture those concrete and valuable relationships we have with specific persons.
2. We each should exercise special care for those to whom we are concretely related by attending to their particular needs, values, desires, and well-being as seen from their own personal perspective, and by responding positively to these needs, values, desires, and well-being, particularly of those who are vulnerable and dependent on our care.

### Ethical Application

#### Preserving Relationships

Feuerstein, owner of Malden Mills, decided to remain in Lawrence, Massachusetts, and care for his workers by continuing to pay them while the company's factory was being rebuilt, after a fire. This response reflects the imperative of preserving the concrete relationships he had formed with his employees. It also reflects the imperative of exercising special care for the specific needs of individuals who were economically dependent on him. Based on an ethic of care, the moral obligation to care for this specific group of individuals was greater than the moral obligation to employ strangers in developing countries.

It is important not to restrict the notion of a concrete relationship to relationships between two individuals or to relationships between an individual and a specific group. The examples of relationships that we have given so far have been of this kind. Many advocates of an ethic of care have argued that it should also encompass the larger systems of relationships that make up concrete communities.[150] An ethic of care, therefore, can be seen as encompassing the kinds of obligations that a so-called *communitarian ethic* advocates.

A *communitarian ethic* is an ethic that sees concrete communities and communal relationships as having a fundamental value that should be preserved and maintained.[151]

What is important in a communitarian ethic is not the isolated individual, but the community within which individuals discover who they are by seeing themselves as integral parts of a larger community, with its traditions, culture, practices, and history.[152] The broad web of concrete relationships that make up a particular community, then, should be preserved and nurtured just as much as the more limited interpersonal relationships that spring up between individuals.

What kind of argument can be given in support of an ethic of care? An ethic of care can be based on the claim that the identity of the self—who I am—is based on the relationships the self has with other selves: the individual cannot exist, cannot even be who he or she is, in isolation from caring relationships with others.[153] I need others to feed and care for me when I am born; I need others to educate me and care for me as I grow; I need others as friends and lovers to care for me when I mature; and I must always live in a community on whose language, traditions, culture, and other benefits I depend and that come to define me. It is in these concrete relationships with others that I form my understanding of *who* and *what* I am. Therefore, to whatever extent the self has value, to that same extent the relationships that are necessary for the self to exist and be what it is must also have value and so should be maintained and nurtured. The value of the self, then, is ultimately derivative from the value of the community.

**FORMS OF CARING AND THE VALUE OF RELATIONSHIPS** It is important in this context to distinguish three different forms of caring:

- caring *for* someone
- caring *about* something
- caring *after* someone[154]

The kind of caring demanded by an ethic of care is the kind expressed by the phrase "caring for someone." The paradigm example of caring for someone is the kind of caring that a mother extends toward her child.[155] Such caring is focused on persons and their well-being, not on things; it does not seek to foster dependence, but nurtures the person's development so that he or she becomes capable of making his or her own choices and living his or her own life. It is not detached, but is engrossed in the person and attempts to see the world through the eyes and values of the person. By contrast, "caring about something" is the kind of concern and interest that one can have for objects or ideas, and not the concern one has for a person in whose subjective reality one becomes engrossed. Such caring for objects or ideas is not the kind of caring demanded by an ethic of care. Finally, "caring after someone" entails taking care of someone in a manner that looks after the person's needs but remains objective and distant from that person as, for example, often happens in bureaucratic service institutions such as the post office or a social welfare office. Caring after someone in this way, although often necessary, is not the kind of caring demanded by an ethic of care.

## An Ethic of Care: Additional Issues and Examples

Additional issues complicate a caring approach in business.

Interactive

**Quality of Relationships Affect the Ethic of Care**

Not all relationships have value, and so not all would generate the demands of care. Relationships in which one person attempts to dominate, oppress, or harm another; relationships that are characterized by hatred, violence, disrespect, and viciousness; and relationships that are characterized by injustice, exploitation, and harm to others lack the value that an ethic of care requires. An ethic of care does not obligate us to maintain, remain in, or nurture such relationships. However, relationships that exhibit the virtues of compassion, concern, love, friendship, and loyalty do have the kind of value that an ethic of care requires, and an ethic of care implies that such relationships should be maintained and nurtured.

**Demands of Caring Can Conflict with the Demands of Justice**

**No Fixed Rule for Conflict Resolution Exists**

*Quick Review 2.16*
**An Ethic of Care . . .**

- Claims ethics need not be impartial, unlike traditional ethical theories which assume that ethics has to be impartial
- Emphasizes preserving and nurturing concrete valuable relationships
- Says we should care for those dependent on and related to us
- Argues that since the self requires caring relationships with others, those relationships are valuable and should be nurtured

**RECONCILING THE DEMANDS OF CARING WITH JUSTICE AND RIGHTS** Although no fixed rule can resolve all conflicts between the demands of caring and the demands of justice, some guidelines can be helpful in resolving such conflicts. Consider that when a manager was hired, she voluntarily promised those who hired her that she would accept the position of manager along with the duties and privileges that would define her role as a manager. Among the duties to which she committed herself is the duty to protect the resources of the company and abide by company policy. Therefore, if the manager shows favoritism toward a friend (which is in violation of the company policies she voluntarily agreed to uphold), she would betray her commitments to those who hired her and harm her relationships with the people to whom she made these commitments. The institutional obligations we voluntarily accept and to which we voluntarily commit ourselves, then, can require that we are impartial toward our friends and that we pay more attention to the demands of impartial justice than to the demands of an ethic of care. What about situations in which there is a conflict between our institutional obligations and the demands of a relationship, and the latter is so important to us that we feel we must favor the relationship over our institutional obligations? Then morality would seem to require that we relinquish the institutional role that we have voluntarily accepted. Thus, the manager who feels that she must favor her friend because she cannot be impartial, as she voluntarily agreed to be when she accepted her job, must resign. Otherwise, the manager is in effect living a lie: by keeping her job while favoring her friend, she would imply that she was living up to her voluntary agreement of impartiality when, in fact, she was being partial toward her friend.

We noted that primarily feminist ethicists have been responsible for the development of the care approach to ethics. The care approach, in fact, originated in the claim of psychologist Carol Gilligan that women and men approach moral issues from two different perspectives: men approach moral issues from an individualistic focus on rights and justice, whereas women approach moral issues from a nonindividualistic focus on relationships and caring. Empirical research, however, has shown that this claim is mistaken for the most part, although some differences exist in the way that men and women respond to moral dilemmas.[156] Most ethicists have abandoned the view that an ethic of care is for women only and have argued, instead, that just as women must recognize the demands of justice and impartiality, so men must recognize the demands of caring and partiality.[157] Caring is not the task of only women, but a moral imperative for both men and women.

*Quick Review 2.17*
**Issues Related to an Ethic of Care**

- Caring is not detached but an engrossed “caring for” a person.
- Relationships are not valuable when characterized by domination, oppression, harm, hatred, violence, disrespect, viciousness, injustice, or exploitation.
- The demands of caring and justice can conflict, and such conflicts should be resolved in ways that do not betray our voluntary commitments to others and our relationships with them.

### 2.5.3: Criticisms of an Ethic of Care

*Quick Review 2.18*
**Objections to the Caring Approach to Ethics**

- Objection: an ethic of care can degenerate into favoritism.
- Response: conflicting moral demands are an inherent characteristic of moral choices.
- Objection: the demands of an ethic of care can lead to burnout.
- Response: an adequate view of caring will balance the need of the caregiver to care for him or herself with caring for others.

## 2.6: Integrating Utility, Rights, Justice, and Caring

**OBJECTIVE:** **Evaluate an approach to business ethics that combines four main moral standards**

The previous modules have described the four main kinds of moral standards that today are the basis of most of our moral reasoning and that force us to bring distinctive kinds of considerations into our moral thinking.

### Objections to the Caring Approach

The caring approach to ethics has been criticized on several grounds, and proponents have responded to these objections.[158, 159]

Interactive

**Unjust Favoritism**

Being partial, for example, to members of one's own ethnic group, to a sexist old-boy network, to members of one's own race, or to members of one's own nation can all be unjust forms of partiality.

**Proponents' response:** Although the demands of partiality can conflict with other demands of morality, this is true of all approaches to ethics. Morality consists of a wide spectrum of moral considerations that can conflict with each other. Utilitarian considerations can conflict with considerations of justice, and these can conflict with moral rights. In the same way, the demands of partiality and caring can also conflict with the demands of utility, justice, and rights. What morality requires is not that we get rid of all moral conflicts, but that we learn to weigh moral considerations and balance their different demands in specific situations. The fact that caring can sometimes conflict with justice, then, does not make an ethic of caring less adequate than any other approach to ethics, but points out the need to weigh and balance the relative importance of caring versus justice in specific situations.

**Demands Can Lead to Burnout**

## 2.6.1: The Four Moral Considerations and Behavior

Our morality, then, contains the following four kinds of basic moral considerations: utility, rights, justice, and caring. Each emphasizes certain morally important aspects of our behavior, but no single consideration captures all the factors that must be taken into account when making moral judgments. Utilitarian standards consider only the aggregate social welfare, but ignore the way that welfare is distributed as well as the moral claims of individuals. Moral rights consider the individual but discount both aggregate well-being and distributive considerations. Standards of justice consider distributive issues, but they ignore aggregate social welfare and the individual as such. Although standards of caring consider the partiality that must be shown to those close to us, they ignore the demands of impartiality. These four kinds of moral considerations do not seem to be reducible to each other, yet all seem to be necessary parts of our morality. That is, there are some moral problems for which utilitarian considerations are appropriate. For other problems, the decisive considerations are the rights of individuals or the justice of the distributions involved or how those close to us should be cared for. This view suggests that moral reasoning should incorporate all four kinds of moral considerations, although only one or the other may turn out to be relevant or decisive in a particular situation. We might, for example, ask a series of questions about an action that we are considering:

- Does the action, as far as possible, maximize benefits and minimize harms?

### The Basis of Moral Judgments

Interactive

**Standards of Utility**

Utilitarian standards are appropriate when decisions involve limited but valuable resources that can be used in many different ways. In such cases, it is important to avoid wasting the resources we have. So we are forced to consider the benefits and costs of deciding to use those resources in one way rather than another, and to identify the decision that will use them in the most beneficial way. When we try to make these kinds of utilitarian decisions, we have to rely on measurements, estimates, and comparisons of the relevant benefits and costs involved. Such measurements, estimates, and comparisons constitute the information on which the utilitarian moral judgment is based.

**Standards of Rights of Individuals**

**Standards of Justice**

**Standards of Caring**

- Is the action consistent with the moral rights of those whom it will affect?
- Will the action lead to a just distribution of benefits and burdens?
- Does the action exhibit appropriate care for the well-being of those who are closely related to or dependent on us?

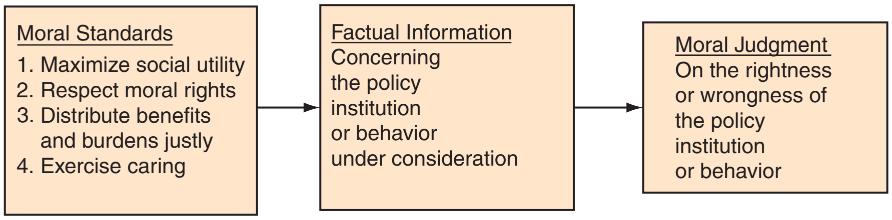
One simple strategy for ensuring that all four kinds of considerations are incorporated into our moral reasoning is to inquire systematically into the utility, rights, justice, and caring issues that are raised by the situation about which we are making a moral judgment, a process described in Figure 2.2.

## 2.6.2: Relating the Moral Standards to Each Other

Bringing together different moral standards requires that we keep in mind how they relate to each other. As we have seen, moral rights identify areas in which other people generally may not interfere, even if they can show that they would derive greater benefits from such interference. Generally speaking, therefore, standards concerned with moral rights have greater weight than either utilitarian standards or standards of justice. Similarly, standards of justice are generally accorded greater weight than utilitarian considerations. Further, standards of caring seem to be given greater weight than principles of impartiality in those situations that involve close relationships (such as family and friends) and privately owned resources.

These relationships hold only in general. If a certain action (or policy or institution) promises to generate sufficiently large social benefits or prevent sufficiently large social harms, the enormity of these utilitarian consequences may justify limited infringements on the rights of some individuals. Sufficiently large social costs and benefits may also be significant enough to justify limited departures from standards of justice. The

**Figure 2.2** The Process of Making a Moral Judgment




The process of making a moral judgment involves each of the following moral considerations: utility, rights, justice, and caring.

correction of large and widespread injustices may be important enough to justify limited infringements on some individual rights. When a large injustice or large violation of rights, or even large social harms, are at stake, the demands of caring may have to give way to the demands of impartiality.

To date, we have no comprehensive moral theory capable of determining precisely when utilitarian considerations become "sufficiently large" enough to outweigh limited infringements on a conflicting right, a standard of justice, or the demands of caring. Similarly, no universal rule exists that will tell us when considerations of justice become "important enough" to outweigh infringements on conflicting rights or on the demands of caring. Moral philosophers have been unable to agree on any absolute rules for making such judgments. However, some rough criteria can guide us in these matters. Suppose that only by invading my employees' right to privacy (with hidden cameras and legal on-the-job phone taps), will I be able to stop the continuing theft of several life-saving drugs that some employees are clearly engaged in. How can I determine whether the utilitarian benefits in this example are sufficiently large to justify infringing on their right to privacy?

- First, I might ask whether the *kinds* of utilitarian values involved are clearly more important than the *kinds* of values protected by the right (or distributed by the standard of justice). The utilitarian benefits in this example include the saving of human life, whereas the right to privacy protects (let us suppose) the values of freedom from shame and blackmail and freedom to live one's life as one chooses. Considering these points, I might decide that human life is clearly the more important kind of value because without life, freedom has little value.
- Second, I might ask whether securing the more important kind of value will, in this situation, affect the interests of more (or fewer) people than would be affected by securing the less important kind of value. For example, because the recovered drugs will (we assume) save several hundred lives, whereas the invasion of privacy will affect only a dozen people, securing the utilitarian values will affect the interests of substantially more people.
- Third, I might ask whether the actual injuries sustained by the persons whose rights are violated (or to whom an injustice is done) will be large or small. For example, suppose that I can ensure that my employees suffer no shame, blackmail, or restriction on their freedom as a result of my uncovering information about their private lives (I intend to destroy all such information), then their injuries will be relatively small.
- Fourth, I might ask whether the potential breakdown in trusting relationships that surveillance risks is more or less important than the theft of life-saving drugs. Let us suppose, for example, that the potential harm that surveillance will inflict on employee relationships of trust is not large. Then, it would appear that my invasion of the privacy of employees is justified.

Hence, rough and intuitive criteria can guide our thinking when it appears that, in a certain situation, utilitarian considerations might be sufficiently important to override conflicting rights, standards of justice, or the demands of caring. Similar criteria can be used to determine whether, in a certain situation, considerations of justice should override an individual's rights, or when the demands of caring are more or less significant than the requirements of justice. However, these criteria remain rough and intuitive. They lie at the edges of the light that ethics can shed on moral reasoning.

***Quick Review 2.19***
**Moral Judgments Should Be Based on . . .**

- Maximizing the net utility of our actions
- Respecting the moral rights of individuals
- Ensuring a just distribution of benefits and burdens
- Caring for those in concrete relationships

# 2.7: An Alternative to Moral Principles: Virtue Ethics

**OBJECTIVE: Relate virtue ethics to moral decision-making in business**

Many ethicists have argued that we should look at the kinds of actions a person ought to perform and always pay attention to what kind of person he or she ought to be. An "agent-based" focus on what one ought to be, in contrast to an "action-based" focus on how one ought to act, would look carefully at a person's moral character, including whether a person's moral character exhibits virtue or vice. A more adequate approach to ethics, according to these ethicists, would take the virtues (such as honesty, courage, temperance, integrity, compassion, self-control) and the vices (such as dishonesty, ruthlessness, greed, lack of integrity, cowardliness) as the basic starting points for ethical reasoning. The case of Qwest Communications helps put this view into perspective.

## 2.7.1: Vices, Virtues, and the CEO of Qwest Communications

Joe Nacchio, former chairman and CEO of Qwest Communications, was released from prison on September 20, 2013. He had just finished serving a four-year sentence for orchestrating a $3 billion fraud that inflated Qwest's revenues and its stock price and that allowed him to engage in criminal insider trading from which he personally netted about $176.5 million.[160]

According to the Securities and Exchange Commission (SEC, a U.S. government agency that monitors fraud related to stocks and other financial instruments), Nacchio and other Qwest officials issued false and misleading statements about Qwest's revenues in the financial reports they provided the public. Specifically, over a period of three years they reported that Qwest had made $3.8 billion of its revenues by selling Internet-related services. In reality, those $3.8 billion were the result of selling off company equipment and swapping the right to use Qwest's transmission cables with another company in return for the right to use that other company's transmission cables. Although such a swap generated no economic benefit for either company, both companies would record the swap as a "sale." By reporting the sell-off of its equipment and the swaps as "revenues," Nacchio and his managers made the company appear highly successful, "thereby masking Qwest's declining financial condition and artificially inflating its stock price."[161] Knowing the company's true condition and that the stock price could collapse if the truth emerged, Nacchio sold much of the Qwest stock he owned and left his buyers holding the company's overvalued stock. When the fraud was revealed, the stock fell from a high of $64 per share to a low of $1.10 per share, leaving investors with a total market loss of about $90 billion.

Nacchio joined Qwest as its CEO after a 20-year career at AT&T Corp. Investors liked Nacchio at first because under him the company seemed to prosper and its stock kept rising. According to a local newspaper:

> Wall Street glorified Nacchio as the ideal Internet-era CEO—a brash, no-excuses leader who delivered the breakneck growth investors coveted. . . . Despite a quick temper and sharp tongue, Nacchio could be charismatic and insightful in public. He charmed regulators, customers and the media.[162]

Nacchio was not an easy boss to work for. Almost from the beginning of his tenure as CEO, he set high revenue targets and exerted extreme pressures on subordinates to meet those aggressive targets at all costs. A senior executive noted that because Nacchio had an explosive temper, "people were just afraid of the man." Another executive said that Nacchio installed "a culture of fear" that pressured employees into the acts that resulted in financial fraud. Investigators noted "an aggressive, unforgiving 'tone at the top' at Qwest that pushed underlings to cut questionable deals."[163] At an all-employee meeting, Nacchio told employees:

> The most important thing we do is meet our numbers. It's more important than any individual philosophy, it's more important than any individual cultural change we're making. We stop everything else when we don't make the numbers.[164]

Robert Rosen, a well-known psychologist and adviser to corporate executives wrote:

> Nacchio is a guy with a big ego. He was impatient and demanding. Chances are good that he had trouble tolerating limitations in others because he couldn't accept limitations in himself. Either he was blind to the impact of his actions on others, or he didn't care. He was so driven by his desire for success—and probably his fear of failure—that he had to win at all costs. His impossible goals and explosive temperament created an environment of excessive stress and fear.[165]

Eventually, investors began to realize that the reports Nacchio and his management team released were less than truthful. One industry analyst wrote, "Nacchio is developing a reputation for just not being candid with investors."[166]

## 2.7.2: Virtue Ethics and Action-Based Ethics

As the story of Joe Nacchio makes clear, we evaluate the morality of people's character as well as their actions. The approaches to ethics that we have examined so far, however, all focus on action as the key subject matter of ethics and ignore the character of the agent who carries out the action. Utilitarianism, for example, tells us that "*actions* are right in proportion as they tend to promote happiness," and Kantian ethics tells us that "I ought never to *act* except in such a way that I can also will that my maxim should become a universal law." However, the central issue that emerges in the case of Nacchio, and in many similar stories of ethical or unethical behavior by men and women in business, is not just the wrongness of their actions, but the nature of their character. In Nacchio's case, for example, we see a man who is "impatient and demanding" and "driven by his desire for success," a man who "had to win at all costs." Although he had the virtues of being "charismatic" and "charming," he also had the vices of an "explosive temper," being "intolerant of the limitations of others" and being untruthful. When we discussed Unocal's construction of the Yadana pipeline, we saw that Burma's General Than Shwe was described as a "manipulator" who was "ruthless and brutal," while the opposition leader Aung San Suu Kyi was described as having the virtues of "courage" and "humility. All of these traits are moral traits—virtues or vices—and are an important part of our moral evaluations of people and what they do.

Although virtue ethics looks at moral issues from a very different perspective than action-based ethics, it does not follow that the conclusions of virtue ethics will differ radically from the conclusions of an action-based ethic. As we will see, certain virtues are correlated with utilitarianism (e.g., the virtue of benevolence), other virtues are correlated with rights (e.g., the virtue of respect), and still other virtues are correlated with justice and caring. The virtues, then, should not be seen as providing a fifth alternative to utility, rights, justice, and caring. Instead, the virtues should be seen as providing a perspective that surveys the same ground as the four moral standards, but from an entirely different perspective. What the principles of utility, rights, justice, and caring do from the perspective of action evaluations, an ethic of virtue does from the perspective of character evaluations.

## 2.7.3: Moral Virtues

What exactly is a moral virtue? A *moral virtue* is an acquired disposition that is valued as part of the character of a morally good human being and that is exhibited in the person's habitual behavior.

A person has a moral virtue when he is disposed to behave habitually as a morally good person would behave, and with the reasons, feelings, and desires that are characteristic of a morally good person. Honesty, for example, is a virtue of morally good people. A person possesses the virtue of honesty when he is disposed to habitually tell the truth and does so because he believes telling the truth is right. The honest person feels good when he tells the truth and uncomfortable when he lies, and always wants to tell the truth out of respect for the truth and its importance in human communication. If a person told the truth on occasion, or did so for the wrong reasons or with the wrong desires, we would not say that the person is honest. We would not say a person is honest, for example, if the person frequently lies, tells the truth only because he thinks it is the way to get people to like him, or tells the truth out of fear and with reluctance. Moreover, a moral virtue must be acquired and is not just a natural characteristic such as intelligence, beauty, or natural strength. A moral virtue is praiseworthy, in part, because it is an achievement—its development requires effort.

The basic issues, from the perspective of virtue ethics, are as follows: What are the traits of character that make a person a morally good human being? Which traits of character are moral virtues? On these issues, there have been numerous views, a few of which we will consider here. We begin with a discussion of the views of the Greek philosopher Aristotle, who proposed what remains today the most influential theory of virtue.

**ARISTOTLE AND VIRTUE AS THE REASONABLE MEAN BETWEEN EXTREMES** Aristotle argued that a moral virtue is a habit that enables a human being to live according to reason. He argued that a person lives according to reason when the person knows and habitually chooses the reasonable middle ground between going too far and not going far enough in his feelings and actions. "Moral virtue," he wrote, "is . . . a mean [midpoint] between two vices, one of excess and the other of deficiency, and . . . it aims at hitting the mean in emotions and actions." With respect to fear, for example, *courage* is the virtuous midpoint between the vicious extremes of cowardliness at one end and recklessness at the other. Courage is the reasonable middle ground because it is the virtue of having the right amount of fear in fearful situations and standing up to what one fears when important values are at stake. *Cowardliness* is the vice of feeling excessive fear in fearful situations and always fleeing what one fears even when important values are at stake, while *recklessness* is the vice of feeling insufficient fear in fearful situations and rushing into fighting for things that have little value. With respect to pleasure, *temperance* is a virtue because it is the reasonable middle ground between indulging in too much pleasure and not indulging in enough, whereas self-indulgence is the vice of indulging in pleasure to excess, and self-deprivation is the vice of indulging too little. With respect to the action of giving people what they deserve, justice is the virtue of giving people exactly what they deserve, whereas injustice is the vice of giving them more than they deserve or giving them less than they deserve. The virtue of knowing what action is reasonable in a given situation, is prudence, which is opposed by imprudence, the vice of choosing actions that are thoughtless, impetuous, negligent or otherwise unwise. In addition to these four key or "cardinal" virtues—courage, temperance, justice, and prudence—Aristotle described a number of other virtues and their corresponding vices of excess and deficiency, as indicated in Table 2.3.

**Table 2.3** Moral Virtues and Vices, According to Aristotle

| The Emotion or Action Involved | The Vice of Excess in the Emotion or Action | The Virtue of the Mean in the Emotion or Action | The Vice of Deficiency in the Emotion or Action |
|---|---|---|---|
| Fear | Recklessness | Courage | Cowardliness |
| Pleasure | Self-indulgence | Temperance | Self-deprivation |
| Taking one's due | Injustice: taking more | Justice | Injustice: taking less |
| Donating money | Prodigality | Generosity | Stinginess |
| Spending money | Ostentatiousness | Refinement | Cheapness |
| Feeling admired | Vanity | Confidence | Self-abasement |
| Seeking honor | Over-ambition | Ambition | Unambitiousness |
| Anger | Irascibility | Good temper | Apathy |
| Shame | Self-consciousness | Self-esteem | Arrogance |
| Talking about oneself | Boastfulness | Honesty | False modesty |
| Entertaining people | Buffoonery | Wittiness | Boorishness |
| Socializing | Obsequiousness | Friendliness | Quarrelsomeness |

## Aristotle on Habits and the Reasonable Middle Ground

Aristotle considered virtues and vices to be what he called *habits*. Virtues are habits of dealing with one's emotions and actions in ways that regularly strike the reasonable mean between the extremes of excess and deficiency. By contrast, vices are habits of regularly going to the unreasonable extreme of either excess or deficiency. Virtue is the middle ground between the extremes of excess and deficiency.

**Interactive**

### On Virtues and Vices as Habits

Aristotle's use of the term *habit* is important because he claimed that virtues and vices, like any other habits, are acquired through repetition. By repeatedly standing firm when I am fearful, I become courageous; by repeatedly exercising control over my appetites, I become temperate; and by repeatedly giving people what they deserve, I become just. On the other hand, by repeatedly giving in to my fears, I become cowardly; by repeatedly indulging my appetites, I become self-indulgent; and by repeatedly keeping what others deserve, I become unjust.

This suggestion of how virtues are acquired leads to a puzzle: How can I engage in virtuous acts before I am virtuous? For example, how can I behave courageously before I am courageous? Aristotle points out that when a person does not yet have a virtue, the person can be trained or forced to do what a virtuous person would do. A child, for example, can be forced by his parents to behave courageously although he does not yet have the virtue of courage. The person who does not yet have the virtue will gradually come to acquire it, then, by repeatedly being made to do what the virtue requires. The way people are raised, then, determines the virtues and vices they have as adults.

### On Virtue as the Reasonable Middle Ground

**THOMAS AQUINAS: A RELIGIOUS THEORY OF VIRTUE** St. Thomas Aquinas, a Christian philosopher of the Middle Ages, followed Aristotle in holding that the moral virtues enable people to follow reason in dealing with their desires, emotions, and actions. He also accepted that the four pivotal or cardinal moral virtues are courage, temperance, justice, and prudence. As a Christian, however, Aquinas held that the purpose of a person is not merely a happiness in this life that is achieved through the exercise of reason, but happiness in the next life that is achieved through union with God. Aquinas added the "theological" or Christian virtues of faith, hope, and charity—the virtues that enable a person to achieve union with God—to Aristotle's list of the moral virtues. Moreover, Aquinas expanded Aristotle's list of the moral virtues to include others that make sense within the life of a Christian, but would have been foreign to the life of the Greek aristocratic citizen on whom Aristotle had focused. For example, Aquinas held that for the Christian, humility is a virtue and pride is a vice, whereas Aristotle had argued that for the Greek aristocrat, pride is a virtue and humility is a vice.

**MORE CONTEMPORARY VIEWS** More recently, American philosopher Alasdair MacIntyre has claimed that a virtue is any human disposition that is praised because it enables a person to achieve the good at which human "practices" aim. Virtues, he claims, are dispositions that enable us to "achieve the goods internal to practices" and which also help "sustain" us by providing the strengths we need to "overcome the harms, dangers, temptations and situations" that we all encounter in our "quest" for those goods.[167] By "practices" MacIntyre is referring to activities such as playing chess or sports, the practice of medicine and science, and political practices. Practices, MayIntyre points out, have standards about what it means to do well in the practice, and rules about how the practice should be carried out. And to learn live up to these standards and rules, he argues, requires that we develop and have virtues such as courage, persistence, temperance, and fairness.

Critics have argued, however, that MacIntyre's approach does not seem to get things quite right. When Joe Nacchio, former chairman and CEO of Qwest Communications, was criticized as being quick tempered, uncaring about the impact of his actions on others, and untruthful, people were not faulting him for failing to have the virtues proper to the practices within which he was pursing his vision of the good. The moral defects for which Nacchio was criticized were his alleged failings as a human being, regardless of how well or poorly he did in the various human practices in which he was engaged. The moral virtues, then, seem to be those dispositions that enable one to live a morally good human life in general and not merely those that enable one to engage successfully in some set of human practices.

Edmund L. Pincoffs criticized MacIntyre for claiming that virtues include only those traits required by our social practices. When we say that a person has a certain virtue, he argued, we do not seem to be saying that the person has a disposition that will let him succeed in our social practices. Virtues seem to be traits that make a person good as a human being, not merely good at succeeding in our social practices. Pincoffs suggested that virtues include all those dispositions to act, feel, and think in certain ways that we use as the basis for choosing between persons or between potential future selves.[168] When deciding, for example, whom to choose as a friend, spouse, employee, or manager, we look to people's dispositions: Are they honest or dishonest, sincere or insincere, greedy or selfish, reliable or unreliable, trustworthy or untrustworthy, dependable or undependable? Similarly, when thinking about a moral decision, we often think not so much of what we are obligated to do, but instead of the kind of person we would be if we were to do it. In carrying out the action, would I be honest or dishonest, sincere or insincere, selfish or unselfish?

However, what makes one disposition a moral virtue and another a moral vice? There is no simple answer to this question, Pincoffs claimed. He rejected Aristotle's view that every virtue can be understood as "a mean between extremes." Instead, Pincoffs argued, virtues should be understood in terms of the role they play in human life. Some dispositions, he pointed out, provide specific grounds for preferring a person because they make a person good or bad at specific tasks, such as painting houses. Specific dispositions that aim at specific tasks are *not* virtues. However, other dispositions are generally desirable because they make a person good at dealing with the kinds of situations that frequently and typically arise in human life. The virtues consist of such "generally desirable dispositions" that it is desirable to have them in view of the "human situation, of conditions . . . under which human beings must (given the nature of the physical world and of human nature and human association) live."[169] Because the human situation often requires concerted effort, for example, it is desirable that we have persistence and courage. Because tempers often flare, we need tolerance and tact. Because goods must often be distributed by consistent criteria, we need fairness and nondiscrimination. However, selfishness, deceptiveness, cruelty, and unfairness are vices: they are generally undesirable because they are destructive to human relationships. The moral virtues, then, are those dispositions generally desirable for people to have in the kinds of situations they typically encounter in living together. They are desirable because they are useful either "for everyone in general or for the possessor of the quality."[170]

Pincoffs's theory of virtue seems more adequate than MacIntyre's, which confines virtue to traits connected with social practices. Moral virtues seem to be dispositions that enable us to deal well with all of the exigencies of human life and not merely the exigencies of practices. For example, both Aristotle and Aquinas felt that, in articulating the moral virtues, they were articulating those habits that enable a person to live a human life well and not merely to do well in social practices.

As we have seen, however, Aristotle and Aquinas had different views on exactly what human life required. This difference suggests that to some extent, what one counts as a moral virtue depends on one's beliefs about the kinds of situations that humans face. Nevertheless, as Pincoffs suggested, "we share a good deal of well-grounded agreement on the question of who is the right sort of person in general,"[171] because people in all societies have to face similar problems in living together. Catholics, for example, can recognize when a Buddhist is not just a good Buddhist, but also a person of good moral character: "Courage is not more a Catholic than it is a Buddhist virtue; honesty commends itself to Presbyterian and Coptic Christian alike."[172] The moral virtues include that wide variety of dispositions that people in all societies recognize as desirable because they "serve as reasons for preference in the ordinary and not-so-ordinary exigencies of life." The four classical virtues on which Aristotle and Aquinas both agreed—courage, temperance, justice, and prudence—fall into this class. However, the three theological virtues—faith, hope, and charity—that Aquinas added because of their special importance for a Christian life would not count as moral virtues because they are desirable only within a special kind of life devoted to the pursuit of special religious objectives. Similarly, pride, which was a quality admired in Greek society, would not count as a moral virtue because it, too, is desirable only within a specific kind of society.

## 2.7.4: Virtues, Actions, and Institutions

Thus far we have ignored a key aspect of **virtue theory**: How does it help us decide what we are to do? Can an ethic of virtue do more than tell us the kind of people we should be? Is an ethic of virtue able to provide us with any guidance about how we should live our lives, how we should behave? One of the major criticisms made against virtue theory, in fact, is that it fails to provide us with guidance on how we are to act. When a woman is trying to decide whether to have an abortion, for example, she may ask a friend, "What should I do?" In such situations, it does not help to be told what kind of character one should have. In such situations, one needs advice about what kinds of actions are appropriate in one's situation, and virtue theory seems incapable of providing such advice. This criticism—that virtue theory provides no guidance for action—is not surprising because virtue theory deliberately turns away from action and focuses on moral character as the fundamental moral category. Nevertheless, although virtue is the foundation of virtue theory, this does not mean that virtue theory cannot provide any guidance for action.

Virtue theory is not only able to provide a criterion for evaluating actions but also provides a useful criterion for evaluating our social institutions and practices. For example, it has been argued that some economic institutions make people greedy, that large bureaucratic organizations make people less responsible, and that the practice of providing government "handouts" to people makes them lazy and dependent. All such arguments evaluate institutions and practices based on a theory of virtue. Although such arguments may be false, they all appeal to the idea that institutions are morally defective when they tend to form morally defective characters.

We noted that, according to Pincoffs, moral virtues are dispositions that are generally desirable because they are required by the human situations with which all people everywhere must cope. Some dispositions are moral virtues because people everywhere are tempted by their emotions and desires to not do what they know they should do. Courage, temperance, and, in general, the virtues of self-control are of this sort. Some virtues are dispositions to engage willingly in specific kinds of moral action that are valued in all societies, such as honesty. Pincoffs suggests that some dispositions can be classified as "instrumental virtues" because they enable people everywhere to pursue their goals effectively as individuals (persistence, carefulness, determination) or as part of a group (cooperativeness), whereas some are "noninstrumental virtues" because they are desirable for their own sake (serenity, nobility, wittiness, gracefulness, tolerance, reasonableness, gentleness, warmth, modesty, and civility). Some virtues are cognitive and consist of understanding the requirements of morality toward ourselves and others, such as wisdom and prudence. Other virtues are dispositions that incline one to act according to general moral principles. The virtue of benevolence, for example, inclines one to maximize the happiness of others, the virtue of respect for others inclines one to exercise consideration for the rights of individuals, the virtue of justice inclines one to behave according to the principles of justice, and the virtue of caring inclines one to live up to the tenets of care.

***Quick Review 2.20***
**Virtue Theory Claims**

- We should exercise, exhibit, and develop the virtues.
- We should avoid exercising, exhibiting, and developing vices.
- Institutions should instill virtues, not vices.

### Virtue Theory as Guidance for Action

The key action-guiding implication of virtue theory can be summed up in this claim: An action is morally right if in carrying out the action the agent exercises, exhibits, or develops a morally virtuous character, and it is morally wrong to the extent that by carrying out the action the agent exercises, exhibits, or develops a morally vicious character.

Interactive

**Determining Whether an Action Is Morally Right**

Virtue theory argues that the aim of the moral life is to develop those general dispositions we call the *moral virtues* and to exercise and exhibit them in the many situations that life sets before us. Insofar as we exercise the virtues in our actions, insofar as our actions exhibit the virtues, or insofar as our actions make us virtuous, those actions are morally right actions.

**Determining Whether an Action Is Morally Wrong**

**Evaluating an Action's Relationship to the Agent's Virtues and Vices**

## 2.7.5: Studying Virtue Theory in the Real World

Some philosophers have argued that virtue theory is not consistent with the findings of modern psychology.[173] In a study involving theology students at Princeton University Divinity School, students were asked to read a Bible story about a good Samaritan who helps a wounded man lying next to the road, and then each was told he had to rush to another building for an extremely important appointment he was almost late for.[174] As each student hurried to the other building, he or she had to go past a man lying on the ground who looked sick or injured. Ninety percent of the theology students glanced at the man, stepped over him or went around him, and hurried on without helping. Yet, the students had not only just read about and, presumably, thought about the importance of helping (particularly helping an injured person lying by one's path), they were also largely good people with a virtuous character aspiring to be ministers. The authors of the study concluded that a person's behavior is determined by his or her external situation, not by the person's moral character.

## Ethical Application

### The Prison Study

In Philip Zimbardo's well-known study involving students at Stanford University, 21 male students were randomly assigned to be either a "prisoner" or a "guard" in a "prison" in the basement of the psychology department.[175] The students were selected from 75 volunteers and given psychological tests to establish that among the volunteers, they were the most emotionally stable, most mature, least anti-social, normal, and psychologically healthy young men. The guards had uniforms, wore mirrored sunglasses to prevent eye contact, and had wooden batons to establish their authority but not to be used to punish the prisoners. The prisoners wore poorly fitting dress-like white smocks that reached only to their knees and that had a number on the back. Each prisoner wore a chain around his ankles and was referred to by his number and not by name. The experiment was to go on for two weeks but was stopped after six days because it had spun out of control. As the experiment progressed, the guards became increasingly domineering and abusive, harassed the prisoners, punished them by forcing them to do push-ups or to sleep on the concrete floor without a mattress, made some go nude to degrade them, and humiliated all of them in numerous petty ways. About a third of the guards became "sadistic" and "cruel." The "prisoners" became increasingly passive, servile, dehumanized, erratic, and hateful of the "guards." They exhibited extreme depression, crying, rage, and acute anxiety. Philip Zimbardo, author of the experiment, concluded that the experiment showed that a person's behavior is not determined by personal psychological or moral traits, but by the external environment. If placed in an environment that approves of, legitimizes, and supports domineering and cruel behavior, people will exhibit those behaviors regardless of what virtues they happen to have. Zimbardo later remarked that the torture and sadistic behavior that U.S. soldiers inflicted on their prisoners in the Abu Ghraib military prison in 2004 was a result of the same kind of environment that his experiment had studied.

More recent work in psychology, however, has tended to be more supportive of virtue theory.[176] Some psychologists have argued that people may learn to act on their virtues within certain familiar types of situations, but not beyond. If those psychologists are correct, then the subjects tested in the Princeton and Stanford studies may have failed to act on their virtues only because the situations in which the studies placed them were unusual and not familiar situations. People's behavior may be governed by their virtues, but only within certain more or less familiar kinds of situations. The Princeton and Stanford studies should not lead us to give up on the virtues, but should spur us to figure out how to widen the range of situations in which they come into play.

Moreover, more direct studies on the relationship between character and behavior has suggested that the virtues influence our moral decisions more or less as predicted by virtue theory. One set of studies argues that moral decisions that harmonize with those character traits a person feels are part of who he or she is—part of his or her identity—are more stable and enduring characteristics of a person than decisions that conflict with those traits. Other studies show that a person's understanding of his or her own moral character or identity influences his or her behavior because failing to live up to one's moral identity creates emotional discomfort and a feeling of having betrayed oneself. Although strange or unusual environmental factors can reduce the influence of virtue on behavior (as the Princeton and Stanford studies indicated), an understanding of one's own character will ordinarily influence one's behavior. As virtue theory suggests, when making a moral decision, people with a strong sense of themselves as caring, compassionate, fair, friendly, generous, helpful, hardworking, honest, and kind will consider how a person like themselves should behave. Ordinarily their decision will be consistent with their sense of the kind of person they are.

***Quick Review 2.21***
**Virtue Theory: Objection and Response**

- Objection: Virtue theory seems inconsistent with psychology, which showed in the Milgram and Princeton studies that behavior is determined by the external situation and not moral character.
- Response: Moral character determines behavior in a person's familiar environment. Recent psychology shows that behavior is determined by one's moral identity, which includes one's virtues and vices.

## 2.7.6: Virtues and Principles

What is the relationship between virtue theory and the theories of ethics that we considered earlier (utilitarian, rights, justice, and care theories)? As a glance at the many kinds of dispositions that count as virtues suggests, the moral virtues support or facilitate adherence to moral principles, but they do this in a variety of different ways. There is, then, no single, simple relationship between the virtues and our moral principles. Some virtues enable people to do what moral principles require. Courage, for example, enables us to stick to our moral principles even when fear of the consequences tempts us to do otherwise.

Some virtues consist of a readiness to act on moral principles. Justice, for example, is the virtue of being disposed to follow principles of justice. Some virtues are dispositions that our moral principles require us to develop. Utilitarianism, for example, requires us to develop dispositions such as kindness and generosity that will lead us to increase the happiness of people.

Hence, no conflict exists between theories of ethics that are based on principles and theories of ethics based on virtues. However, a theory of virtue differs from an ethic of principles in the perspective from which it approaches moral evaluations. A theory of virtue judges actions in terms of the dispositions that are associated with those actions, whereas an ethic of principles judges dispositions in terms of the actions associated with those dispositions. For an ethic of principles, actions are primary, whereas for an ethic of virtue, dispositions are primary. We may say, then, that both an ethic of principles and an ethic of virtue identify what the moral life is about. However, principles look at the moral life in terms of the actions that morality obligates us to perform, whereas virtues look at the moral life in terms of the kind of person morality obligates us to be. An ethic of virtue, then, covers much of the same ground as an ethic of principles, but from a very different standpoint.

An ethic of virtue, then, is not a fifth kind of moral principle that should take its place alongside the principles of utilitarianism, rights, justice, and caring. Instead, an ethic of virtue fills out and adds to these principles by looking not at the actions people are required to perform, but at the character they are required to have. An adequate ethic of virtue, then, will look at the virtues that are associated with utilitarianism, rights, justice, and caring. In addition, it will (and in this respect an ethic of virtue goes beyond an ethic of principles) look at the virtues people need to adhere to their moral principles when their feelings, desires, and passions tempt them to do otherwise. It will look at the many other virtues that the principles of utilitarianism, rights, justice, and caring require a person to cultivate. An ethic of virtue, then, addresses the same landscape of issues that an ethic of principles does, but it also addresses issues related to motivation and feelings that are largely ignored by an ethic of principles.

## 2.8: Unconscious and Conscious Moral Decisions

**OBJECTIVE:** **Differentiate unconscious and conscious moral decision-making processes and implications**

We have seen that moral reasoning is the process of applying our moral principles to the knowledge or understanding we have about a situation, and making a judgment about what ought to be done in that situation. The managers of Ford Motor Company, for example, were faced with a car design that could injure passengers in a rear collision. They searched for more information and found a fix for the problem and calculated the costs and benefits of making the fix. They applied their utilitarian principles to the knowledge they had gathered and judged they should not change the design of the car.

Now, think for a moment about the many times today that you decided to do what was morally right. For example, you probably had several conversations during which you told the truth instead of lying, or you walked past other people's property and did not steal it, or you kept your promise when you told someone that you would meet her after class or that you would return a book she loaned you.

Notice that as you made these ethical decisions throughout your day, you did not go through the conscious and deliberate process of moral reasoning we have been discussing. When you talk, you usually tell the truth without a second thought, you respect people's property without reasoning about what your moral principles say, and you keep your promises without thinking about it. It seems that we make many of our ethical decisions without the kind of conscious moral reasoning about utility, rights, justice, caring, and virtue that we have been discussing. Instead, we seem to be making many of our moral decisions automatically and without any conscious reasoning. What is going on here?

A large number of psychological studies of the brain and its processes have suggested that we have two ways of making moral decisions: through conscious reasoning and through unconscious mental processes. Our brain is capable of taking in information and then making decisions automatically and unconsciously, and it is also able to engage in conscious and deliberate reasoning processes. The kinds of moral reasoning that we have been discussing in this chapter are part of our conscious reasoning abilities, but many of our daily ethical decisions seem to arise from unconscious mental processes. We will look briefly now at what we know about these unconscious processes.

The unconscious processes seem to be the processes by which we make the vast majority of our moral decisions. Yet, we have said almost nothing about these unconscious processes. If we want to understand moral reasoning, then, it is important for us to understand these unconscious processes that play such a significant role in our moral decision-making. Because these processes are unconscious and automatic, it is easy to conclude that they are unrelated to the conscious and logical reasoning processes we have been studying.

If these unconscious processes are unrelated to our conscious and logical reasoning processes, then aren't we in effect saying that they are nonlogical and nonrational? Could these processes even be completely irrational? Moreover, if most of our moral decisions are made through these nonlogical and nonrational—-possibly irrational—processes, then does it follow that, in the end, most of our moral life is based on a possibly irrational foundation that we are not even aware of? What is the point of studying all the stuff we have been studying about moral reasoning, moral standards, and so on? It is important that we look at these processes and try to answer these pressing questions.

## 2.8.1: X-System and C-System Processes

Scott Reynolds, a psychologist, calls the unconscious processes by which we automatically make many moral decisions the "X-system," and the conscious reasoning through which we make moral decisions the "C-system."[177] (Note that the conscious reasoning processes are sometimes called "system 1" and the unconscious processes "system 2.") The X-system, Reynolds and others have argued, is based on the use of "schemas" or "prototypes."[178] Prototypes are general memories of the kinds of situations we have experienced in the past, together with the kinds of sounds, words, objects, or people those situations involved, the kind of emotions we felt, the way we behaved in those situations, the type of moral norms or rules that we followed, etc. The brain uses these stored "prototypes" to analyze the new situations we encounter each day and to determine how to behave in those situations. Our brain does this by trying to match each new situation we experience with its store of prototypes. If the new situation matches a stored prototype, then the brain recognizes that the new situation is the kind of situation represented by the prototype. The brain then uses the information stored in the prototype to identify what kind of behavior is appropriate for that kind of situation, what kind of moral norms apply in such a situation, what emotions are usual for such situations, etc.

Although these matching processes go on unconsciously, once a match is made, the conscious brain becomes aware of the match. That is, when the brain matches a situation with a stored prototype, we become conscious of recognizing the kind of situation we are in, and what behavior is appropriate in this kind of situation. When we are having a conversation, we consciously recognize that we are in a conversation and know what to do, for example, although we are not conscious of everything our brain had to do to come up with that recognition and that knowledge. In this way, we do not have to use up our limited conscious reasoning resources to figure out what is happening and what we should do each time we experience something. Without expending any conscious reasoning efforts, we immediately know what kind of situation we are in and how we should act because all the work of coming up with that conscious knowledge was done by the unconscious matching processes of the brain.

Prototypes are not fixed and unchanging. As we go through life and experience the same types of situation again and again, we add to their prototypes whatever new information we get from each experience. A prototype, for example, may be one that stores information about conversations we have had. As time goes on and we experience more conversations, we may learn that in such situations truthful behavior is appropriate. The prototype will store that information, and the next time we are in a conversation, the brain will match this new situation with that prototype and know it is involved in a conversation and automatically decide to be truthful in that situation. Because of the thousands of prototypes we eventually store in our brains, we not only recognize a great many kinds of situations but also know how to behave in those situations without having to think about it consciously.

Once we are conscious of the kind of situation we are in, we can begin to use our conscious reasoning processes—our C-system processes—to deal with it. We may be conscious, for example, that we are having a conversation with a friend and that in this kind of situation, we tell the truth. However, suppose this time we know that if we tell the truth, we will hurt our friend's feelings, so we consider lying. Our conscious reasoning processes then have to swing into action to deliberately figure out what to do: Do we lie or do we tell the truth? These conscious reasoning processes are part of our C-system.

The C-system or conscious reasoning system uses processes that, as we have learned in this chapter, are more complicated than the simple matching of prototypes the X-system uses. As we saw in Chapter 1, conscious moral reasoning can deliberately gather information about a situation we are considering. It can draw upon our store of moral principles to see which ones might apply to this kind of situation, and it can then figure out what those moral principles require for the situation we face.

We also rely on conscious reasoning when we find ourselves in a new or unusual situation that our unconscious X-system cannot match up with any of its stored prototypes. For example, we may come upon some kind of object we have never seen before. Then the C-system takes over and begins trying to reason out what it is that we have encountered. We may consciously try to gather more information about the strange object, and we may call upon the rules and principles we know to see if any of them tell us what to do with such objects. Should we touch it? Should we throw water on it? Should we eat it? Should we run? Eventually we figure out what to do and then store up a new prototype that contains the information about this new kind of object. Our conscious reasoning processes are one basic source of the prototypes our X-system uses and the information contained in those prototypes.

The countless automatic and unthinking moral decisions we make throughout an ordinary day, then, can be understood as the outcomes of our unconscious reliance on prototypes of past situations that include information about the actions that are morally appropriate for the situation we are in. Although these moral decisions are made without much thought, this is possible in part because we have previously experienced similar situations and so we earlier consciously figured out what to do. Those past experiences allowed us to build a store of prototypes—a kind of wisdom—which we can now use without having to consciously figure everything out again from the beginning. Prototypes thus serve an important and liberating purpose: they free us from having to engage in the labors of moral reasoning repeatedly throughout the day. Think of how impossible life would be if we had to constantly be stopping to engage in the kind of conscious, logical, and slow moral reasoning we have been discussing in this and the previous chapter! The prototype system of the brain saves us—liberates us—from being continuously bogged down in the laborious processes of conscious moral reasoning.

***Quick Review 2.22***
**Unconscious Moral Decisions . . .**

- Comprise most of our moral decisions
- Are made, according to psychologists, by the brain's "X-system" using stored prototypes to automatically and unconsciously identify what the brain perceives and what it should do

## 2.8.2: The Legitimacy of Unconscious Moral Decision-Making

Although our use of prototypes is an unconscious process, this does not mean that it is a disreputable or irrational kind of process. To see that it is not an irrational process, we can compare it with some conscious forms of reasoning that are very similar to the use of prototypes, but that are clearly legitimate and rational. One form of conscious moral reasoning that is very similar to the unconscious use of prototypes is casuistry.

Notice that casuist moral reasoning uses paradigms that function much like the prototypes the brain uses in its unconscious decision-making processes. Casuist reasoning is virtually a conscious version of the brain's unconscious use of prototypes. Casuistry is not the only kind of reasoning that is similar to our unconscious reliance on prototypes. Judges in common law legal systems, such as the system we have in the United States, rely on past "precedents" to decide what to do in a current case.[179] A precedent is a legal case that was decided previously by a higher court or by the court that is deciding the current case. If the current case involves issues or facts that are the same as the issues or facts that were involved in a precedent, then a judge will normally make the same decision in the current case that was made in the precedent. Yet another form of reasoning that is similar to the brain's use of prototypes is "case-based reasoning," which is widely used in artificial intelligence computer systems.[180] Here, again, the process involves relying on matching previous cases to decide what to do in a current case.

Our unconscious use of prototypes, then, which is how we make many of our moral decisions, is not an irrational process nor is it illegitimate. It is, in fact, an unconscious version of the decision-making processes that are legitimately used in many fields, including in an important form of conscious moral reasoning (i.e., casuistry). The similarity between our unconscious use of prototypes and the conscious and legitimate reasoning processes we have been discussing provides good reason to think that our unconscious prototype-based decision-making processes are neither illegitimate nor irrational.

***Quick Review 2.23***
**Prototypes and Rationality**

- The brain's use of prototypes is similar to its use of paradigms in casuistry or precedents in common law, which are both rational processes.
- The similarity between our unconscious use of prototypes and our conscious and legitimate reasoning processes implies that using prototypes is a rational process.
- Conscious reasoning can correct and shape our prototypes.

## 2.8.3: Cultural Influences and Intuition

We mentioned earlier that some of the prototypes on which we base our actions are the products of conscious moral reasoning. However, not all prototypes originate in conscious moral reasoning. There are at least two other ways in which we acquire our convictions about what morality requires of us: culture and intuition.

We mentioned in Chapter 1 that many of our moral beliefs are derived from the cultural influences that surrounded us as we grew up; that is, from family, peer groups, stories, songs, magazines, television, radio, church, novels, newspapers, and so on. These cultural influences no doubt are incorporated into our prototypes and, thereby, shape our actions. Of course, just because we acquire a moral belief from the culture around us does not mean that it is necessarily correct or incorrect. In fact, one of the roles of traditional

### Moral Reasoning Using Casuistry

Casuistry is a kind of moral reasoning that was widely used until the seventeenth century. It began to be used again toward the end of the twentieth century, especially in medical ethics, where it continues to be an influential form of moral reasoning that is widely accepted as legitimate and rational.[181]

Interactive

**When a Situation Is Similar to a Previous Paradigm Case**

**When a New Situation Is Not Similar to a Previous Paradigm Case**

Casuist reasoning might also conclude that a new situation is not similar to a paradigm case. Suppose, for example, that you borrowed a gun from a friend who now says he wants it back and you suspect he will use it to harm himself or someone else. What should you do? You remember several cases when you borrowed something and believed you had a moral obligation to return it. However, there is an important moral difference between your current situation and those previous ones: in your current situation, a person may be killed if you return what you borrowed. Because the obligation to preserve human life outweighs the obligation to return what you borrow, you decide that the difference between your situation now and then is morally significant and justifies *not* following those earlier cases. Instead, you consider other cases that involved potential harm to others. Perhaps, in some of those cases you were sure that it would be wrong to cooperate in harming another person. The similarity between your current situation and cases that involved cooperating in harming someone is significant enough that you decide it would be wrong to return the gun because that would be contributing to a potential harm.

moral reasoning is to critically evaluate the beliefs we have picked up from family, peers, etc. and that have become part of the prototypes we use in order to determine whether these beliefs are reasonable or unreasonable.

Some of our strongest and most tenaciously held moral beliefs seem to be based on sheer intuition; that is, we do not acquire them from our environment, nor are they based on any moral or nonmoral reasons or reasoning.[182] Psychologist Jonathan Haidt suggests that we consider the following story, which he made up and which, he says, reveals a moral belief that we all share but that does not seem to be based on conscious moral reasoning:

> Julie and Mark are brother and sister. They're traveling together in France on summer vacation from college. One night they're staying alone in a cabin near the beach. They decide that it would be interesting and fun if they tried making love. At the very least, it would be a new experience for each of them. Julie was already taking birth control pills, but Mark uses a condom too, just to be safe. They both enjoy making love, but they decide never to do it again. They keep that night as a special secret, which makes them feel even closer to each other. What do you think about that? Was it ok for them to make love?[183]

Probably your answer to the last question Haidt asks is that what Julie and Mark did was morally wrong. (That would certainly be my own answer!) What reasoning led us to this conclusion? What reasons do we have for our conviction that their incest was immoral? No one else was harmed by what they did, and, let us suppose, they suffered no bad consequences, did not feel guilt, their relationship was not affected, etc. In addition, what they did was not unjust, violated no one's moral rights, nor was it uncaring. There is a biological reason why close relatives should not have children together (namely because inbreeding increases the likelihood of defective offspring), but this reason does not apply to the situation of Julie and Mark. What reasons do you and I have for our conviction that what they did was wrong? Most of us will not be able to find a clear reason, yet this will not change our minds. We might end up saying something like this: "Although I don't know why it's wrong, I still know that it's wrong!" Haidt argues that the fact that we cannot find a justification for our conviction that incest is wrong implies that we did not acquire this conviction by reasoning; that is, it is not based on reasons. Moreover, the fact that this conviction is one that almost everyone in every culture in every age has accepted suggests that this conviction is just built into the human brain. It is based on intuition that seems to be "hardwired" into our brains. This view, of course, does not mean the conviction is wrong or right; it only means that it is not originally based on a reasoning process. (Whether the conviction is right or wrong would require examining it at much greater length with the use of conscious moral reasoning.)

Other moral beliefs, like our conviction that incest is wrong, seem to be based on intuition; we have the beliefs but cannot provide the reasons why we believe them.

**Table 2.4** Marc Hauser's Three Principles for Guiding Moral Judgments

Social psychologist Marc Hauser has found that most people apply three principles when they make judgments about the morality of harming others.

**Interactive**

| Term | Description |
|---|---|
| The action principle | Harm caused by action is morally worse than equivalent harm caused by an omission.<br><br>**Example:** it is worse to kill a person than it is to allow a person to die without doing anything to prevent his or her death. |
| The intention principle | Harm intended as the means to a goal is morally worse than equivalent harm foreseen as the side effect of a goal.<br><br>**Example:** It is worse to jump out of a boat deliberately intending to kill myself by drowning than it is to jump out of a lifeboat so that there will be room for other survivors of a sinking ship even if I ultimately drown. |
| The contact principle | Using physical contact to cause harm to a victim is morally worse than causing equivalent harm to a victim without using physical contact.<br><br>**Example:** It is worse for a soldier to stab and kill an innocent villager, than it is for a pilot to drop a bomb that he knows will kill an unseen innocent villager. |

Check Your Understanding

By analyzing the responses people give to several scenarios (like the examples above), Hauser has shown that almost all people accept the three principles when deciding whether it is morally worse to cause harm in one way rather than another. However, when pressed for the reasons why we accept these principles, most of us cannot provide any. We seem to accept these principles not because we have reasoned them out but because they seem to be based on intuition.

The prototypes that we unconsciously use to make most of our everyday moral decisions, then, can also draw from these moral principles that we know by intuition, as well as from the cultural influences around us and from our conscious moral reasoning. It is worth repeating that merely because we accept a principle based on intuition, it does not follow that the principle is correct or incorrect. Moral reasoning may ultimately show us, for example, that the action principle, the intention principle, and the contact principle are correct; or future reasoning may show that they are mistaken. In fact, some philosophers have argued that the action, intention, and contact principles are mistaken, while others have argued that these three principles are correct.[184] The reasoning that we use to prove or disprove these three moral principles, of course, is conscious moral reasoning—that is, the kind of reasoning that deliberately gathers evidence, appeals to moral principles such as utilitarianism, and reaches a considered judgment. While conscious moral reasoning is probably not "in the driver's seat" all of the time, it plays a crucial role when we want to determine whether our intuitions are right or wrong, as well as when we want to see whether the beliefs we learned from our culture are reasonable or unreasonable.

***Quick Review 2.24***
**Moral Intuitions**

- Prototypes can be shaped by "hardwired" moral intuitions, as well as by conscious moral reasoning and cultural influences.
- Hardwired intuitions seem to include the following: incest is wrong; harming by action is worse than harming by omission; harming as a means to a goal is worse than harming as a foreseen side effect; harming by physical contact is worse than harming without physical contact.

**MORAL DECISIONS BASED ON BOTH UNCONSCIOUS AND CONSCIOUS PROCESSES** In conclusion, our moral decisions are based on two different processes:

- the unconscious and automatic use of prototypes that we gradually accumulate as we go through life
- the conscious use of moral reasoning that appeals to evidence and to moral standards such as utility, rights, justice, and caring

Our unconscious prototype processes are responsible for many—perhaps even most—of our automatic everyday moral decisions, and these prototypes are shaped by our cultural surroundings, our moral intuitions, and past conscious moral reasoning. On the other hand, we rely on conscious moral reasoning when we need to decide what to do in a new or unusual situation (one that does not match any of our prototypes), as well as when we want to figure out whether the beliefs we get from intuition or from our culture are reasonable or unreasonable. Although during much of our lives we depend on the kind of automatic and almost unthinking behavior that prototypes enable us to engage in, we also often find that we need to fall back on moral reasoning to correct or extend our prototypes, when they fall short of providing the kind of guidance we need.

The processes on which we base our moral decisions, then, can be rational even though they are unconscious. The unconscious use of prototypes is much like casuistry and other forms of conscious reasoning that we accept as rationally justified. Moreover, the rules and norms that become part of our brain's prototypes often originate in previous episodes of conscious moral reasoning. Most important of all, it is possible for us to stand back and consciously think about the norms and rules that our brain seems to have incorporated into its prototypes and ask whether these norms and rules can be given any rational support. By doing this, we can correct these previously accepted norms and rules. We can do this not only to the norms and rules that we have accumulated from our culture—from parents, friends, movies, books, and other cultural influences—but also to the norms and rules that we know by intuition and that seem to be hardwired into the brain. However, thinking about and weighing all the norms we have accumulated as we have grown older is a long and difficult process. It is the work of ethics, a work that can take a lifetime.

***Quick Review 2.25***
**Conscious Moral Reasoning . . .**

- Is used in new, strange, or unusual situations for which the brain has no matching prototypes
- Consists of the conscious, logical but slow processes of the brain's "C-system"
- Evaluates how reasonable or unreasonable are our intuitions, our cultural beliefs, and the norms stored in our prototypes

# Web Resources

Readers who want to conduct online research on the topic of ethical principles in business might want to begin by accessing the following websites: Council for Ethical Leadership at Capital University (*http://www.businessethics.org*); Business for Social Responsibility (BSR) (*http://www.bsr.org*); Guide to Philosophy on the Internet (*http://legacy.earlham.edu/~peters/gpi/index.htm*); Stanford Encyclopedia of Philosophy (*http://plato.stanford.edu/*); Internet Encyclopedia of Philosophy (*http://www.iep.utm.edu/*); Utilitarianism Resources (*http://www.utilitarianism.com*); Kant on the Web (*http://staffweb.hkbu.edu.hk/ppp/Kant.html*); John Rawls on Justice (*http://people.wku.edu/jan.garrett/ethics/johnrawl.htm*); Julia Annas on Virtue Ethics *http://www.u.arizona.edu/~jannas/*.

## SHARED WRITING

**Utilitarianism and Distributive Justice**

1. In your view, does utilitarianism provide a more objective standard for determining right and wrong than moral rights do? Explain your answer fully. Does utilitarianism provide a more objective standard than principles of justice? Explain.
2. "Every principle of distributive justice, whether that of the egalitarian, the capitalist, the socialist, the libertarian, or Rawls, in the end is illegitimately advocating some type of equality." Do you agree or disagree? Explain.

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit 0 characters | 140 minimum

## SHARED WRITING

**An Ethic of Caring and an Ethic of Virtue**

1. "An ethic of caring conflicts with morality because morality requires impartiality." Discuss this criticism of an ethic of caring.
2. "An ethic of virtue implies that moral relativism is correct, while an action-centered ethic does not." Do you agree or disagree? Explain.

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit 0 characters | 140 minimum

# Case Study 2.1: Triodos Bank and Roche's Clinical Trials in China

On September 23, 2010, Triodos Bank, a small British financial institution with a 2009 income of $127.3 million and a net profit of $13.6 million, publicly announced that it had removed the Swiss pharmaceutical giant, Roche, from its investment portfolio because the results of Roche's clinical trials with transplanted organs in China were falling short of the bank's investment criteria for selection."[1]

Triodos Bank noted on its website that it was a leading ethical bank and sustainable bank. Triodos declared that its day-to-day decision-making was guided by six principles:

- **Promote sustainable development**—consider the social, environmental and financial impacts of its business
- **Respect and obey the law**—in every country where business is conducted
- **Respect human rights**—of individuals and within different societies and cultures; support the aims of the United Nations Universal Declaration of Human Rights
- **Respect the environment**—strive to create and encourage positive environmental effects
- **Be accountable**—to anyone for anything
- **Improve continuously**—always look for better ways of doing things in every area of business[2]

Besides offering savings accounts and providing loans to "organizations that bring real social, cultural or environmental benefits," Triodos Bank offered 13 funds in which individuals could invest their money. The funds, in turn, invested this money in "sustainable" businesses or purchased shares of stock of companies that met its "stringent ethical criteria" and "that provide sustainable products or services, or achieve above average social and environmental performance, and actively contribute to sustainable development."

In 2009, Triodos Bank had reviewed the operations of Roche and had determined that the pharmaceutical company met the bank's ethical criteria and so qualified for including its stock in the bank's portfolio of investments. In fact, Roche looked like an outstanding addition to its investment fund portfolio. The bank's results placed the company in the best performing 50% of pharmaceutical companies in Europe. Roche was considered transparent about sustainability issues, with clear ethical guidelines for clinical trials.[3] But several months later the bank learned about Roche's research programs in China, and after further investigations, the bank decided Roche no longer met its ethical criteria.

What the Bank discovered was that in January 2010, Roche received the Public Eye Award, which is sponsored by the Berne

Declaration and Greenpeace and names and shames corporations with unethical social or ecological behavior. Roche was cited for its clinical trials in China for the drug CellCept, which prevents the rejection of transplanted organs. Roche was testing the drug on Chinese transplant patients because Chinese law requires that any drug sold in China must first be tested on Chinese patients. CellCept is a drug that prevents a patient's immune system from rejecting an organ that has been transplanted into the patient. Transplanted organs are taken from people who have recently died or been declared "brain dead," or from living donors who donate an organ or part of an organ when their remaining organs can regenerate or can take over the work of the donated organ (such as a kidney or part of a liver). Roche did not verify the origins of the organs in its China-based trials.[4]

In most countries, there are strict rules governing the removal of organs from donors. In particular, most countries do not allow organs to be taken from donors, living or dead, unless they earlier give their free and informed consent. Moreover, many countries do not allow donors to trade their organs for money. Such requirements were problematic in China, according to the bank. Up to 90 percent of all transplanted organs in China come from executed prisoners. Regulation surrounding transplantation in China has improved in the last couple of years and includes better safeguards for prisoners' rights. But even when a prisoner supposedly consents to an organ donation, such consent while imprisoned cannot be considered of free will.

Triodos Bank's final assessment balanced the gathered information and concluded that Roche's approach to clinical trials in China is was not acceptable. The company's size and influence warranted a much clearer position on the origin of transplanted organs, the bank stated. Roche no longer met its human rights minimum standard, it was be removed from all Triodos investments within the short term.[5]

## Responses to the Bank's Decision

Roche was concerned by the growing controversy over its participation in transplant operations that in many cases, the company knew, had to use organs taken from prisoners without their consent or with "consent" that had been forced out of them. According to the company, while it was true that a certain percentage of the organs of its test patients had to have been harvested from prisoners, it was not possible for the company to find out what was the source of any of its Chinese patients' organs. However, the company pointed out, if it did not test its drug on transplant patients in China, whatever the source of the organs, then it could not market its drug there. The company felt that the greater good would be served by going ahead with its drug tests even though many of the transplanted organs in its test patients were harvested from prisoners. Otherwise, thousands of future Chinese transplant patients would not only be deprived of the benefits of the drug but also suffer harmful and costly outcomes in many cases because they would need a drug that would not be available. In a report on the company's annual shareholders' meeting on March 2, 2010, Roche explained its position through Dr. Schwan, a company spokesman. According to Dr. Schwan, CellCept had saved "thousands of patients lives" by ensuring that their transplanted organs would not be rejected by their bodies. Removing CellCept from the market of any country would endanger the lives of countless patients and so was "morally unthinkable." Moreover, Roche's spokesman continued, Roche had no control over how organs were obtained in the various countries where CellCept was marketed, since the procurement of organs was handled by "independent institutions" in each country, and donor identity was kept confidential. In China, Dr. Schwan said, the company was studying what the optimal dosage of CellCept should be for Chinese patients since ethnic factors or other factors related to their constitution might make their response to the drug different from the responses of Western patients. The purpose of the drug trials in China, therefore, was to determine its "safety and efficacy" when given to Chinese patients. [6]

In May 2007, the Chinese government banned the sale of human organs and established that living donors could donate their organs only to spouses, blood relatives, or step and adopted family members. Nevertheless, the organ trade continued to flourish in China.[7] However, the organs of deceased people (including executed prisoners whose organs it was still legal to "harvest") were sold covertly to doctors, hospitals, or organ "brokers." Moreover, living donors secretly sold their organs by using easily forged documents testifying that they were related to the recipient of their organs.[8]

A large number of China's prisoners were political dissidents or those who had been jailed because of their religious or political beliefs and not because they had violated the law or inflicted harm on others. Since 2006, the Falun Gong, a Chinese quasi-Buddhist spiritual group banned in 1999 and now actively persecuted by the government, had been providing credible evidence that many of the hundreds of thousands of their members imprisoned by the Chinese government and who had subsequently "disappeared" had been killed for their organs, which were then sold or given to transplant candidates.[9] In the summer of 2010, human rights groups announced that their investigations had uncovered evidence that more than 9,000 members of Falun Gong had been executed in Chinese prisons for their corneas, lungs, livers, kidneys, and skin. Imprisoned members of other religious groups, including Christians, Muslims, and Tibetan Buddhists, had also been imprisoned and executed for their organs.[10] Critics of Roche feared that many of the transplanted organs of Roche's test patients had been harvested from such prisoners of conscience against their will.

### WRITING PROMPT

**Think Critically about Triodos Bank and Roche's Clinical Trials in China**

1. Explain how utilitarianism might provide a defense for Roche and how a rights-based ethic might instead condemn Roche's clinical trials in China. Which of these two approaches is stronger or more reasonable? Explain the reasons for your answer.
2. Was Triodos Bank ethically justified in excluding Roche's stock from the funds it offered its customers? Consider your answer in light of the bank's duty to invest money wisely and in light of its own conclusion that Roche was among "the best performing 50% of pharmaceutical companies in Europe,"

was "transparent about sustainability issues," had "a comprehensive position regarding genetic engineering and clear ethical guidelines for clinical trials," enforced high "standards" for its suppliers, and strove to "reduce energy consumption and greenhouse gas emissions."

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Case Notes

1. Triodos Bank website, accessed January 14, 2010, http://www.triodos.com/en/about-triodos-bank/news/newsletters/newsletter-sustainability-research/pharmaceutical-company.
2. Triodos Bank website, accessed January 14, 2010, http://www.triodos.co.uk/en/about-triodos/who-we-are/mission-principles/business-principles/.
3. Triodos Bank website, accessed January 14, 2010, http://www.triodos.com/en/about-triodos-bank/news/newsletters/newsletter-sustainability-research/pharmaceutical-company.
4. Ibid.
5. Ibid.
6. Minutes of the 92nd Annual General Meeting of the Shareholders of Roche Holding Ltd, Basel, held at 10.30 A.M. on March 2, 2010. at the Convention Centre, Basel Trade Fair Complex, Basel, accessed January 12, 2010, http://www.roche.com/annual_general_meeting_2010_en.pdf.
7. Liu Zhen and Emma Graham-Harrison, "Organ Trafficking Trial Exposes Grisly Trade," *Reuters*, May 19, 2010.
8. Shan Juan, "Organ Trafficking Ring to Go on Trial," *China Daily*, March 17, 2010, http://www.chinadaily.com.cn/china/2010-03/17/content_9599832.htm.
9. David Matas and David Kilgour, *Bloody Harvest: Organ Harvesting of Falun Gong Practitioners in China* (Woodstock, ON: Seraphim Editions, 2009).
10. "Chinese Accused of Vast Trade in Organs," *Washington Times*, April 27, 2010.

# Case Study 2.2: Testing Drugs in the Developing World

Any drug marketed within the United States has to be approved by the FDA, a government agency charged with ensuring the safety of the food supply and medicines. Before the FDA will allow a drug company to market a newly discovered drug within the United States, however, it requires the company to test the drug on animals and then on humans. The FDA-mandated tests on humans are called "clinical trials" and have three "phases." In Phase 1, the new drug is tested on 20 to 100 people in order to evaluate its safety and its most frequent side effects. In Phase 2, the drug is tested on several hundred people to determine how effective it is in treating a certain disease or condition and what doses are required to treat it. In Phase 3, the drug is tested on 200 to 3,000 people to confirm its effectiveness and safety compared with other drugs, study different dosages, and identify additional side effects.[11] U.S. law requires that everyone participating in a clinical trial must sign a "consent form," which states that they understand the nature of the clinical trial and its risks and have consented to participate in the trial. Generally, the consent form will contain several pages explaining the clinical trial and its risks, and the subject is expected to read them before signing the form.

Until 1980 all clinical trials had to be conducted within the United States on people living in the country, and were usually conducted in medical schools and hospitals. That year, however, the FDA began to allow drug companies to test their new drugs on people in other countries. A key reason for this change in FDA policy was the fact that average Americans are reluctant to enter clinical trials, knowing that they often carry high risks. New drugs are tested on humans because no one knows their side effects, which might range from fairly benign effects such as a temporary rash or a headache, to more serious illnesses such as permanent paralysis, organ failure, or death. Before the FDA began accepting foreign clinical trials, American drug companies had found it increasingly difficult and more time-consuming to find the large numbers of U.S. volunteers they needed to complete their Phase 1, 2, and 3 trials. Time was important to the companies since each year a company spent looking for volunteers to test its drug was a year of lost sales. Time pressures and the difficulty of finding volunteers led the companies to look for alternatives, and their lobbying efforts eventually convinced the FDA to allow them to look for test subjects in other countries.

In the following decades, the number of clinical trials conducted outside the United States exploded. By 2015 American drug companies were testing a large proportion of their new drugs on the citizens of foreign countries, particularly those living in poorer parts of the world, such as India, Africa, the Middle East, eastern Europe, and Latin America.

Finding the numbers of people required for their clinical tests was much easier when the drug companies began conducting their clinical trials in poor countries. Poor people in less developed nations have little access to medical personnel, and so they are attracted by the opportunity to be examined by health care professionals even if the examination is part of a drug experiment. Many people in less developed nations, in fact, believe they are being treated for a disease when they take part in a clinical trial. Regulations in foreign countries can be less stringent than those of the United States, making it easier for the drug companies to operate.

The drug companies not only found more people in poor nations who were willing to enter a clinical trial but also substantially lowered the costs of their clinical trials. Clinical trial participants are compensated, and the compensation required to convince most Americans to accept the inconveniences and risks of drug testing are higher than the compensation required to convince a citizen of a poor nation to accept the same. Moreover, for poor people in developing nations, the compensation the drug companies provide is often more than they make in a month.

In 2010, the Department of Health and Human Services reported that "between 40 percent and 65 percent of clinical trials investigating FDA-regulated products are conducted outside of the United States."[12]

According to critics, one of the main reasons it is easier to find clinical trial participants in poor nations is because they can be poorly educated, sometimes even illiterate. Consequently, they may not understand the consent forms they are asked to sign and are not aware of, or do not understand, the nature of a clinical trial and its risks. GlaxoSmithKline, for example, developed a vaccine for hepatitis E and began testing it during the early part of this century. World Health Organization estimates that each year, about 20 million people are infected with hepatitis E, and about 56,600 people die of the liver disease the virus causes.[13] The virus is transmitted mainly through contaminated drinking water, and most infections and deaths occur in poor nations where people have limited access to clean drinking water.

GlaxoSmithKline decided to test the vaccine in Lalitpur, Nepal, where hepatitis E is endemic and where much of the population lives in extreme poverty.[14] GlaxoSmithKline did not expect to market the drug in poor countries such as Nepal, since their citizens would not be able to afford the vaccine. Instead, the company had thought it might market the drug to people in the developed world who planned to travel to a region where the disease is common, or to the U.S. military whose soldiers often were deployed to such countries.[15] Critics suggested that this approach could be seen as a form of exploitation since "In clinical research, exploitation involves asking others to bear risk while benefits accrue to persons not exposed to those risks . . . [so that] the rich and advantaged gain at the expense of those who are neither."[16]

Before GlaxoSmithKline could begin its tests, however, a local Nepalese NGO, Lumanti, protested against the tests, arguing that the majority of the population of Lalitpur, Nepal, was illiterate, highly vulnerable, and likely unable to understand what the tests involved. Faced with this opposition, GlaxoSmithKline turned to the government, who agreed to provide 2,000 soldiers from the Royal Nepalese Army as test subjects. However, the soldiers were also largely poor and illiterate. Moreover, critics argued, as soldiers their participation would likely not be voluntary since they would feel they were being ordered to participate by their officers.[17] Nevertheless, GlaxoSmithKline went ahead and carried out its clinical trial on the Nepalese soldiers.

In 2008, GlaxoSmithKline carried out another clinical trial in the Argentinean province of Santiago del Estero, one of Argentina's poorest regions. This clinical trial was for Synflorix, a vaccine developed to prevent pneumonia and ear infections.[18] The trial was designed to test whether the vaccine was safe to use on babies. Many of the parents of the babies used in the clinical trial were illiterate, however, and did not understand that they were allowing their babies to be used in a medical experiment. The parents were persuaded to enter their babies in the clinical trial by local doctors, who received about $350 from GlaxoSmithKline for each baby a doctor enrolled in the trial. At least 14 babies died during the trial. The two principle investigators running the clinical trial as well as GlaxoSmithKline were fined. However, the company insisted that the mortality rate of the infants participating in the trial was comparable to the morality rate of the local population.

The practice of paying local doctors to provide test subjects is widespread. A psychiatrist in Budapest stated: "Drug companies make us offers they know turn our heads." Although at the time he was earning $178 a month in salary, he said, the drug companies would offer him as much as $1,000 and $2,000 for each test subject he recruited.[19]

A site that several American and European drug companies have chosen for many of their clinical trials is Maharaja Yeshwantrao Hospital, which is located in Indore, India. Its patients are often inducted into clinical trials. However, according to the BBC, patients do not always know that they have been enrolled in a clinical trial. Chandrakala Bai's daughter-in-law, for example, brought her to the hospital when she complained of chest pains. A doctor at the hospital told them that she would be treated with a new heart drug. Both Chandrakala and her daughter-in-law are low-caste Hindus who are illiterate and so could not read whatever paperwork they were given. The drug Chandrakala was given, was, in fact, Tonapofylline, an experimental drug then being tested by Biogen, an American drug company headquartered in Cambridge, Massachusetts. Shortly after taking the drug, Chandrakala suffered heart abnormalities and less than a month later, her heart stopped beating and she died. Altogether, the hospital had enrolled about 3,300 patients in 73 clinical trials over the previous seven years; 80 had died or suffered some serious "adverse event." According to Dr. Anand Rai, who once worked at the hospital, "They chose poor, illiterate people who do not understand the meaning of clinical drug trials."[20]

In Poland, Wojclech, a 24-year-old homeless man, was standing outside a church-run shelter in Warsaw when he was approached by three men who asked him and other homeless people if any of them wanted to test a new flu vaccine for 50 PLN in cash (about $20 at the time).[21] Wojclech agreed and a few days later went to a clinic to begin the clinical trial. There, he was asked to sign a lengthy form:

> I did not really understand it, it was around 50 pages long and the language was difficult to understand. I asked the trial officials some questions about it but they said explaining everything would take too much time.[22]

He nevertheless signed the form, got the vaccine, and was paid. When asked why he did it, he said: "All I care about is making easy money. I did what I had to do and got paid."[23]

Mrs. Liu, the wife of a poor peasant farmer living in a village south of Beijing, China, was diagnosed with lung cancer. Three years later, when she began getting headaches and vomiting, she borrowed money from her son and journeyed to Beijing to see a doctor who told her the cancer had moved to her brain. When she told the doctor her family was too poor to pay for any treatment, the doctor offered to enroll her in a trial of a drug that, he said, would help shrink her tumor. She later said:

> I didn't really understand anything but he said I could have the treatment for free which was a good thing. I do not really understand what a clinical trial means, but we are poor farmers and the most important thing for us is saving money . . . We didn't ask the doctors anything. I didn't think about any risks, I just wanted the free benefits and to save some money. They didn't ask me to sign anything.[24]

Although Mrs. Liu took the drug, it did not help her condition. Later her husband said, “if we were a rich family we would not have to take part in these clinical trials.”[25]

## The Problem of Finding Ways to Test Drugs

In 1996 a meningitis epidemic broke out in the city of Kano, in northern Nigeria; scores of people were soon dying. Doctors Without Borders, an organization of doctors dedicated to caring for the sick for free anywhere in the world, quickly arrived and set up a treatment tent on one side of a hospital compound. They were soon administering an antibiotic that is a standard treatment for curing meningitis, a disease that is caused by certain bacteria. On the other side of the world, researchers at Pfizer Inc., a major American drug company, heard about the meningitis epidemic. Pfizer at the time was trying to get the FDA to approve Trovan, a new antibiotic the company had recently developed. The drug had never been tested on children, and Pfizer’s researchers saw the Nigerian epidemic as an opportunity to test an oral form of their drug on children with meningitis. The company therefore quickly organized a team that flew into Kano and set up their clinical trial on the other side of the same hospital compound that Doctors Without Borders was using. There they began treating sick children with their new experimental drug. When parents brought their sick children into the hospital, they were generally steered toward the Pfizer team. Most of the families were illiterate, and so could not understand the consent forms they were given. Instead, local nurses talked to the families, saying that they were administering a new medicine for treating their child’s disease, and they had a right to say no. They failed to tell them that there was an alternative available for their children: walking over to the Doctors Without Borders tent and taking the standard known and well-tested treatment for meningitis. Several of the children treated with Trovan died, although it is not clear whether the death rate was lower than the death rate of those treated by Doctors Without Borders. The Pfizer team left Nigeria two weeks after it had arrived, without providing the follow-up exams that are called for by U.S. medical guidelines. However, one of the physicians from Doctors Without Borders later saw several of the children who had been treated with the Pfizer drug and who had returned for follow-up exams. He said: “All those patients and their families came back saying that they had never been informed that they were used in experimentation with an unproved medicine.”[26]

Eventually Pfizer’s Trovan was approved for adults, but the FDA refused to approve it for children. In Europe regulators specifically ruled that Trovan should not be administered to children. About 16 months after Trovan began to be used in the United States, the FDA discovered that the drug had injured the livers of 140 patients, some of whom had died as a result. The FDA restricted its use to patients with serious diseases, while European regulators ruled that the drug could no longer be sold in Europe.

While many have criticized the drug industry’s growing tendency to conduct their drug trials in poor countries, industry representatives defend the practice. Bert Spilker, a spokesman for the Pharmaceutical Research and Manufacturers of America pointed to the enormous benefits drug trials produce by enabling the pharmaceutical industry to market drugs that save countless lives and relieve the suffering and debilitation of millions of people. Those benefits would not materialize if the companies were not able to find enough subjects for their clinical trials: “You need patients to create new products that help us here and help people around the world. You cannot do it without test subjects.”[27] If citizens in the developed world will not step forward to volunteer for clinical trials, the drug companies have argued, then they have to search for volunteers elsewhere, even if this means going to the poorer regions of the world to look for them.

### WRITING PROMPT

**Your Thoughts on Testing Drugs in the Developing World**

1. Several critics of the drug companies have claimed that the companies’ practice of testing drugs on poor people in developing countries violates principles of justice. Why would they say this? Which principles of justice would be involved?
2. Some critics of the drug companies have argued that the doctors that have agreed to participate in the drug trails have violated the requirements of the ethic of care. Explain why these critics are right or why they are wrong.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Case Notes


11. “Step 3: Clinical Research,” U.S. Food and Drug Administration, accessed October 12, 2016, http://www.fda.gov/ForPatients/Approvals/Drugs/ucm405622.htm#Clinical_Research_Phase_Studies.
12. Chris Galvin, *Challenges to FDA’s Ability to Monitor and Inspect Foreign Clinical Trials*, report OEI-01-08-00510 (Washington, DC: Office of Inspector General, U.S. Department of Health & Human Services, 2010), http://oig.hhs.gov/oei/reports/oei-01-08-00510.pdf.
13. World Health Organization, “Hepatitis E Fact Sheet No. 280,” July 2015. accessed August 20, 2015, http://www.who.int/mediacentre/factsheets/fs280/en/.
14. Marty Logan, “Nepal: Guinea Pigs in Hepatitis E Vaccine Trials,” *Inter Press Service News Agency*, February 6, 2006, http://www.ipsnews.net/2006/02/nepal-guinea-pigs-in-hepatitis-e-vaccine-trials/.
15. Philip C. Stevenson, “Nepal Calls the Shots in Hepatitis E Virus Vaccine Trial,” *Lancet* 355 (June 2000): 1623, http://www.researchgate.net/publication/12497389_Nepal_calls_the_shots_in_hepatitis_E_virus_vaccine_trial.
16. Al Caplan, “Clinical Trials of Drugs and Vaccines Among the Desperately Poor in Poor Nations: Ethical Challenges and Ethical Solutions,” *Clinical Pharmacology & Therapeutics* 88, no. 5 (November 2010): 583–84.
17. J. Andrews, “Research in the Ranks: Vulnerable Subjects, Coercible Collaboration, and the Hepatitis E Vaccine Trial in Nepal,” *Perspectives in Biology and Medicine* 49, no. 1, (Winter 2006): 35–51.
18. Donald L. Barlett and James B. Steele, “Deadly Medicine,” *Vanity Fair*, January 2011.
19. Mary Pat Flaherty, Deborah Nelson, and Joe Stephens, “The Body Hunters: Overwhelming the Watchdogs,” *Washington Post*, December 18, 2000.
20. Sue Lloyd-Roberts, “Have India’s Poor Become Human Guinea Pigs?” *BBC News*, November 1, 2012, http://www.bbc.com/news/magazine-20136654.

21. Wemos Foundation, *The Globalization of Clinical Trials: Testimonies from Human Subjects* (Amsterdam, The Netherlands: Wemos Foundation, 2010), pp. 14–15, https://www.wemos.nl/wp-content/uploads/2016/07/Testimonies_Wemos.pdf.
22. Ibid., p. 15.
23. Ibid.
24. Ibid., p. 45.
25. Ibid.
26. Joe Stephens, "Where Profits and Lives Hang in Balance," *Washington Post*, December 17, 2000, https://www.washingtonpost.com/archive/politics/2000/12/17/where-profits-and-lives-hang-in-balance/90b0c003-99ed-4fed-bb22-4944c1a98443/.
27. Flaherty et al.

# Summary

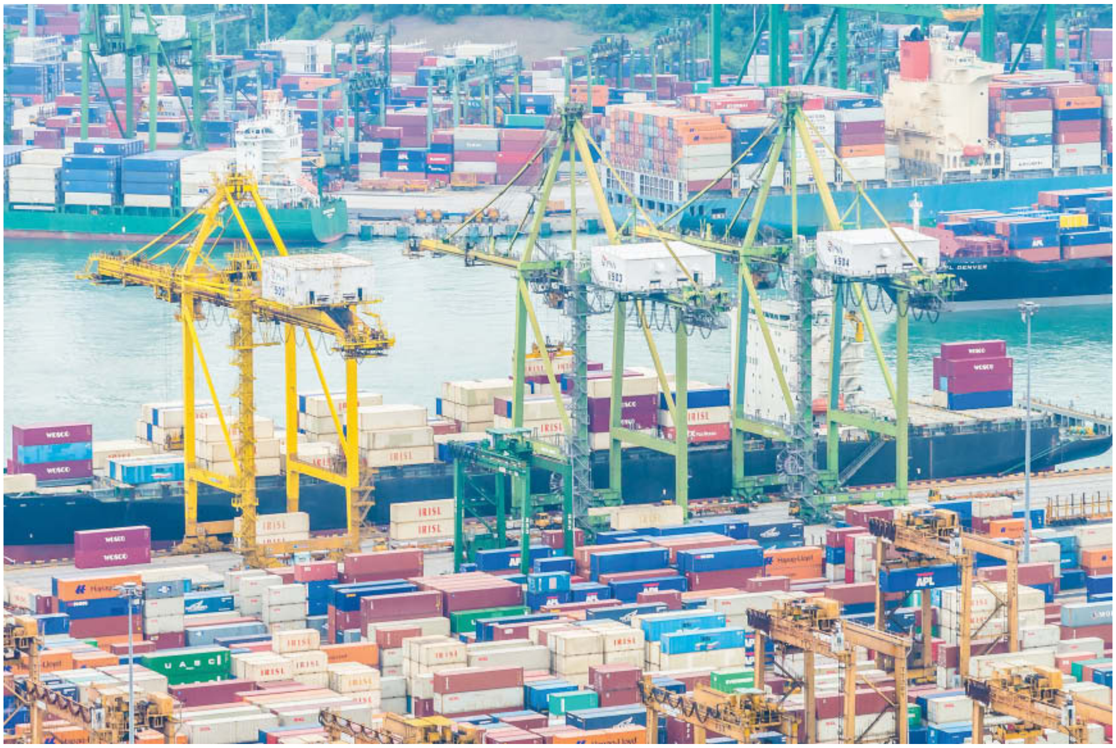
1. When we address ethical issues in business, we often appeal to several distinct moral principles. Many of these principles provide specific approaches to ethics in business. Of these various approaches, four are key because we employ them in almost all the moral debates that arise in our business lives. They are the utilitarian, rights, justice, and care approaches to ethical decision-making.
2. The utilitarian approach holds that an act is morally right if the utility produced by that act is greater than the utility produced by any other act the agent could perform in its place. While this approach has been widely adopted, critics point out that trying to measure utility leads to many difficult problems. Moreover, utilitarianism seems to lead to unethical outcomes when decisions involve questions of justice or of moral rights.
3. The rights approach asks whether our actions respect the moral or human rights of those whom they affect. Immanuel Kant's theory of ethics provides strong support for the claim that people have human rights. Kant's theory provides two versions of the basic principle he calls the "categorical imperative." The first version says that an action is right if the agent's reason for acting is a reason he or she would be willing to have every person act on, in any similar situation. The second says that an action is right if the agent does not use others only as means, but always treats others as they freely and rationally consent to be treated and helps others pursue their freely and rationally chosen ends. Together these two versions of Kant's categorical imperative imply that we have a right to pursue a certain interest (such as an interest in worshiping as we choose) if (1) we would not be willing to have everyone be deprived of the freedom to pursue that interest, and (2) the freedom to pursue that interest is needed to live as rational beings who can choose and pursue our own ends.
4. The justice approach encompasses distributive, retributive, and compensatory justice. The most important of these is distributive justice. It is based on the fundamental principle that people who are similar in all respects relevant to the kind of treatment in question should be given similar benefits and burdens, while people who are dissimilar in a relevant respect ought to be treated dissimilarly, in proportion to their dissimilarity. Several distinct characteristics have been said to constitute "relevant" similarities or differences. Egalitarians argue that all persons should be treated as equals because there are no "relevant differences" that justify unequal treatment. Others argue that benefits should be distributed according to people's contributions. Socialists have argued that burdens should be distributed according to people's abilities, and benefits should be distributed according to their needs. Libertarians have claimed that people should be left free to do whatever they choose with whatever they own. John Rawls's theory of justice draws these distinct approaches together by arguing that principles of justice should be chosen behind a "veil of ignorance," where nobody knows what their own characteristics are. In such a situation, he claimed, people would agree that justice requires that people's political and civil liberties should be equal for all. Moreover, he claimed that the distribution of benefits and burdens in a society is just if and only if economic and social inequalities are arranged so that they are both (1) to the benefit of the most needy, and (2) attached to offices and positions open to all under conditions of fair equality of opportunity.
5. The care approach to ethics claims that human relationships have a moral value that justifies exercising special care toward those particular persons with whom we have valuable close relationships, particularly relations of dependency. Unlike the previous three approaches, which emphasize impartiality, the care approach holds that we can and should be partial toward those with whom we have valuable relationships. Accordingly, an ethic of care holds that (1) we should preserve and nurture our valuable relationships, and (2) we should care for those to whom

we are related by attending to their particular needs, values, desires, and concrete well-being as seen from their own perspective.

6. Each of the four approaches to ethics described above looks at moral issues from a different perspective. To make a fully informed moral decision, therefore, we should try to bring all the approaches to bear on our moral decisions. We can do this by asking four questions: (1) Which action will maximize benefits and minimize harms for everyone? (2) Which action best respects the moral rights of all those involved? (3) Which action will lead to the most just distribution of benefits and burdens among those involved? (4) Which action cares appropriately for the well-being of those who are closely related to or dependent on us?
7. Virtue ethics is an alternative to the four approaches described above. Unlike those four approaches, which focus on what the right moral action is, the virtue approach focuses on the virtues of the good, moral person. In his classic theory of virtue, Aristotle argued that a moral virtue is a habit that enables a person to live according to reason by choosing the reasonable middle ground between going too far and not going far enough in his feelings, desires, and actions. The aim of human life, he claimed, is happiness and so the reasonable choice is the one that contributes toward a happy life. The moral virtues—such as courage, temperance, and justice—enable a person to control his or her desires, emotions, and actions as necessary to achieve happiness. Edmund Pincoffs proposed a modern theory that holds that virtues are dispositions that make a person good at dealing with the kinds of situations that frequently and typically arise in life. Virtue ethics does not provide a fifth approach to ethical decision-making. Instead, an ethic of virtue covers much of the same ground as an ethic of principles, but does so not in terms of the actions we should perform, but in terms of the kind of person we should be.
8. We make many of our moral decisions, however, without thinking about them at all. We seem to have two ways of making moral decisions: though conscious reasoning and through unconscious mental processes. Conscious reasoning uses the kinds of principles we have discussed in this chapter. Our unconscious mental processes seem to proceed by using “prototypes” of learned past behaviors that are “matched” with the situations in which we find ourselves. In this way, we respond to the moral decisions we face automatically and without thinking. These unconscious and automatic decisions are not irrational. They are based on past conscious reasoning, on cultural influences, and in some cases on intuitions that seem to be “hard-wired” into our minds. However, it is always possible for us to stand back and consciously examine the behaviors and responses that make up the prototypes we unconsciously use. By doing so, we can rationally evaluate and correct the unconscious and automatic ways by which we have been responding to our moral decisions.

## Chapter 3

# The Business System: Government, Markets, and International Trade



As the world's busiest hub for containerized cargo, the Port of Singapore is at the center international trade. Singapore's government has embraced globalization and supports free trade.

## Learning Objectives

**3.1** Explain the impact of globalization on the business system

**3.2** Analyze John Locke's theory of natural rights as it relates to free markets

**3.3** Assess key arguments associated with Adam Smith's utilitarian view of free markets

**3.4** Analyze comparative advantage as a foundation for free trade among nations

**3.5** Interpret Marxist views on the impact on workers of free trade and free markets

**3.6** Explain the mixed economy and redefinitions of property that affect the business system

# 3.1: Globalization and the Business System

**OBJECTIVE: Explain the relation between business and globalization**

During the past 25 years, **globalization** has surged forward to a degree that is unprecedented in our world's history.[1] Globalization has connected nations so that goods, services, capital, and knowledge now flow freely among them. These flows are carried by ever faster and cheaper transportation and communication systems. They are facilitated by free trade agreements between national governments and supported by international institutions such as the World Trade Organization (WTO), a group of countries that agree to abide by rules establishing free and open markets among themselves. As governments have opened their nations' borders to free trade with other nations, businesses as well as governments have had to face numerous challenges. In every country, individual companies and entire industries have been wiped out as globalization has forced them to compete with companies in other parts of the world. Workers have found themselves jobless when companies have relocated factories to other nations with cheaper wages. Companies have been accused of manipulating the institutions that regulate trade between nations. Governments have been criticized for allowing companies to abandon their workers and move their operations to other countries.

Controversies over globalization and free trade are but the latest episodes in a great and centuries-long ethical debate over a single question: Should governments allow businesses to trade freely among themselves without interference, or do governments have the right and the duty to impose restrictions on business activities in order to protect their citizens? One side argues that when government steps out of the market arena and allows businesses to engage in unrestrained free markets and free trade, unethical behaviors are inevitable, including unfair competition, global pollution, unfair labor practices, sweatshops, discrimination, and disregard for the well-being of the poor. The other side argues that government restrictions on business are bad because they violate property rights and the right to freedom, lead to unfairness, and leave us all worse off. This chapter examines these ethical and moral arguments for and against free markets and free trade systems.

## 3.1.1: Economic Systems

Arguments about free markets and free trade are arguments about economic systems. An *economic system* is the system a society (or group of societies) uses to provide the goods and services it needs to survive and flourish.[2] This system must accomplish two basic economic tasks.

- The first task is producing goods and services, which requires determining what will be produced, how it will be produced, and who will produce it.
- The second task is distributing these goods and services among the society's members, which requires determining who will get what and how much each will get.

To accomplish these two tasks, economic systems rely on three kinds of social devices: traditions, commands, and markets.

**EXAMINING THE BALANCE** Economies today contain elements of traditions, commands, and markets.[3] The United States, for example, is highly market-oriented, yet both tradition and government are influential. For example, more women work in some job categories (dental hygienists), while more men work in others (roofers), so traditional gender roles still may determine who does those jobs. Moreover, the U.S. government not only issues commands that regulate business, labor, and international trade but also owns or has owned several important businesses, including the Export-Import Bank, the U.S. Postal Service, the Federal Prison Industries, Ginnie Mae, the Tennessee Valley Authority, Amtrak, and the Corporation for Public Broadcasting. In 2010, the U.S. government acquired full or partial ownership of dozens of failing businesses, including car companies (General Motors), banks (Citigroup), and insurance companies (AIG).

It would be undesirable to run an economy completely on the basis of traditions, or commands, or markets. If an economy were to be a pure market system, with no economic interventions by government, there would be no constraints on the property one could own or what one could do with it. Slavery would be entirely legal, as would prostitution and all drugs, including hard drugs. Today, the governments of even the most market-oriented economies decree that some entities (e.g., people) may not be owned, some things (e.g., polluting) may not be done with one's property, some exchanges (e.g., child labor) are illegal, and some exchanges (e.g., taxation) are imposed. Such limitations on markets are the impositions of a command system: government concern for public welfare leads it to issue commands concerning which goods may or may not be produced or exchanged. Similarly, even under the almost all-encompassing command system of the former Soviet Union's harsh Stalinist regime during the twentieth century, local markets—many of them so-called black markets—existed, where workers could trade their wages for the goods they wanted. These local markets were interventions of a market system into a command system.

### Traditions, Commands, and Markets

Each of the three social devices provides a way to organize people's activities, motivate people, and determine who owns or controls society's productive resources.[4, 5, 6]

Interactive

**Tradition**

So-called primitive societies used economic systems based primarily on tradition. *Tradition-based societies* are small and rely on communal roles and customs to carry out the two tasks of producing and distributing goods. Individuals are motivated by the community's expressions of approval or disapproval, and the community's productive resources—such as its herds—are often owned in common. A small nomadic tribe, for example, whose members survive by hunting and herding, may hold its herd, its most valuable property, in common. The small society may rely on the traditional roles of husband, wife, mother, father, son, and daughter to decide both who does what and who gets what. Societies that are almost completely tradition-based exist today among Bushmen, the Inuit, Kalahari hunters, and Bedouin tribes.

**Commands**

**Markets**

**DEBATING THE BALANCE** Since the eighteenth century, debates have raged over whether economies should be based more on commands or on markets.[7] Should we have more government commands in the form of more economic regulations and more government control of business enterprises, or should government stand back and trust the economy more to the workings of the market and the decisions of private owners of companies? Sometimes these debates have been expressed in terms of whether economic activities should be more or less "free of government intrusions," and then the discussion is framed in terms of **free markets** (free, that is, of government limits) and free trade.[8] Sometimes the debate is about laissez-faire policies, which, literally, is the French phrase for policies that "let us act" free of government controls.

In this chapter, we will examine the arguments on both sides of these debates, which are, in the end, about the proper role of governments and of markets, both nationally and internationally.

In analyzing these arguments on free markets and free trade, on government commands and markets, we in effect analyze what sociologists refer to as ideologies.[9] An *ideology* is a system of normative beliefs shared by members of some social group. A group's ideology expresses its answers to questions about the following:

- *Human nature:* Are human beings motivated solely by economic incentives?
- *Basic purpose of our social institutions:* What is the purpose of government? Of business? Of property?
- *How societies actually function:* Are markets really free? Does big business control government?
- *Values society should try to protect:* freedom, productivity, and equality.

### Debate over Free Markets and Free Trade

Today, these debates continue on two levels. We should not confuse the two different levels of these debates, although the two levels are related.

Interactive

**Level 1: Debate over Free Markets**

**Should a nation's own internal economy be organized as a free market economy?**

The debate at the first level asks whether a nation's government should regulate business exchanges between its citizens or, instead, allow its citizens to freely exchange goods with one another.

**Level 2: Debate over Free Trade**

The ideologies that we here in the United States hold today incorporate ideas drawn from John Locke, Adam Smith, David Ricardo, and other influential thinkers whose normative views we will examine and evaluate in this chapter. We discuss these ideas not only because of the significant influence they have had on our ideologies, but because many people today argue that these ideologies must be adjusted if they are to meet the contemporary needs of business and society.[10] It would be a valuable exercise for the reader, while reading this chapter, to identify the ideology he or she holds and to examine and critique its elements.

We will examine two important arguments for free markets.

- The first argument originated with John Locke and is based on a theory of **moral rights**.
- The second argument was first clearly proposed by Adam Smith and is based on **utilitarian** principles.

Then, we turn from free market arguments to focus on international free trade arguments. We will discuss the ideas of David Ricardo, whose life overlapped that of Adam Smith and who, like Smith, based his views about free trade on utilitarian principles. Finally, we will discuss the important but opposing arguments of Karl Marx, who held that without government controls, free market systems defy **justice** and promote injustice, both nationally and internationally.

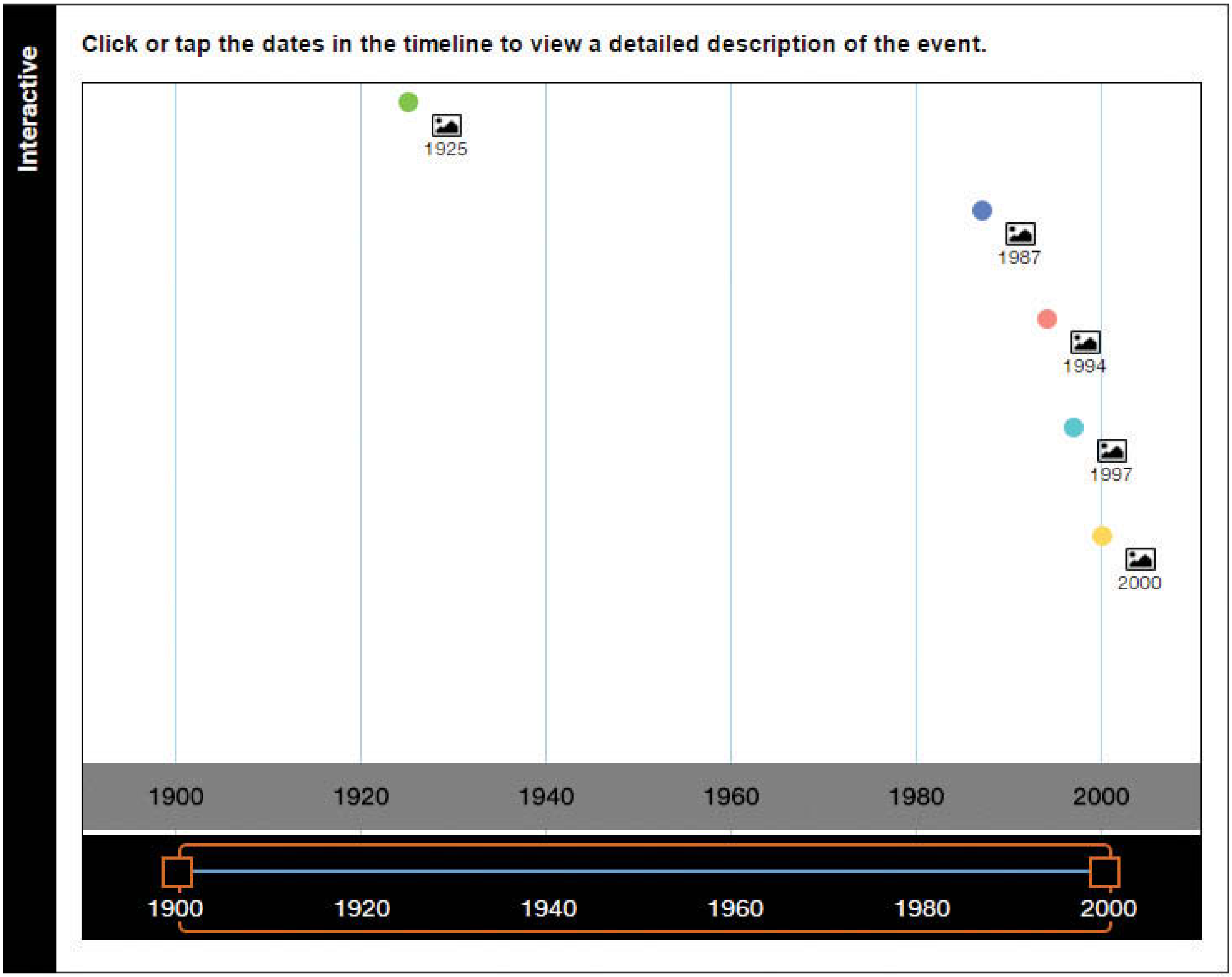
## 3.1.2: Market Theory and Market Practice

Throughout the chapter, we will illustrate many of the ethical issues connected to markets by looking at how two companies, Swingline (a manufacturer of staplers and related products) and Abbott Labs (a pharmaceutical company), each in different ways took advantage of the market opportunities that globalization provided. We start out with detailed background information on both companies and describe an ethical situation that relates to each company. We will check in to see how market theory can be applied, using these real-world examples.

**SWINGLINE** Jack Linsky, a Ukrainian immigrant, invented the modern, easy-to-use stapler known as the Swingline stapler. In 1925 he built a stapler factory in New York where he hired immigrants from everywhere. Linsky's workers liked him and with their hard work the company prospered until 1987 when he sold it for $210 million. But globalization and WTO agreements in 1995 began allowing foreign companies to freely import and sell their copycat staplers in the U.S. By 1997 the company was struggling to compete against these companies whose labor costs were much lower than its own. In 2000 the company fired all of its workers at its New York plant, closed the factory and moved its operations to Nogales, Mexico.

The North American Free Trade Agreement (NAFTA) between the United States, Mexico, and Canada allowed Swingline, to produce its staplers using Mexico's cheap labor and then import the products back into the United States, paying only limited import tariffs.[13] Cheap labor was plentiful in Nogales. Thousands of Mexican farmers and farm workers had been migrating to Nogales and other border towns. Their displacement was also related to NAFTA, which allowed U.S. farmers to sell their corn in Mexico. Since the U.S. government gives its corn farmers $5 to $10 billion a year in subsidies, U.S. corn growers could sell their corn in Mexico for less than Mexican farmers could.[14] Between 1994 and 2004, 1.5 million Mexican corn farmers and farm workers lost their main source of income and migrated to border cities, desperate for work. The resulting surplus of workers, the government's low minimum wage laws, and its low health and safety workplace standards all helped to keep labor costs down, which proved to be an irresistible attraction for U.S. companies.

### Globalization Shifts Labor: Swingline[11, 12]



However, as early as 2003, jobs in Mexico had begun leaving the country and heading for China.[15] China's workers were paid even less than Mexican workers, and they often worked in factories whose health and safety standards were even lower than those of Mexico. In 2010, the Swingline factory again fired all its workers, closed its Nogales factory, and contracted to have a Chinese factory make its staplers.

The Swingline story raises a number of ethical questions:

- Is it ethical for a company to abandon workers who have given decades of their lives to make it succeed?
- What ethical obligations, if any, does a company have to the workers left behind when it moves to another country?
- What ethical obligations do companies have toward their foreign workers?
- Should government allow companies to move their operations to other countries, or should it try to prevent or slow their exit?
- As companies continuously search for cheaper labor, will this produce a "race to the bottom" that will unjustly reduce workers' standards of living throughout the world?

**ABBOTT LABORATORIES** Global free trade has been criticized not only for the impact it has had on workers, but because of the impact it has had on those who live in poor nations. Many critics of free trade have argued that the international agreements and institutions that make free trade possible benefit global businesses but harm the world's poor and powerless.

### Globalization Affects Poor Nations: Abbott Laboratories

To understand these criticisms, consider how Abbott Laboratories responded when Thailand's government announced a new policy designed to provide its poorest people with a lifesaving drug.[16, 17, 18, 19, 20]

Interactive

**1990–1995**

In the early 1990s, U.S. drug companies began lobbying hard to get the U.S. government to pressure all countries to make patent laws part of the rules for the new WTO that was then being formed.

Pushed by U.S. drug companies, many of which made lavish donations to politicians, officials of the U.S. government insisted that WTO rules should require all member nations to adopt strict patent and copyright laws like those of the United States. Poor nations strongly objected to this proposition.

Until 1994, U.S. patent laws gave a new drug 17 years of protection inside the United States only.

However, when the WTO was finalized in 1995, its rules included an article entitled Trade-Related Aspects of Intellectual Property Rights (TRIPS), which required all WTO member nations to adopt patent and copyright laws modeled on U.S. laws.

Since it is difficult for a country to sell its goods to WTO member nations unless it too belongs to the WTO, most nations joined the WTO in spite of their objections to TRIPS.

1 of 7 Previous Next

Abbott Laboratories argued that if Thailand started making a generic version of Kaletra, it would be taking Abbott's property, since the company had discovered, developed, and tested the drug using several hundred million dollars of its own money and now held the patent. Moreover, Abbott claimed, under its interpretation of TRIPS, Thailand's government had no right to ignore Abbott's patent simply because it did not want to pay for the drug. Reluctance to pay, the company said, did not constitute an "emergency."[21] The head of Doctors Without Borders in Thailand said of Abbott's position: "For me, it's just evil. It's appalling. It reflects so badly on the multinational companies."[22]

The conflict between Thailand and Abbott Laboratories raises many of the ethical and moral questions that surround globalization and free trade:

- Has global free trade unjustly benefitted multinational companies at the expense of poor nations?
- Is it ethical for multinational companies—such as the large drug companies—to influence the rules that govern international trade and bend them to serve their own corporate interests?
- Should governments intervene when companies seem to be engaging in unethical behavior? Is it ethical for governments to intervene in business affairs?
- Are relatively new forms of property—such as patents on drug formulas—ethically legitimate?
- Is it ethical for the governments of poor nations to take a company's patented drug property without the consent of the company?

## 3.2: Free Markets and Rights: John Locke

**OBJECTIVE: Analyze John Locke's theory of natural rights as it relates to free markets**

One of the most popular cases for allowing government to play only a very limited role in markets derives from the idea that human beings have certain **natural rights** that only a free market system can protect. The two natural rights that free markets are supposed to protect are the right to freedom and the right to private property. Free markets are supposed to preserve the right to freedom insofar as they enable each individual to voluntarily exchange goods with others free from the coercive power of government. They are supposed to preserve the right to private property insofar as each individual is free to decide what will be done with what he or she owns without interference from government.

John Locke (1632–1704), a British political philosopher, is generally credited with developing the idea that human beings have a natural right to liberty and a natural right to private property.[23] Locke argued that if there were no governments, human beings would find themselves in a *state of nature*. In this state of nature, each individual would be the political equal of all others and would be perfectly free of any constraints other than the *law of nature*—that is, the moral principles that God gave to humanity and that each individual can discover by the use of God-given reason. As he puts it, in a state of nature, everyone would be in

> a *state of perfect freedom* to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man. A *state also of equality*, wherein all the power and jurisdiction is reciprocal, no one having more than another . . . without subordination or subjection [to another]. . . . But . . . the *state of nature* has a law of nature to govern it, which obliges everyone: and reason, which is that law, teaches all mankind, who will but consult it, that being all *equal and independent*, no one ought to harm another in his life, health, liberty, or possessions.[24]

According to Locke, the law of nature teaches that each has a right to liberty and that, consequently, "no one can be put out of this [natural] estate and subjected to the political power of another without his own consent."[25] The law of nature also informs us that all people have rights of ownership over their bodies, their labor, and the products of their labor, and that these ownership rights are natural—that is, they are not invented or created by government nor are they the result of a government grant:

> Every man has a property in his own person: This nobody has a 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 has provided and left it in, he has mixed his labor with, and joined to it something that is his own, and thereby makes it his property . . . [For] this labor being the unquestionable property of the laborer, no man but he can have a right to what that [labor] is once joined to, at least where there is enough, and as good, left in common for others.[26]

The state of nature, however, is a perilous state in which individuals are in constant danger of being harmed by others, "for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure."[27] Consequently, individuals inevitably organize themselves into a political body and create a government whose primary purpose is to provide the protection of their natural rights that is lacking in the state of nature. Because the citizen consents to government "only with an intention . . . to preserve himself, his liberty and property . . . the power of the society or legislature constituted by them can never be supposed to extend farther" than what is needed to preserve these rights.[28] Government cannot interfere with any citizen's natural right to liberty and natural right to property except insofar as such interference is needed to protect one person's liberty or property from being invaded by others.

***Quick Review 3.1***
**John Locke's State of Nature**

- All persons are free and equal.
- Each person owns his body and labor, and whatever he mixes his own labor into.
- People's enjoyment of life, liberty, and property are unsafe and insecure.
- People agree to form a government to protect and preserve their right to life, liberty, and property.

## 3.2.1: Interpreting John Locke

Although Locke never explicitly used his theory of natural rights to argue for free markets, several authors have employed his theory for this purpose.[29] Friedrich A. Hayek, Murray Rothbard, Gottfried Dietze, Eric Mack, and many others have claimed that each person has the right to liberty and property that Locke credited to every human being and that, consequently, government must leave individuals free to exchange their labor and their property as they voluntarily choose.[30] Only a free private enterprise exchange economy, in which government stays out of the market and in which government protects the property rights of private individuals, allows for such voluntary exchanges. The existence of the **Lockean rights** to liberty and property, then, implies that societies should incorporate private property institutions and free markets.

Locke's views on the right to private property have had a significant influence on American institutions of property, an influence that continues to be felt in today's digital society. Most important, throughout most of its early history, U.S. law has held to the theory that individuals have an almost absolute right to do whatever they want with their property and that government has only a limited right to interfere with or confiscate an individual's private property even for the good of society. The Fifth Amendment to the U.S. Constitution states, "No person shall be . . . deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." This amendment (which incorporates Locke's ideas on life, liberty, and property) ultimately derives from Locke's view that private property rights are established by nature (when an individual "mixes" labor into a thing) and so are prior to government. Government does not grant or create private property rights. Instead, it must respect and protect the property rights that are naturally generated through labor and trade.

Different views on property all assume that private property is a bundle of rights. To say that X is my private property is to say that I have a right to use it, consume it, sell it, give it away, loan it, rent it, keep anything of value it produces, change it, destroy it, and, most important exclude others from doing any of these things without my consent.

# Ethical Application

## Abbott Labs and Locke

Let's consider the actions of Abbott Laboratories in light of Locke's views. Recall that Abbott withheld several lifesaving drugs from Thailand's people when the government of Thailand announced its intention to manufacture a drug that Abbott had patented. Abbott claimed that Thailand was stealing the company's intellectual property.[31] Regardless of what any government or other ruling body might say, Abbott insisted it had created the formula for the drug and invested the money needed to develop it, and so it was Abbott's property and no one else had a right to use it without Abbott's authorization. Abbott's position was based on the Lockean view that private property is created by one's labor and not by government. The right to property, like the right to liberty, is prior to, or more basic than, government's authority and, as Locke insisted, government is created to protect these fundamental rights. The head of a pharmaceutical association that represented Abbot and other multinational drug companies said: "After the company does 10 years of research, and then suddenly the Thai government would like to impose a compulsory license, taking away their property, their assets—this is not right."[32]

Thailand's government, on the other hand, issued a report in which it stated that it had "fully complied with [all] the national and international legal frameworks," including TRIPS.[33] It pointed out that the WTO had explicitly declared that to protect its citizens' health, a country could issue a compulsory license and manufacture a drug without the authorization of the company that held the patent. Consequently, Thailand's government determined that it was not wrong to manufacture the drug even though Abbott held the patent, since the legal framework that created the patent and turned the drug formula into a form of property explicitly allowed them to use the formula. The view of Thailand's government, then, was that governments and their laws create property rights, a view that is decidedly *not* Lockean.[34] Also unlike Locke, Thailand's government held that property rights are not absolute. Thailand said in its report that its decision was based on its "commitment to put the right to life above trade interests." Property rights, then, are limited by the right to life, because human life is more important than the international rules that protect trade interests by protecting property rights.

The views of both Abbot Laboratories and Thailand's government were shaped by their ideologies. In other words, they were shaped by their beliefs about which rights are most basic, about the purpose of government, and about the nature of private property.

### Views on Property Rights

It is only relatively recently, in the late nineteenth and twentieth centuries, that the Lockean view began to give way to the more socialist view that government may limit an individual's private property rights for the good of society. Even today in the United States, there is a strong presumption that government does not create property rights, but it must respect and enforce the property rights that individuals create through their own efforts. The U.S. law explicitly recognizes, for example, that if a person produces a literary text, the text is his or her property even without a government-issued copyright.

Interactive

**Different Definitions of Property**

It is important to see that this Lockean view of property is not universal. In some countries, such as Japan, resources are not seen as things over which individuals have an absolute private property right. Instead, in Japan, as in many other Asian societies, resources are seen as functioning primarily to serve the needs of society as a whole, and so the property rights of individuals should give way to the needs of society when there is a conflict between the two.

**Property as a Bundle of Rights**

## 3.2.2: Criticisms of Lockean Rights

Criticisms of the Lockean defense of the right to liberty, both within and outside of markets, have focused on four of its major weaknesses:

1. The assumption that individuals have the "natural rights" Locke claimed they have
2. The assumption that negative rights take precedence over positive rights
3. A failure to acknowledge that adherence to Lockean rights can lead to injustice
4. The conflict between Locke's individualistic assumptions and the demands of caring

**INJUSTICE AND INEQUALITY** Another major criticism of the Lockean defense of free markets is based on the idea that free markets create unjust inequalities.[35] In a free market economy, a person's productive power is proportioned to the amount of labor or property already possessed. Those individuals who have accumulated a great deal of wealth and who have access to education and training will be able to accumulate even more wealth by purchasing more productive assets. Individuals who own no property, who are unable to work, or who are unskilled (such as the handicapped, infirm, poor, aged) will be unable to buy any goods at all without help from the government. As a result, without government intervention, the gap between the

### Natural Rights and the Conflict between Negative and Positive Rights

Let's examine the first two assumptions: that "natural rights" exist and that negative rights override positive rights.[36, 37, 38, 39]

Interactive

**The Assumption That Natural Rights Exist**

**The Assumption That Negative Rights Take Precedence over Positive Rights**

Even if human beings have a natural right to liberty and to property, it does not follow that these rights must override all other rights. The rights to liberty and to property are negative rights. **Negative rights** can conflict with people's **positive rights**. For example, one person's negative right to liberty may conflict with someone else's positive right to food, medical care, housing, or clean air. Why must we believe that in such cases the negative right has greater priority than the positive right? Critics argue that we have no reason to believe that the rights to liberty and property are overriding. Consequently, we also have no reason to be persuaded by the argument that free markets must be preserved because they protect this right.

richest and poorest widens until large disparities of wealth emerge. Unless government intervenes to adjust the distribution of property that results from free markets, large groups of citizens will remain poor while others grow ever richer. View the distribution of income and wealth among American households in the visual below.

To support their point, critics cite the high poverty levels and large inequalities evident in nations such as the United States that rely heavily on free markets. Consider the following U.S. data:

- The top 1 percent of the population in 2007 held almost half of America's total financial wealth, owned more than one-third of the nation's total net worth, received one-fifth of the country's income, and lived in households with an average net worth of $18,529,000.[40]
- The richest 5 percent of U.S. households in 2008 made on average $322,343 or 27 times the average of the poorest 20 percent.[41]
- In 2013, 45.3 million Americans, or 14.5 percent of the population, were living in poverty.[42] In the same year, the richest 20 percent of U.S. households had an average income of $185,206, while the poorest 20 percent had an average income of $11,984.[43]
- Some 17.5 million U.S. households—about 49.1 million people—suffered from hunger during 2013 because they did not have enough food to meet the basic needs of all household members.[44]
- About 42 million people had no health insurance in 2013.[45]
- Also in 2013, about 600,000 people were homeless each night, about one-quarter of them children.[46]

**Table 3.1** Distribution of Income and Wealth among American Households, 2013

Critics point to the highly unequal distribution of income and wealth found in the United States.[47] Notice the sharp differences between the top 20 percent and the bottom 40 percent. In Table 3.1, the top 20 percent includes the top 1 percent, and the minus sign preceding certain numbers indicates debt.

| Group | Percentage of Total U.S. Income (2013) | Percentage of Total U.S. Financial Wealth (2012) | Percentage of Total U.S. Net Worth (2013) | Average Net Worth (2013) | Percentage of Total U.S. Stock (2012) |
|---|---|---|---|---|---|
| Top 1% | 19.8 | 42.7 | 36.7 | $18,623,900 | 38.3 |
| Top 20% | 61.8 | 93.0 | 88.9 | $2,260,300 | 91.1 |
| Second 20% | 17.8 | 6.8 | 9.3 | $236,400 | 6.4 |
| Third 20% | 11.1 | 1.3 | 2.7 | $68,100 | 1.9 |
| Bottom 40% | 9.4 | –1.0 | –0.9 | –$10,800 | 0.6 |

- Economic inequality has also increased worldwide, driven in part by the forces of globalization. Free trade agreements and globalization have enabled companies to move their operations from one country to another. As they move they leave workers jobless and the result, many claim, is that the working poor of the world keep getting poorer thereby increasing inequality.

Figure 3.1 to 3.3 show the high poverty levels and large inequalities evident in nations such as the United States that rely heavily on free markets.

## Ethical Application

### Expanding Inequality

Recall the case of Swingline, the company that manufactures staplers and related products. When the company left its workers behind in New York and moved to Mexico, the economic standing of the abandoned workers declined. When the company then left Mexico and moved to China because of China's cheaper wage policies, the living standards of its abandoned workers once again went down.

**Figure 3.1** Rising U.S. inequality since 1973

Figure 3.1 depicts the movement of the Gini index, which is a simple standard measure that shows how U.S. economic inequality has been rising steadily since 1973.

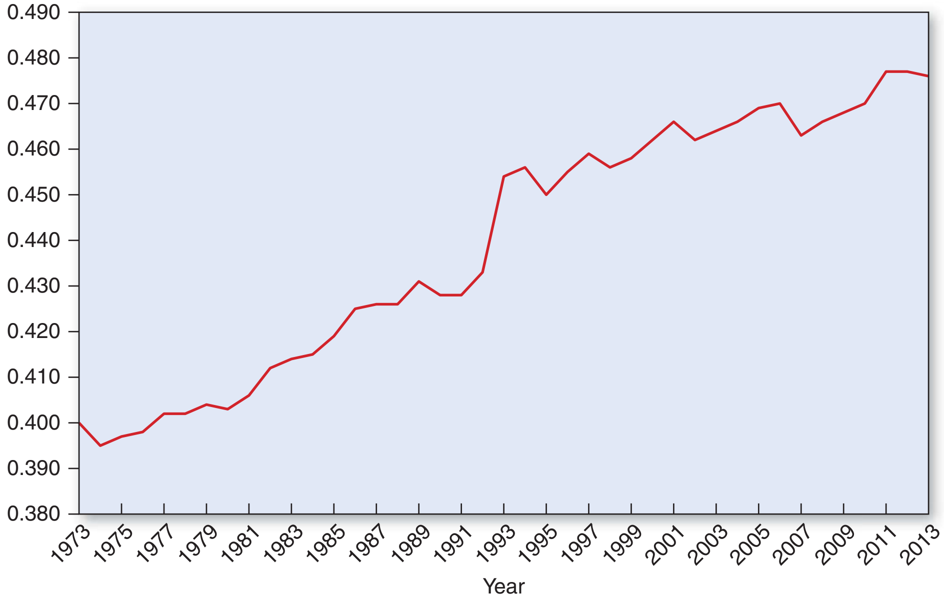


**Figure 3.2** Increasing household inequality, 1974–2013

Figure 3.2 is an overview of the widening gap in household income between wealthy and low-income families. With an overall look at shares of total U.S income across time, it is clear that the gap between wealthy and low-income households is widening.

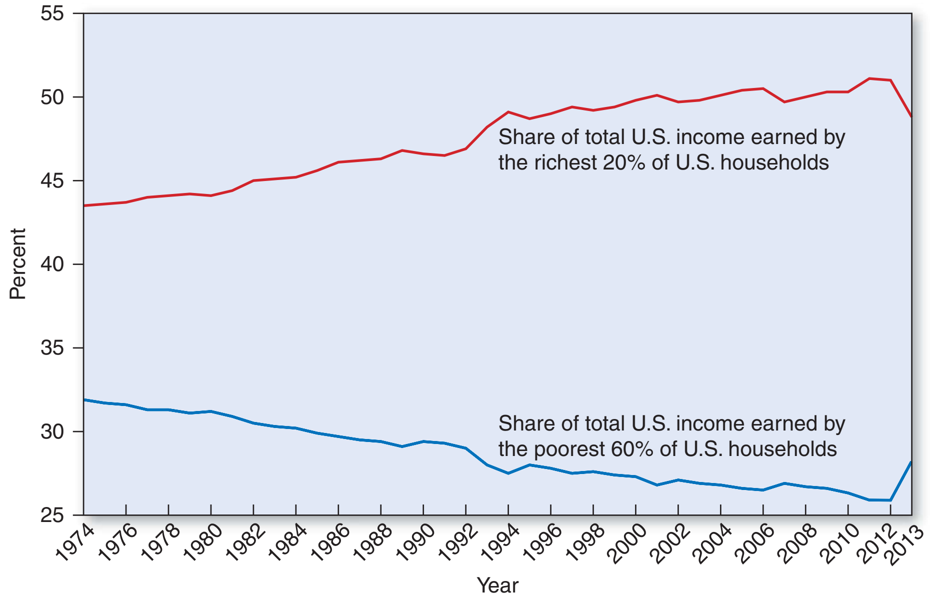
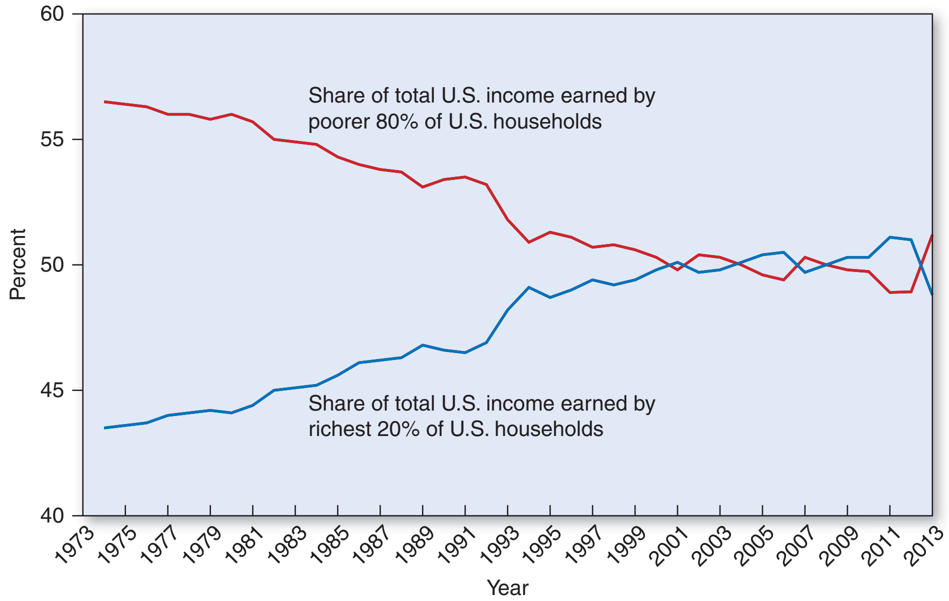



**Figure 3.3** Income shares of U.S. households, 1974–2013

Figure 3.3 shows how the richest 20 percent of U.S. households now take in about as much income as all the rest combined.




## WRITING PROMPT

**Numbers and People**

Graphs and statistics are one way to reveal the reality of economic inequality, and the news is another way. People who have lost jobs and livelihoods can also tell you powerful personal stories. Have you, your family, or friends been affected by business decisions that have created inequality? How has your town or neighborhood been changed by such business decisions? Write a personal story and connect it to a global view.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

**CONFLICT BETWEEN INDIVIDUAL AND COMMUNITY** Finally, Locke's critics have argued that his argument assumes that human beings are atomistic individuals with personal rights to liberty and property that flow from their individual nature independently of their relations to the larger community. Because these rights are assumed to be prior to and independent of the community, the community can make no claims on the property or freedom of the individual. However, critics claim that these individualistic assumptions are completely false: they ignore the key role of caring relationships in human societies and the demands of caring that arise from these relationships. Locke's critics point out that human beings are born dependent on the care of others; as they grow, they remain dependent on the care of others to acquire what they need to become able adults. When they become adults, human beings still depend on the caring cooperation of others in their communities for virtually everything they do or produce. Even an individual's liberty depends on others. The degree of liberty a person has depends on what the person can do: the less a person can do, the less she is free to do. However, a person's abilities depend on what the person learns from those who care for her, as well as on what others care to help her to do or allow her to do.

Similarly, the property that a person produces through labor depends ultimately on the skills acquired from those who cared for him or her and on the cooperative work of others in the community, including employees. Even one's identity—the sense of who one is as a member of the various communities and groups to which one belongs—depends on one's relationships with others in the community. In short, the individualistic assumptions built into Locke's view of human beings ignore the concrete caring relationships from which a person's identity and the possibility of individual rights arise. People are not atomistic individuals with rights that are independent of others; instead, they are persons embedded in caring relationships that make those rights possible and that make the person who and what he or she is. Moreover, critics continue, people are morally required to sustain these relationships and to care for others as others have cared for them. The community can legitimately make claims on the property of individuals and can restrict the freedom of individuals precisely because the community and the caring it has provided are the ultimate source of that property and freedom.

***Quick Review 3.2***
**Weaknesses of Locke's Views on Rights**

- Locke does not demonstrate that individuals have natural rights to life, liberty, and property.
- Locke's natural rights are negative rights, and he does not show that these override conflicting positive rights.
- Locke's rights imply that markets should be free, but free markets can be unjust and can lead to inequalities.
- Locke wrongly assumes that human beings are atomistic individuals.

# 3.3: Free Markets and Utility: Adam Smith

**OBJECTIVE: Assess key arguments associated with Adam Smith's utilitarian view of free markets**

The second major support for free markets derives from the utilitarian argument that free markets and private property will produce greater benefits than any amount of government interference could. In a system with free markets and private property, buyers purchase what they want at the lowest prices they can find. Therefore, it will benefit private businesses to produce and sell what consumers want and to do this at the lowest possible prices. To keep their prices down, private businesses will try to cut back on the costly resources they consume. Thus, the free market, coupled with private property, ensures that the economy is producing what consumers want, that prices are at the lowest levels possible, and that resources are efficiently used. The economic utility of society's members is thereby maximized.

Adam Smith (1723–1790), called the father of modern economics, is the originator of this utilitarian argument for the free market.[48] In his major work, *The Wealth of Nations*, Smith wrote that when private individuals are left free to seek their own interests in free markets, they will inevitably be led to further the public welfare by an **invisible hand**:

> By directing [his] industry in such a manner as its produce may be of the greatest value, [the individual] intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end that was no part of his intention. . . . By pursuing his own interest he frequently promotes that of society more effectively than when he really intends to promote it.[49]

## 3.3.1: The Invisible Hand of Market Competition

Smith's invisible hand is market competition. Every producer seeks to make a living by using private resources to produce and sell those goods that the producer perceives people want to buy. In a competitive market, a multiplicity of such private businesses must all compete with one another for the same buyers. To attract customers, therefore, each seller is forced not only to supply what consumers want but also to drop the price of goods as close as possible to "what it really costs the person who brings it to market."[50] To increase his or her profits, each producer will pare costs, thereby reducing the resources consumed. The competition produced by a multiplicity of self-interested private sellers serves to lower prices, conserve resources, and make producers respond to consumer desires. Motivated only by self-interest, private businesses are led to serve society. As Smith stated the matter in a famous passage in *The Wealth of Nations*:

> It is not from the benevolence of the butcher, the baker, and the brewer that we expect our dinner, but from their regard for their own 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.[51]

## 3.3.2: Government Plays No Role

The best policy of a government that hopes to advance the public welfare, Smith claimed, is to do nothing: to let each individual pursue his self-interest in "natural liberty" so that he is free to buy and sell whatever he or she wishes.[52] Any interventions

### Adam Smith's Market Mechanism

Smith argued that a system of competitive markets allocates resources efficiently among the various industries of a society.[53] He presented a classic supply and demand model.

**Interactive**

**Demand**

The process starts with consumer demand.

- When consumer demand of a certain commodity is high enough that the supply is not enough to meet it, buyers bid the price of the commodity upward until it rises above what Smith called the *natural price* (i.e., the price that just covers the costs of producing the commodity, including the going rate of profit obtainable in other markets).
- Producers of that commodity then reap profits higher than those available to producers of other commodities.
- Higher profits induce producers of those other products to switch their resources into the production of the more profitable commodity.

**Supply**

**Utility**

in the market by government can only serve to interrupt the self-regulating effect of competition and reduce its many beneficial consequences by creating either surpluses or shortages.

## Ethical Application

### Government Intervention

The view that government interventions in the market are not beneficial seems to be the view that Abbott Laboratories adopted when it objected to Thailand's decision to manufacturer Abbott's patented drug. Abbott argued that the high prices it put on its drugs were necessary to recover the high costs of developing them, and if companies could not charge these high prices they would no longer have any incentive to continue developing new drugs, which would induce a shortage of new drug development. When Thailand's government intervened in the drug market by taking Abbott's patented drug, then, it interfered with Abbott's ability to recover its costs and, to some extent, removed Abbott's incentive to continue developing new AIDS drugs, thereby potentially lowering the future supply of new AIDS drugs. Thus, in the long run, the government's intervention in the drug market was hurting its own people. Government interventions in the market, Smith argued, will almost always end up harming consumers.

## 3.3.3: Interpreting Adam Smith

In the early twentieth century, economists Ludwig von Mises and Friedrich A. Hayek supplemented Smith's market theories by an ingenious argument.[54] They argued that not only does a system of free markets and private ownership efficiently serve to allocate resources, it is in principle impossible for the government or any human being to allocate resources with the same efficiency as the market. Human beings cannot allocate resources efficiently because they can never have enough information nor calculate fast enough to coordinate in an efficient way the hundreds of thousands of daily exchanges required by a complex industrial economy. In a free market, high prices indicate that additional resources are needed to meet consumer demand, and they motivate producers to allocate their resources to those consumers. The market thereby allocates resources efficiently from day to day through the pricing mechanism. If a government were to try to do the same thing, von Mises and Hayek argued, it would have to know from day to day what things each consumer desired and what materials each producer would need to produce the countless things consumers desired, and it would have to calculate how best to allocate resources among interrelated producers so as to enable them to meet consumer desires. Von Mises and Hayek claimed that the infinite quantity of detailed bits of information and the astronomical number of calculations that a government would need to make would be beyond its capacity. Thus, not only do free markets allocate goods efficiently, it is impossible for government planners to duplicate their performance.

**COMMODIFICATION, OR HOW FREE SHOULD FREE MARKETS BE?** Although Smith argued that everyone should be left free to buy and sell whatever they want in markets that are free of any government intervention, many have countered that government should be allowed to set limits on what is bought and sold in markets. The word "commodification" was coined by those who suggest that not everything should be turned into a marketable commodity. To "commodify" something is to treat it as, or turn it into, an item that can be bought and sold (a commodity). Should we be free to commodify whatever we want? For example, many people would like the U.S. government to allow the open sale of sexual intimacies, but since selling sex is illegal in all states but Nevada, sex workers secretly market their services online and in the Yellow Pages as escorts. Others would like the government to allow people to freely buy and sell hard drugs (cocaine and heroin) as do Spain, Mexico, Portugal, and Italy.

**THE KEY ASSUMPTION OF PRIVATE PROPERTY** Although Adam Smith did not discuss the notion of private property at great length, it is a key assumption of his views. Before individuals can come together in markets to sell things to one another, they must have some agreement about what each individual owns and what each individual has the right to sell to others. Unless a society has a system of private property that indicates who owns what that society cannot have a free market system. For this reason, Adam Smith assumed that a society with free markets would have a private property system, although he gave no explicit arguments showing that a system of private property was better than, say, a system where all productive resources were owned in common by everyone or by government. Earlier philosophers, however, had provided arguments in support of a private property system that, like Smith's own arguments for free markets, were based on utilitarian considerations. In the thirteenth century, for example, philosopher Thomas Aquinas argued that society should not rely on a property system in which people own all things in common. Instead, society would prosper best if its resources were owned by individuals, who then would have an interest in improving and caring for those resources. A private property system, Aquinas argued,

> is necessary to human life for three reasons. First because every man is more careful to procure what is for himself alone than that which is common to many or to all: since each one would shirk the labor and leave to another that which concerns the community. . . . Secondly, because human affairs are conducted in more orderly fashion if each man is charged with taking care of some particular thing himself, whereas there would be confusion if everyone had to look after any one thing indeterminately. Thirdly, because a more peaceful state is ensured to man if each one is contented with his own. Hence it is to be observed that quarrels arise more frequently where there is no division of the things possessed.[55]

### Commodity Markets: Human Babies and Human Organs

As you might expect, not everyone shares the same opinions on commodification. Here we'll look further into two types of commodity markets: one for human babies and one for human organs. Where will you stand?[56, 57, 58, 59, 60, 61]

**Interactive**

Judge Richard Posner, who sits on the U.S. Court of Appeals for the Seventh Circuit in Chicago, and co-author Elisabeth Landes wrote an article entitled "The Economics of the Baby Shortage." The authors pointed out that more couples who want to adopt a baby exist than babies up for adoption. They suggested that this shortage could be fixed by starting a baby market in which available babies could be sold, and couples who want to adopt babies could buy them.

One argument suggests that Posner and Landes's proposal for expanding the free market for babies is a good idea:

In such a baby market, a shortage of babies would cause their price to rise, and rising prices would lead to more babies being put up for sale and fewer couples stepping up to buy them, which would solve the shortage. Mothers who could not care for their children due to poverty would also benefit.

1 of 5 Previous Next

In the view that Aquinas proposed, private property is not something that is naturally produced when labor is mixed into things, as Locke claims. Instead, private property is a social construct, an artificial, but beneficial, social institution that we create and that can be shaped in numerous ways. These utilitarian arguments in favor of a private property system over a system of common ownership have often been repeated. In particular, many philosophers have repeated the argument that, without a private property system in which individuals get the benefits that come from caring for the resources they own, individuals would have no incentive to improve those resources or make them as productive as possible.[62] A private property system is best because it provides incentives for individuals to invest their time, work, and effort in improving and exploiting the resources they own and whose benefits they know they will personally receive.

***Quick Review 3.3***

**Additional Support for Adam Smith**

- Hayek and von Mises argued that government should not interfere in the market because a government cannot gather and process the vast amount of information necessary to allocate resources as efficiently as a free market.
- Smith, like Thomas Aquinas, assumed that, according to a utilitarian argument, a system of private property would lead to better care and use of resources than would common ownership.

## 3.3.4: Criticisms of Smith's Free Markets

Critics have attacked Smith's classic utilitarian argument in defense of free markets and his assumptions regarding private property on a variety of fronts.

### The Criticism of Unrealistic Assumptions

The most common criticism of Smith's defense of free markets is that the argument rests on unrealistic assumptions.[63, 64]

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**Monopoly Prices Do Not Necessarily Move to Lowest Levels**

Critics claim that Smith's argument assumes that the impersonal forces of supply and demand will force prices down to their lowest levels because the sellers of products are so numerous and each enterprise is so small that no one seller can control the price of a product. This assumption was perhaps true enough in Smith's day, when the largest firms employed only a few dozen workers and a multitude of small shops and individual merchants competed for the consumer's attention. However, today many industries and markets are completely or partially monopolized, and the small firm is no longer the rule. A monopolized industry is one with a very few sellers. In these monopolized industries, the few large enterprises are able to set their own prices, so it is no longer true that prices necessarily move to their lowest levels. The power of the industrial giants enables them to keep prices at artificially high levels and production at artificially low levels.

Many observers have pointed out that patents create a form of monopoly. When a company is issued a patent for a drug it has developed, it alone has the right to sell that drug, so it has a monopoly in that drug. If the drug is able to cure a prevalent disease, then the company will likely be able to set the price for that drug as high as it wants to set it. In a free market, there are no limits on the price a monopolist can charge for its drugs.

**Producers Do Not Carry All Costs**

**Profit Is Not a Universal Motive**

## Ethical Application

### Monopoly and High Prices

As we saw in the case of Abbott Laboratories, which had patents on certain drugs that could treat AIDS, the price at which the company sold its AIDS drugs was so high that the drugs were out of reach for people in poorer countries such as Thailand. Abbott set the price of its AIDS drug Kaletra, for example, at $7,000 a year in most countries, and at $2,200 a year for Thailand. Other patented AIDs drugs could be sold for as much as $12,000 a year by companies that had patents that gave them a monopoly on those drugs. In monopolized free markets like these, prices do not move to their lowest levels as Adam Smith suggested they would.

**MORALITY, EFFICIENCY, AND JOHN MAYNARD KEYNES** The market system of a society makes humans selfish, and this widespread selfishness then makes us think the profit motive is natural.[65] It is the institutions of capitalism that engender selfishness, materialism, and competitiveness. In actual fact, human beings are born with a natural tendency to show concern for other members of their species (e.g., in their families). A major moral defect of a society built around competitive markets, in fact, is that within such societies this natural benevolent tendency toward virtue is gradually replaced by self-interested tendencies toward vice. In short, such societies are morally defective because they encourage morally bad character.

As for the argument of von Mises and Hayek—that human planners cannot allocate resources efficiently—the examples of the French, Dutch, and Swedes have demonstrated that planning within some sectors of the economy is not quite as impossible as they imagined.[66] Moreover, the argument of von Mises and Hayek was answered on theoretical grounds by socialist economist Oskar Lange, who demonstrated that a "central planning board" could efficiently allocate goods in an economy without having to know everything about consumers and producers and without engaging in impossibly elaborate calculations.[67] All that is necessary is for the central planners to receive reports on the sizes of the inventories of producers and price their commodities accordingly. Surplus inventories would indicate that lowering of prices was necessary, whereas inventory shortages would indicate that prices should be raised. By setting the prices of all commodities in this way, the central planning board could create an efficient flow of resources throughout the economy. Yet, even the critics of von Mises and Hayek must acknowledge that the kind of large-scale planning that has been attempted in some communist nations—particularly the former Soviet Union—has resulted in large-scale failure. It appears that planning is possible only if it is but one component within an economy in which exchanges are, for the most part, based on market forces.

***Quick Review 3.4***
**Criticisms of Smith's and Keynes's Arguments**

- Smith's arguments rest on the unrealistic assumption that there are no monopoly companies.
- Smith's arguments falsely assume that all the costs of manufacturing are paid by the manufacturer, which ignores the costs of pollution.
- Smith's arguments falsely assume that human beings are motivated only by a self-interested desire for profit.

## The Influence of John Maynard Keynes

The most influential criticism of Smith's classical assumptions came from British economist John Maynard Keynes (1883–1946). In turn and over time, elaboration on and criticism of Keynes's theories have evolved as well.

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### The Keynesian Criticism of Adam Smith

Smith assumed that without any help from the government, the automatic play of market forces would ensure full employment of all economic resources, including labor. If some resources are not being used, then their costs drop and entrepreneurs are induced to expand their output by using these cheapened resources. The purchase of these resources, in turn, creates the incomes that enable people to buy the products made from them.

Thus, all available resources are used and demand always expands to absorb the supply of commodities made from them (a relationship now called *Say's Law*). Since Keynes, however, economists have argued that, without government intervention, the demand for goods may not be high enough to absorb the supply. The result is unemployment and a slide into economic depression.

Keynes argued that the total demand for goods and services is the sum of the demand of three sectors of the economy: households, businesses, and government. The **aggregate demand** of these three sectors may be less than the aggregate amounts of goods and services supplied by the economy at the full employment level. This mismatch between aggregate demand and aggregate supply will occur when households prefer to save some of their income in liquid securities instead of spending it on goods and services. When, as a consequence, aggregate demand is less than aggregate supply, the result is a contraction of supply. Businesses realize they are not selling all their goods, so they cut back on production and thereby cut back on employment. As production falls, the incomes of households also fall, but the amounts households are willing to save fall even faster. Eventually, the economy reaches a stable point of equilibrium at which demand once again equals supply, but at which there is widespread unemployment of labor and other resources.

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- Contrary to Smith's view, some government planning and regulation of markets is possible and desirable.
- According to Keynes, Smith wrongly assumed that demand is always enough to absorb the supply of goods.
- Keynes' views were challenged when government spending did not cure high unemployment but created inflation.

## 3.3.5: Social Darwinism

Nineteenth-century social Darwinists added a new twist to utilitarian justifications of free markets by arguing that free markets have beneficial consequences over and above those that Adam Smith identified. They argued that economic competition produces human progress.

Those individuals whose aggressive business dealings enable them to succeed in the competitive world of business are the fittest and, therefore, the best. Just as survival of the fittest ensures the continuing progress and improvement of an animal species, Spencer argued, so too the free competition that enriches some individuals and reduces others to poverty results in the gradual improvement of the human race. Government must not be allowed to interfere with this stern competition because doing so would only impede progress. In particular, government must not lend economic aid to those who fall behind in the competition for survival. If these

### Charles Darwin and Herbert Spencer

The doctrines of **social Darwinism** were named after Charles Darwin (1809–1882), who found that the various species of living things were evolving as the result of the action of an environment that favored the survival of some things while destroying others. Even before Darwin had published his theories, philosopher Herbert Spencer (1820–1903) and other thinkers had already begun to suggest that the evolutionary processes that Darwin described were also operative in human societies.[68, 69]

**Interactive**

**Charles Darwin's Theory**

Darwin said, "This preservation of favorable individual differences and variations, and the destruction of those which are injurious, I have called natural selection or the survival of the fittest." The environmental factors that resulted in the **survival of the fittest** were the competitive pressures of the animal world. As a result of this competitive struggle for existence, Darwin held, species gradually change because only the fittest survive to pass their favorable characteristics on to their progeny.

**Herbert Spencer's Theory**

economic misfits survive, they will pass on their inferior qualities and the human race will decline.

The shortcomings of Spencer's views were obvious even to his contemporaries. Critics were quick to point out that the skills and traits that help individuals and firms advance and survive in the business world are not necessarily those that help humanity survive on the planet. Advancement in the business world might be achieved through a ruthless disregard for other human beings. The survival of humanity, however, may well depend on the development of cooperative attitudes and the mutual willingness of people to help each other.

The basic problem underlying the views of the social Darwinist, however, is the fundamental normative assumption that *survival of the fittest* means *survival of the best.* That is, whatever results from the workings of nature is necessarily good.

The fallacy, which modern authors call the **naturalistic fallacy**, claims that whatever happens naturally is always good. However, it is a basic failure of logic to infer that what is should be and that what nature does is what it ought to do.

In spite of its many shortcomings, many business people today firmly believe in a version of social Darwinism. That is, many business people believe that businesses must compete for their lives in an economic environment in which only the strong will survive. Modern versions of Spencerism hold that competition is good not because it destroys the weak individual, but because it weeds out weak firms. Economic competition ensures that the so-called best business firms survive and, as a result, the economic system gradually improves. The conclusion of modern social Darwinists is the same: government must stay out of the market because competition is beneficial. This is one of the reasons why many business people object to government assistance to troubled businesses, or bailouts. During the last several decades, when very large businesses were failing and it looked like they might have to close and lay off all their workers, the U.S. government stepped in and provided those businesses with enough money to bail them out of their troubles. This happened during the 2008–2009 recession when government provided over $700 billion to prop up dozens of banks, insurance companies, automobile companies, and other businesses. Social Darwinists objected that all this did was preserve weak and inefficient companies that should have been allowed to go under.

***Quick Review 3.5***
**Views of Herbert Spencer**

- Evolution operates in society when economic competition ensures the fittest survive and the unfit do not, which improves the human race.
- If government intervenes in the economy to shield people from competition, the unfit survive and the human race declines, so government should not do so.
- Spencer assumes that those who survive in business are "better" people than those who do not.

## 3.4: Free Trade and Utility: David Ricardo

**OBJECTIVE: Analyze comparative advantage as a foundation for free trade among nations**

We have so far focused on the arguments for and against free markets as they might operate within a single nation. But utilitarian arguments have also been advanced in favor of free trade between nations. Adam Smith's work, *The Wealth of Nations*, in fact, also discussed the benefits of free trade. There he wrote:

> It is the maxim of every prudent master of a family, never to attempt to make at home what it will cost him more to make than to buy. The tailor does not make his own shoes but buys them from the shoemaker. . . . What is prudence in the conduct of every family, can scarce be folly in that of a great kingdom. If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage.[70]

Adam Smith's point here is simple. Like individuals, countries differ in their ability to produce goods. One country can produce a good more cheaply than another and it is then said to have an **absolute advantage** in producing that good. These cost differences may be based on differences in the following:

- labor costs
- workers' skills
- climate
- technology
- equipment
- land
- natural resources

Suppose that because of these differences, our nation can make one product for less than a foreign nation can, and suppose that the foreign nation can make some other product for less than we can. Then, clearly it would be best for both nations to specialize in making the product each has an absolute advantage in producing and to trade it for what the other country has an absolute advantage in producing.

But what if one country can produce everything more cheaply than another country?

### David Ricardo's Example of Comparative Advantage: England and Portugal

British economist David Ricardo (1772–1823) is usually credited with showing that even if one country has an absolute advantage at producing everything, it is still better for it to specialize and trade. In his major work, *On the Principles of Political Economy and Taxation*, Ricardo used the example of England and Portugal to show that even if England is better than Portugal at producing *both* cloth and wine, it is still better for both England and Portugal to specialize and trade.[71, 72]

Interactive

**Foreign Trade from England's Perspective**

According to Ricardo, "England may be so circumstanced, that to produce the cloth may require the labour of 100 men for one year; and if she attempted to make the wine, it might require the labour of 120 men for the same time. England would therefore find it in her interest to import wine, and to purchase it by the exportation of cloth."

**Foreign Trade from Portugal's Perspective**

## 3.4.1: Ricardo's Argument for Comparative Advantage

Ricardo's argument for comparative advantage asks us to imagine a world consisting of only two countries: England and Portugal. We first see that Portugal has an absolute advantage in making both wine and cloth, since it can produce both products more cheaply than England can.

Note that after specializing and trading, both countries have *more* of both products than either had when they did not specialize or trade. Specialization in comparative advantages increases the total output of goods countries produce, and through trade all countries can share in this added bounty.

## 3.4.2: Comparative Advantage and Globalization

Ricardo's ingenious argument has been hailed as the single most important and most meaningful economic discovery ever made. Some have said it is the most surprising and counterintuitive concept in economics. Comparative advantage is, without a doubt, the most important concept in international trade theory today and is at the heart of the most significant economic arguments people make when they argue in favor of globalization. In fact, it is the key argument for globalization and free trade. All the arguments politicians and economists make in favor of globalization and free trade come down to Ricardo's point:

### Comparative Advantage in Foreign Trade

As you go through the data, figure out why and how each country can benefit from foreign trade.

Interactive

| | 100 Barrels of Wine (Cost in Worker-years) | 100 Rolls of Cloth (Cost in Worker-years) |
|---|---|---|
| England | 120 | 100 |
| Portugal | 80 | 90 |

It costs England the labor of 120 workers toiling one year to produce a certain amount of wine (let us arbitrarily assume that amount is 100 barrels), while it costs Portugal the labor of only 80 workers to produce the same amount of wine over the same time. Meanwhile, it costs England the labor of 100 workers for one year to produce a certain amount of cloth (let us arbitrarily assume that the amount is 100 rolls), while it takes Portugal only 90 workers to produce the same amount of cloth over the same time.

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globalization is good because specialization and free trade boost total economic output, and everyone can share in this increased output.

***Quick Review 3.6***
**Free Trade: Support for Globalization**

- Free trade is advocated by Smith, who showed that everyone prospers if nations specialize in making and exporting goods whose production costs are lower for them than those costs are for other nations.
- Free trade is advocated by Ricardo, who showed that everyone prospers if nations specialize in making and exporting goods whose opportunity costs to them are lower than the opportunity costs other nations incur to make the same goods.
- The arguments of Smith and Ricardo provide support for globalization.

## 3.4.3: Criticisms of Ricardo

Although most economists accept Ricardo's basic argument as correct in theory, many question whether his utilitarian argument applies in practice to today's real world. Of course, Ricardo makes a number of simplifying assumptions that clearly do not hold in the real world—such as that there are only two countries making only two products with only a fixed number of workers. But these are merely simplifying assumptions Ricardo made to get his point across more easily, and his conclusion could still be proved without these assumptions.

Other assumptions, however, are not so easy to get around. Ricardo assumed the following:

1. The resources used to produce goods (labor, equipment, factories, etc.) do not move from one country to another. Yet today multinational companies can, and

easily do, move their productive capital from one country to another.

2. Each country's production costs are constant and do not decline as countries acquire new technology or expand their production (i.e., there are no *economies of scale*). But we know that the costs of producing goods regularly decline as companies expand production and develop ever better production technologies.
3. Workers can easily and without cost move from one industry to another (from making wine, for example, to making cloth). Yet, when a company in a country closes down because it cannot compete with imports from another country that has a comparative advantage in those goods, the company's workers are laid off, suffer heavy costs, need retraining, and often cannot find comparable jobs.

These are core reasons why many U.S. workers (and their unions) today reject key aspects of globalization and free trade.

## Ethical Application

### Non-transferability of Jobs

U.S. workers of Swingline had to bear significant burdens and costs when the manufacturer closed its factory in New York and moved to Mexico. A few years later, Swingline workers in Mexico suffered a similar fate when the company moved to China.

**INTERNATIONAL RULES SHIFT THE BALANCE** Finally, and perhaps most important, Ricardo ignored international rule-setters. International trade inevitably leads to disagreements and conflicts, and so countries must agree to abide by some set of rules. Today, the main organization that sets the rules that govern globalization and trade is the WTO, although both the World Bank and the International Monetary Fund also impose rules on countries that borrow money from them. Critics claim that these organizations impose requirements that harm poor developing countries while benefiting the wealthy developed nations and their businesses.

It is difficult to say how telling these criticisms are. Many people today continue to be enthusiastic supporters of global free trade, repeating Ricardo's comparative advantage argument. Many others have become harsh critics of globalization. Indeed, there have been continuing and violent demonstrations against globalization on the streets of cities around the world, many of which have directly affected important meetings of the WTO.

## Ethical Application

### International Rules and Balance

When the World Trade Organization (WTO) rules were being negotiated, poor countries had few patent laws so they had often copied the drugs their people needed, but that U.S. drug companies had developed and patented in the U.S. Abbott Laboratories and other large U.S. drug companies contributed millions of dollars to U.S. politicians and successfully got the U.S. government to seek worldwide acceptance of the patent protections they enjoyed in the United States. As a result, when the WTO agreements were finalized, the United States insisted that all WTO countries had to recognize and enforce drug patents for 20 years. Because developing countries did not have the resources to engage in the expensive research needed to invent new drugs, enforcing drug patents would not benefit them. On the contrary, recognizing drug patents would force developing countries to pay the drug companies for the drugs that they had been freely copying. Nevertheless, developing countries went along with the requirement that they enforce drug patents because the WTO offered them the chance to sell their exports in the markets of the United States and other industrialized nations, by far the largest markets in the world. In the end, the patent rules of the WTO forced the poor people of developing nations to pay about $60 billion a year to the drug companies of the rich industrialized nations.[73] Thailand, as we saw, attempted to get around these expensive requirements by using an exception allowed by the TRIPS rules of the WTO.

# 3.5: Karl Marx and Justice: A Critique of Free Markets and Free Trade

**OBJECTIVE: Interpret Marxist views on the impact on workers of free trade and free markets**

Karl Marx (1818–1883) is undoubtedly the harshest and most well-known critic of private property institutions, free markets, and free trade and the inequalities they may create. Marx lived during the Industrial Revolution. He saw all around him the wrenching and exploitative effects that industrialization had on the laboring peasant classes of England, Europe, and the rest of the world. In several works, he described the suffering and misery that capitalism was imposing on its workers: exploitative working hours, pulmonary diseases and premature deaths caused by unsanitary factory conditions, 7-year-olds working 12 to 15 hours a day; 30 seamstresses working 30 hours without a break in a room made for 10 people.[74]

Marx claimed that worker exploitation was merely a symptom of the underlying extremes of inequality that capitalism produces. According to Marx, capitalist systems offer only two sources of income: sale of one's own labor and ownership of the *means of production* (the buildings, machinery, land, and raw materials by means of which we produce goods and services). Because workers cannot produce anything without access to the means of production, they are forced to sell their labor to the owner in return for a wage. The owner, however, competes against other businesses and so tries to minimize all his costs, including the cost of labor. The owner lowers wages to the point where workers receive only what they need to subsist. Workers therefore do not receive the full value of their labor. The difference (or "surplus") between the full value of their labor and the subsistence wages they receive is retained by the owner and is the source of the owner's profits. Thus, the owner is able to exploit workers by appropriating from them the surplus they produce, using as leverage ownership of the means of production. As a result, those who own the means of production gradually become wealthier, and workers become relatively poorer. Capitalism thus promotes an inequality that is inconsistent with justice.

Marx, however, did not use the term *unjust* to describe the way the capitalist takes the surplus value that workers produce. In fact, he claimed that the terms *just* and *unjust* are generally used by capitalists to describe what is, and what is not, in their own interests. The capitalist, he wrote, will even "assert that the present-day distribution is 'fair.'"[75] So the terms *just* and *unjust*, and *fair* and *unfair*, Marx asserted, are nothing more than "obsolete verbal rubbish" and "ideological nonsense."[76] Instead of saying that the surplus value the capitalist takes from workers is an "injustice," Marx said that it is "robbery," "theft," "embezzled," "usurped," and "the loot of other people's labor." So although Marx did not use the term *injustice*, it is clear from his use of these other terms (*robbery*, *theft*, etc.) that he thought it was in fact unjust for the capitalist to take the surplus value that workers produced.[77]

### Marx's View on Alienation

According to Marx, capitalist economies alienate workers in four ways.[78, 79, 80, 81, 82, 83, 84]

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**1. Capitalist Economies Alienate Workers from Their Own Productive Work**

In capitalism, a worker is forced to work for someone else and serves under the supervision and control of someone else. Because the purpose of his work is to make money for the owner of his workplace, it is not designed to be a fulfilling form of productivity and to satisfy his own needs:

> In what, then, consists the alienation of labor? First, in the fact that labor is external to the worker, i.e., that it does not belong to his nature, that therefore he does not fulfill himself in his work, but denies himself in it, has a feeling of misery rather than satisfaction, does not develop freely his mental and physical energies but is physically exhausted and mentally depressed . . . His labor, therefore, is not voluntary, but forced—forced labor. It is not the gratification of his need, but only a means to gratify needs outside his work. Its alien nature shows itself clearly by the fact that work is shunned like the plague as soon as no physical or other kind of coercion exists. Lastly, the external character of labor for the worker appears in the fact that it is not his own, but someone else's, that it does not belong to him, that in it he belongs, not to himself, but to another.

**2. Capitalist Economies Alienate Workers from the Products of Their Labor**

**3. Capitalist Economies Alienate Workers by Denying Them Control**

**4. Capitalist Economies Alienate Workers from Themselves**

## 3.5.1: Alienation

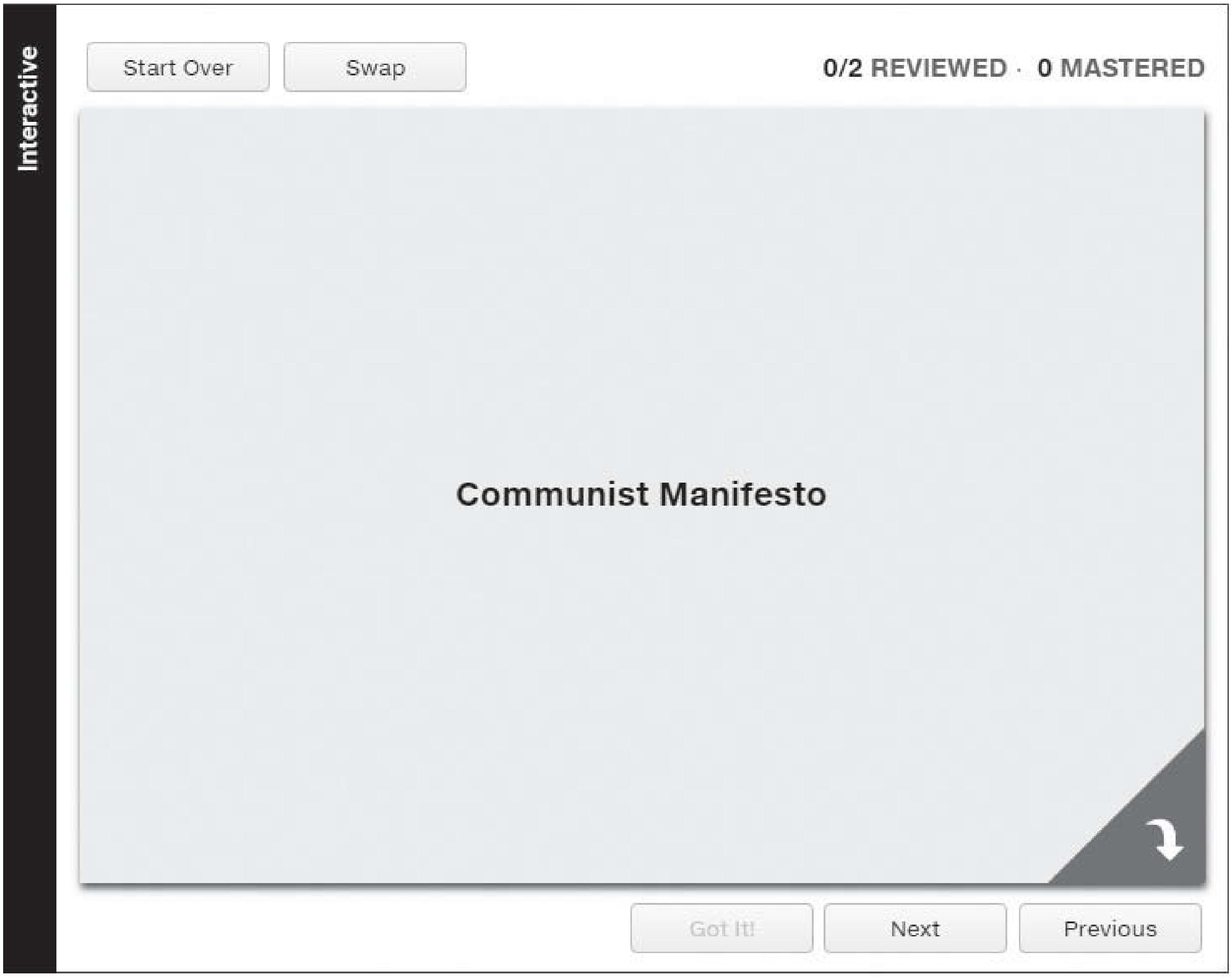
The living conditions that capitalism imposed on workers contrasted sharply with Marx's view of how human beings should live. In Marx's view, capitalism and its private property system creates *alienation* among workers. Marx used the term *alienation*—which means separation or estrangement—to refer to the condition of being separated or estranged from one's own true self or one's own true nature. Marx believed that it was the nature of a human being to be self-determined and able to satisfy one's true needs; that is, to be in control of one's life and able to fulfill one's true human needs. If a person lost control over her life and the ability to be fulfilled through the satisfaction of her human needs and was instead controlled by some external power and forced to meet its needs, this person was alienated from her own nature. Marx's fundamental criticism of capitalism was that it alienated workers by robbing them of control of their lives and forcing them to satisfy needs that were not their own.

**A PRICE ON EVERYTHING** A key cause of alienation, Marx claimed, was the way that capitalist societies come to see everything in terms of their market prices.

Marx might have pointed out that when the managers of Swingline considered moving the factory to Mexico, they did not think about their relationships with their workers. All that mattered to them was whether they would make more money in New York or in Mexico. Instead of thinking about their connection to the people around them, these managers used an "egotistical" calculation to figure out whether the cash payment of moving to Mexico was greater than the cash payment of staying in New York.

### The Communist Manifesto and Commodity Fetishism

Human interactions, Marx claimed, have been so commercialized and turned into commodities that everyone and everything has its price.[85]



# On the Edge

## Marx's Children

The International Labor Organization estimates that 218 million children work today. In developing countries, child workers are common. In the soccer ball industry, for example, child labor continues to be used to stitch soccer balls together in spite of a 1997 industry agreement to end the use of child workers. A 2010 report of the International Labor Rights Forum indicates that child labor occurs in China and India where stitching is done in workers' homes and not in a factory. Geeta, a 12-year-old girl stitcher from Kamalpur in India said, "I have been stitching footballs for as long as I can remember. My hands are constantly in pain. It feels like they are burning."[86] Children must work in a hunched position for five to seven hours to make two soccer balls for 3–4 rupees per ball (a total of 7.5 to 10 cents). Nike, Adidas, and Puma are among the largest companies that buy soccer balls from Indian manufacturers.

### WRITING PROMPT

**Relevance of Marx Today**

1. How would Marx explain why there is so much child labor in the world today?
2. What ethical obligations do companies have in order to deal with these issues? Why?

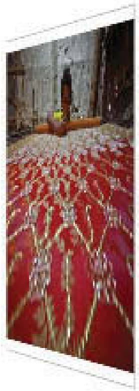
▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

### Child Labor Today

The terrible conditions under which workers—particularly child workers—of the nineteenth century had to labor inspired much of Marx's writing. Yet many of these conditions continue today.[87, 88]

Interactive



**Agriculture**

Vintage photo of child workers in China. According to Human Rights Watch, U.S. farm companies have children and teens working for them today.

### Economic Structure and Social Superstructure

The economic structure of a society, according to Marx, consists of the materials and methods it uses to produce its goods and the way it organizes itself to produce those goods. In addition to its economic structure, a society also consists of what Marx called a *social superstructure*, which is made up of society's institutions and fundamental values. Ultimately, history is shaped by economic forces.[89, 90, 91, 92]

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**Economic Structure: Forces of Production**

Marx refers to the materials (land, labor, natural resources, machinery, energy, technology) a society uses to produce its goods as its *forces of production*. The societies of the Middle Ages, for example, were agricultural societies in which the forces of production were primitive farming methods, manual labor, and hand tools. In modern industrialized societies, the forces of production are factories; assembly-line manufacturing techniques; steam, electricity, nuclear power, and other power sources; and machinery.

**Economic Structure: Relations of Production**

**Economic Structure: Social Classes**

**Social Superstructure: Political and Social institutions**

**Social Superstructure: Influence on History**

**Social Superstructure: Historical Materialism**

## 3.5.2: Historical Materialism

Marx did not believe that what was happening to workers in capitalist societies was an accident. He argued, in fact, that the position of workers in modern capitalist societies was the inevitable result of certain historical and economic forces. Given the nature of modern industry, he claimed, it was inevitable that workers should find themselves being exploited by the capitalist owners of the factories in which they were forced to labor. To support his claim, Marx offered a breathtakingly comprehensive analysis of society, which we can only sketch here.

Marx argued that every society has two main components:

- an economic structure
- a social superstructure[93]

## 3.5.3: Immiseration of Workers

Marx claimed that so long as capitalism remained the dominant economic system of modern societies, the lives of workers would not improve. In fact, he claimed, their lives would only get worse. The combined effects of increased concentration, periodic economic downturns, rising unemployment, and declining wages are what Marx refers to as the *immiseration of workers*. The conditions leading to immiseration of workers include the following:

1. Modern capitalist systems inexorably move toward an ever greater concentration of ownership in a relatively few hands.[94] As owners try to expand their businesses so that they can better compete against other businesses, smaller firms are gradually taken over by larger ones. Thus, economic power and

wealth become concentrated in ever fewer hands, increasing inequality.

2. Capitalist societies must inevitably experience cycles of economic downturns.[95] Because workers are organized into mass assembly lines, businesses can produce large amounts of goods. As these businesses compete with one another, each tries to produce as much as possible. As a result, firms periodically produce an oversupply of goods. These flood the market, and an economic depression or recession results as the economy slows down to absorb the surplus.
3. Marx argued that the pressures of competition lead businesses to do whatever they can to reduce their costs. To reduce their costs, they continually try to reduce the wages of workers, resulting in a gradual fall in wages.[96] Competitive pressures also lead owners to replace workers with cheaper machines, thereby creating rising unemployment.

The solution to conditions leading to the immiseration of workers, Marx believed, was collective ownership of society's productive assets and the use of rational planning to replace unregulated markets (see Table 3.2).

***Quick Review 3.7***
**Marx on Private and Productive Property**

- Private ownership of the means of production, or private property, is the source of the worker's loss of control over work, products, relationships, and self.
- Productive property should serve the needs of all and should not be privately owned, but owned by everyone.

**CLASSLESS SOCIETY AS SOLUTION** Marx's answer to capitalism is captured by the popularized statement with which he ends his most famous work, the *Communist Manifesto*: "Workers of the world, unite!" The problems of capitalism arise from the conflict between classes—between the owner class and the worker class—so the only real solution is to get rid of classes. In other words, the way to overcome capitalism is to wipe away its class system and, in its place, establish a classless society. To get to the classless society, Marx thought, required a revolution in which the workers would overthrow capitalist owners. He wrote that workers could achieve their ends "only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communist revolution. The workers have nothing to lose but their chains."[101]

In the classless society, Marx thought, the means of production would no longer be an owner's private property, but would be collectively owned by all workers. Everyone would contribute according to his or her abilities, and receive according to his or her needs. This would be a society without exploitation, unemployment, poverty, and without inequality. It would be a society "where nobody has one exclusive sphere of activity but each can become accomplished in any branch he wishes, [where] society regulates the general production and thus makes it possible for me to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticize after dinner, just as I have a mind, without ever becoming hunter, fisherman, herdsman or critic."[102]

**Table 3.2** Private and Productive Property

Marx did not hesitate to make clear that his views implied that private ownership of the means of production was wrong.[97, 98, 99, 100]

| | Marx's View | Explanation |
|---|---|---|
| **Private property** | A private property system that allows private control of productive property, he held, is the basis of the alienation, inequalities, and immiseration that characterize capitalist societies:<br><br>You are horrified at our intending to do away with private property. But in your existing society private property is already done away with for nine-tenths of the population; its existence for the few is solely due to its non-existence in the hands of those nine-tenths. You reproach us, therefore, with intending to do away with a form of property, the necessary condition for whose existence is the non-existence of any property for the immense majority of society. | Marx did not suggest that he wanted people to do away with private ownership of their clothes, houses, or food. That is, he did not object to "the power to appropriate the products of society." However, he did object to private ownership of factories, companies, mines, farms, and other productive property (i.e., the private ownership of *capital*). |
| **Productive property** | Productive property should benefit everyone, and so it should be owned by everyone. To the utilitarian argument that without private ownership of productive assets there would be no incentive for individuals to work, Marx replied:<br><br>It has been objected that upon the abolition of private property all work will cease and universal laziness will overtake us. According to this, bourgeois society ought long ago to have gone to the dogs through sheer idleness; for those of its members who work, acquire nothing, and those who acquire anything, do not work. | Marx held that productive property should be seen as having a social purpose: it belongs to the whole community and should serve the needs of all. Productive property should not be private, but should be held in common and its fruits enjoyed by all. Marx believed that if there were no private ownership of the means of production, people would still continue to lead productive lives because their desire to be productive and to express themselves through what they make with their hands and minds is an instinct that is built into their very nature. |

***Quick Review 3.8***
**Marx on Immiseration of Workers**

- Capitalism concentrates industrial power in the hands of a few who organize workers for mass production.
- Mass production in the hands of a few leads to surplus, which causes economic depression or recession.
- Factory owners replace workers with machines, which creates unemployment; they keep wages low to increase profits.
- The combined effects of the above cause immiseration of workers.
- The only solution is a revolution that establishes a classless society where everyone owns the means of production.

## 3.5.4: Critics' Views on Karl Marx's Criticisms

Criticisms of Karl Marx include the proposition that principles of justice are hard to define and that justice requires free markets. Some believe that the benefits of private property and free markets are more important than equality, while others see free markets as able to encourage community instead of causing alienation. Still others argue that immiseration of workers has not occurred.[103, 104]

***Quick Review 3.9***
**Criticisms of Marx**

- Marx's claims that capitalism is unjust are not provable.
- Justice requires free markets.
- The benefits of private property and free markets are more important than equality.
- Free markets can encourage community instead of causing alienation.
- Immiseration of workers has not occurred; instead, their condition has improved.

### Explaining Critics' Viewpoints

There are five distinct criticisms of Karl Marx's worldview, and each are explained here.

Interactive

**Principles of Justice Are Difficult to Define**

Critics have answered the Marxist criticism that free markets generate unjust inequalities by arguing that Marx wrongly assumes that justice means either equality or distribution according to need. This assumption is unprovable, some of his critics have claimed. There are too many difficulties in this way of establishing acceptable principles of justice. Should distributive justice be determined in terms of effort, ability, or need? These questions cannot be answered in any objective way, critics claim, so any attempt to replace free markets with some distributive principle will, in the final analysis, be an imposition of someone's subjective preferences on other members of society. Such an imposition, of course, would violate the (negative) right every individual has to be free of the coercion of others.

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# 3.6: The Mixed Economy, New Forms of Property, and the End of Marxism

**OBJECTIVE: Explain the mixed economy and redefinitions of property that affect the business system**

The debate for and against free markets, free trade, and private property continues. Some people have claimed that the collapse of several communist regimes at the end of the twentieth century showed that capitalism, with its emphasis on free markets, is the clear winner.[105] Other observers, however, have held that the emergence of strong economies in nations that emphasize government intervention and collectivist property rights, such as China and Singapore, shows that free markets alone are not the key to prosperity.[106]

## 3.6.1: The Mixed Economy

Perhaps it is inevitable that the controversy over free markets has led many economists to advocate retention of market systems and private ownership, but with modification of their workings through government regulation that rid them of their most obvious defects. The resulting combination of government regulation, partially free markets, and limited property rights is appropriately referred to as the **mixed economy**.[107]

Basically, a mixed economy retains a market and private property system but relies heavily on government policies to remedy their deficiencies. Government transfers (of private income) are used to get rid of the worst aspects of

### How Effective Are Mixed Economy Policies?

A comparison of the United States with other countries that have gone farther down the road toward implementing the policies of a mixed economy may be helpful. Sweden, Denmark, Norway, France, Ireland, and Switzerland are all mixed economies with high levels of government regulation. Statistics are readily available comparing these countries to the United States.[108]

Interactive

**Comparative Statistics**

To begin with, the United States has greater inequality than Sweden, Denmark, Norway, France, Ireland, or Switzerland. Based on the *CIA World Factbook* for 2015, the top 10 percent of all U.S. households receive 15 times as much income as the bottom 10 percent; however, in Sweden the ratio is 6 times, in Norway it is 5 times, in France it is 7 times, in Ireland it is 9 times, and in Switzerland it is 2.5 times. According to the CIA figures, the infant mortality rate of the United States (6.17 deaths per 1,000 live births) is higher than that of Ireland (3.7 deaths), Denmark (4.1 deaths), Switzerland (3.73 deaths), France (3.31 deaths), Ireland (3.74), and Sweden (2.6 deaths). The life expectancy at birth in the United States (79.56) is less than in Ireland (80.56), Norway (81.6), Switzerland (82.39), Sweden (81.89), and France (81.66).

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inequality by drawing money from the wealthy in the form of income taxes and distributing it to the disadvantaged in the form of welfare payments or social services. Minimum wage laws, safety laws, union laws, and other forms of labor legislation are used to protect workers from exploitation. Monopolies are regulated, nationalized, or outlawed. Government monetary and fiscal policies attempt to ensure full employment. Government regulatory agencies police firms to ensure that they do not engage in socially harmful behavior. How effective are these sorts of policies?

## 3.6.2: Property Systems and New Technologies

Debates have also swirled around the proper balance between property systems that emphasize Lockean notions of private ownership and those that emphasize socialist notions of collective ownership. Nowhere has this debate been more contentious than in regard to the new forms of **intellectual property** that modern technologies—such as genetic engineering and information technologies—have created.

> ***Intellectual property* is property that consists of a nonphysical object, such as a software program, a song, an idea, an invention, a recipe, a digital image or sound, a genetic code, or any form of information.**

Unlike physical objects, intellectual property is nonexclusive. That is, unlike physical objects, one person's use of intellectual property does not exclude another person's simultaneous use of that property.

A physical object such as a house, a pizza, a car, or a square yard of land can be used only by one or a few parties

### Intellectual Property Rights

What sort of property systems should societies adopt to determine ownership rights for intellectual property?[109]

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**Arguments based on the Lockean or the Utilitarian View**

On one side are those who take either the Lockean or the utilitarian view that intellectual property should be treated as private property. Those who take a Lockean view argue that if I create a software program or a song, then it should be treated as my private property simply because it is a product of my own mental labor. If anyone tries to use or copy my program or song without my permission, they are violating my natural property rights. Utilitarians may also argue for private ownership of intellectual property, but for different reasons. Utilitarians can argue that private ownership of intellectual property provides a necessary incentive for people to work hard at generating new intellectual creations. It takes a lot of hard work for a company like Microsoft to create a word-processing program or for a musician to create an original piece of music. Companies and individuals would not put forth these efforts nor make these investments if they could not profit from their creations by being given rights of ownership that allow them the exclusive right to copy their creations and prevent others from making copies without their permission. Without such private property rights, intellectual creation would dry up.

**Arguments based on Karl Marx's Views**

**Other Arguments**

at any single time, and what one party uses or consumes of the object cannot be used or consumed by another person. In contrast, intellectual property such as a song, an idea, or a piece of information can be copied, used, or consumed by countless individuals at the same time. If you create a digital program or image and store it on your computer, others can come along and make millions of exact copies of that program or image that work and look exactly like your original. Those millions of exact copies can be used and enjoyed by millions of people without limiting your own ability to use or enjoy your original copy.

**CREATING INTELLECTUAL PROPERTY RIGHTS** The property system for intellectual property in the United States is still evolving, although in many respects it tends more toward a Lockean/utilitarian system than a Marxist/**socialist** one.

Many people argue that patents and copyrights prevent others from developing improved versions of protected software or from taking advantage of key new drug discoveries—an argument that appeals to a kind of Marxist view that property should serve the good of the community. Yet, others counter that patents expire too quickly and that new inventions should remain the private property of the inventor for much longer—a view with Lockean connotations. The property debate between Locke and Marx thus continues to simmer.

## Copyrights and Patents

In the United States, an important distinction is made between an *idea* and the *expression* of the idea. Ideas cannot be owned nor become private property, but remain the common property of everyone. A particular expression of an idea, such as the text, words, or software used to express the idea, can be granted a *copyright*, which is a legally protected exclusive right to copy, publish, perform, record, or license a written, musical, or artistic work. A second way of creating property rights for intellectual property is through a patent, which is an exclusive right granted by a government to make, use, or sell an invention for a specific period of time.[110]

Interactive

**What Does a Copyright Indicate?**

A copyright indicates that a particular expression of an idea is the private property of an individual or a company. Any tangible text or expression (i.e., one that can be physically seen, touched, or heard) can be copyrighted, including books, magazines, newspapers, speeches, music, plays, movies, radio and television shows, maps, paintings, drawings, photos, greeting cards, sound recordings on any media, software programs, and the masks used to imprint computer circuits.

In a Lockean fashion, U.S. law says that registering a copyright with the government does not create the copyright, but that mere authorship of a work creates a copyright (i.e., ownership or property) in the work. Nevertheless, copyrights of things authored today expire 120 years after their creation or 95 years after publication, and then, like ideas, become common or public property.

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## On the Edge

### Napster's Lost Revolution

When 18-year-old Shawn "Napster" Fanning, then a freshman at Northeastern University, founded Napster, Inc. in 1999, he started a property revolution. In college, Fanning developed software and a website through which users could connect to each other and then download for free the copyrighted music they had to pay for in stores. Many students felt the music they downloaded belonged to everyone and that copying was okay because it did not affect the original. Two music industry groups sued Napster, however, claiming that through its website Napster was helping others steal their property and that if music property rights were not respected, musicians would have no incentive to produce music. On February 12, 2001, the courts ruled that Napster's website actively contributed to copyright infringement and in 2002, the company was forced to block users from downloading copyrighted music.

But Napster had paved the way for the development of decentralized peer-to-peer file-sharing software that let users connect to each other and download music files directly from each other; some entrepreneurs that have carried out this mission are Grokster, StreamCast, Freenet, Gnutella, eDonkey, Kazaa, Poisoned, Morpheus, BitTorrent, and LimeWire.

Several music companies sued Grokster and StreamCast. In 2004, a federal district court ruled that because Grokster and StreamCast programs let users connect directly to each other without going through their website, neither Grokster nor StreamCast could control what users did with their program. The music companies now turned to suing individual downloaders. One victim remarked, "It scares me. You have no power against these people."

Moreover, the music companies appealed the Grokster/StreamCast decision to the U.S. Supreme Court. On June 23, 2005, the Supreme Court ruled that both Grokster and StreamCast had created their peer-to-peer software with the "intent" of "inducing" consumers to download copyrighted materials and so violated the laws protecting copyrights. In 2007, StreamCast was ordered to distribute new software that blocked users from downloading copyrighted material. Nevertheless, people continued to download copyrighted materials by turning to other providers of peer-to-peer software such as BitTorrent, Gnutella, and LimeWire. But record companies sued LimeWire in 2006, and on May 12, 2010, a Manhattan District Court ruled LimeWire had committed copyright infringement and induced others to do so as well. BitTorrent, anxious to change its business model, announced on February 25, 2007, that it would sell legal video material on its website. But on November 7, 2008, BitTorrent fired half its employees, and said it would now concentrate on distributing video games. The company to this day (2016) continues to distribute its BitTorrent client software from its site at Bitorrent.com. PirateBay, a file-sharing website in Sweden, also continued to hold out, although on April 17, 2009, its founders were sentenced to prison for a year and fined $3.6 million for assisting in illegal copying. Other members of the PirateBay community, however, stepped in and continued to operate the site. In spite of being hassled by periodic police raids, thepiratebay.org is still operating today.

#### WRITING PROMPT

**Musical Ethics**

1. Even if what Napster, Grokster, StreamCast, LimeWire, and PirateBay did was illegal, was it unethical? Explain why or why not.
2. Should we treat digitized entertainment like online music, movies, or games in the way that Locke said property should be looked at, or like Aquinas said property should be looked at, or like the collectively owned property that many socialists advocate? How does the kind of free downloading that Napster, Grokster, StreamCast, LimeWire, and BitTorrent made possible fit with each of these three views on property?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## 3.6.3: The End of Marxism?

Defenders of free markets were greatly encouraged by what some called the complete abandonment of communism in several formerly communist nations, particularly the countries of the former Soviet Union. On September 24, 1990, the Soviet legislature voted to switch to a free market economy and to scrap 70 years of communist economics that had led to inefficiencies and consumer shortages. Then, during the summer of 1991, the Communist Party was outlawed after party leaders botched an attempt to take over the Soviet government. The Soviet Union broke up, and its reorganized states discarded their radical Marxist-Leninist ideologies in favor of worldviews that incorporated both socialist and capitalist elements. The new nations embarked on experimental attempts to integrate private property and free markets into their still heavily socialist economies. Some observers, Francis Fukuyama in particular, hailed these developments as indicating "the end of history."[111] What Fukuyama and others were suggesting is that, with the end of communism, there will be no more so-called progress toward a better or more perfect economic system: the whole world now agrees that the best system is capitalism.

Those historic communist reforms, however, did not signal the complete abandonment of Marxism or **socialism**. Without exception, all of these reforms have been aimed at moving communist systems toward economies that are based on the best features of both socialism and capitalism. They have, in short, been aimed at moving the communist countries toward the same kind of mixed economy system that dominates Western nations. The debate today in the formerly communist world as in the United States is over the best mix of government regulation, private property rights, and free markets, and not over whether a pure market system is better or worse than a pure command system.

Followers of Smith and Locke continue to insist that the level of government intervention tolerated by the mixed economy does more harm than good. Their opponents continue to counter that, in our mixed economy, government still favors business interests and that allowing businesses to operate without regulatory oversight worsens our economic problems. On balance, however, it may be that the mixed economy comes closest to combining the utilitarian benefits of free markets with the respect for human rights, justice, and caring that are the characteristic strengths of government regulation.

## Web Resources

Readers interested in researching the topic of globalization can find on the web both introductory discussions of globalization (*http://www.globalization101.org*) and more in-depth discussions (*http://yaleglobal.yale.edu/globalization*); statistics and data on globalization are also available (*http://globalization.kof.ethz.ch*); the web also has materials on Locke (*http://www.libraries.psu.edu/tas/locke/*), Marx (*https://www.marxists.org* ), Smith (*http://www.adamsmith.org* and *http://oll.libertyfund.org/pages/smith*), and Ricardo (*http://oll.libertyfund.org/pages/ricardo*)

### SHARED WRITING

**Contemporary Application**

Consider this statement: "Locke's views on property, Smith's views on free markets, and Marx's views on capitalism obviously do not hold true when applied to contemporary corporations." Do you think this statement is completely true, partly true, or completely false? Why? In what ways, if any, do you think Locke, Smith, and Marx would want to change the way contemporary corporations operate?

A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit

0 characters | 140 minimum

### SHARED WRITING

**Evaluate the U.S. Economic System**

Consider this statement: "Equality, justice, and a respect for rights are characteristics of the U.S. economic system." Would you agree or disagree with this statement? Why?

A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit

0 characters | 140 minimum

## Case Study 3.1: The GM Bailout

By mid-December 2008, GM, the world's second largest auto manufacturer, was losing $2 billion a month. Rick Wagoner, CEO since 2000, knew that GM did not have enough money to survive much longer. The year 2008, GM's 100th anniversary, was turning out to be its worst ever.[1] Wagoner already knew GM would end the year with losses of about $31 billion. But that was an improvement from 2007 when the company lost $38.7 billion, the fourth-biggest corporate loss in history. Those losses, and losses of $1 billion in 2006 and $10 billion in 2005, meant that the company Wagoner led lost an astonishing $80 billion in four years.

Wagoner was a dedicated, affable, and likable man. In high school, he had excelled in all sports but, at 6′4″, his height made him a star in basketball. Upon graduation, he was secretly hoping to become a professional basketball player. As a freshman basketball player at Duke University, it became clear to Wagoner that he did not have the talent and drive to be a professional athlete. Instead, he majored in economics and also began dating Kathleen Kaylor, whom he eventually married. After graduating from Duke and getting an MBA from Harvard University, Wagoner went to work for GM. He rapidly worked his way up through the company's ranks. In 2000, Wagoner was named CEO, the youngest person to ever hold that position in the company's history.

### The Company's Crisis

CEO Wagoner blamed GM's misfortune on a number of factors. One of the most significant factors, he felt, was the "Great Recession" of 2008 that had hurt the sales of all the auto companies, particularly when the troubled banks stopped lending money, so customers could no longer get car loans. Unfortunately, GM did not anticipate the credit crunch, and by 2006, it had sold off a controlling interest in GMAC, the previously wholly owned finance company that had provided cheap loans to its car buyers. After GM sold 51 percent of GMAC to Cerberus for

$7.4 billion, Cerberus refused to let GMAC continue providing the same easy credit to GM's customers, which turned out to be a significant blow to GM's sales.

Yet another problem was GM's labor costs. In 2008, GM was paying an average of about $70 per hour for labor. That $70 included $30 that the worker actually received in wages, and $40 that went to fund other labor costs including the worker's benefits and pension, plus the cost of providing health care and pensions to about 432,000 GM retirees. Because GM had been operating for 100 years, the number of its retirees was much larger than those of new car companies. Toyota, for example, was paying about $53 per hour for labor in its U.S. manufacturing plants, of which $30 went to the worker as wages, and $23 went to pay for the worker's benefits and pension, but very little for retirees since the number was relatively low. In some of its plants, a Toyota spokesman said, it was paying as little as $48 per hour for labor.

But perhaps the major cause of GM's difficulties was its self-inflicted dependence on large SUVs (sport utility vehicles). Japanese automakers could make small and mid-sized cars for less than it cost GM to make comparable cars. To compete, GM had to lower its prices until the profit margins on its small and mid-sized cars were vanishingly thin. But during the 1980s, when gas was cheap, GM discovered that large SUVs were big hits with male customers and with couples with growing families. Moreover, unlike its smaller car models, profit margins on its large SUVs were hefty, as much as $10,000 to $15,000 per vehicle. As its SUV sales boomed during the 1990s, GM expanded its line and eagerly converted many of its plants over to the production of the lucrative big vehicles. By 2003, the bulk of its profits were coming from SUV sales. But when the price of gasoline gradually crept upward, the costs of owning an SUV also increased, causing the SUV market to slow and then to decline. In 2004, unsold SUVs started piling up at car dealerships. When Hurricane Katrina made gasoline prices soar in 2005, sales of SUVs eventually collapsed. Thus, GM ended 2005 with a loss of $10.4 billion. Things improved somewhat in 2006, but then losses climbed to record levels: $38.7 billion in 2007 and $30.9 billion in 2008. Unfortunately, by now GM's plants, strategic plans, research and development programs, and its mindset were all locked into the production of SUVs, and it would take years to change them.

Because of its reliance on SUVs, GM had put off investing in the small fuel-efficient cars a gas-conscious public had turned to in 2005. In the 1990s, GM had developed the technology for an all-electric car, the EV1. The EV1 was, in fact, the first mass-produced modern electric car made by a major car company. By 1999, GM had spent $500 million producing the EV1 and $400 million marketing it, yet had leased only 800 vehicles. Convinced that the car would never match the profitability of its SUVs, the company stopped making the cars, and in 2002, it repossessed all the EV1s it had leased and phased out the project. At the same time, both Toyota and Honda were introducing their small hybrid electric-gas engine cars into the United States. The hybrids turned out to be a commercial success and, more important, production of the cars allowed both Toyota and Honda to gain almost a decade of experience in hybrid technology, while GM continued focusing on its gas-guzzling SUVs. In a June 2006 interview published in *Motor Trend,* Rick Wagoner confessed that his worst decision during his tenure at GM was "axing the EV1 electric-car program and not putting the right resources into hybrids."[2]

All of these problems had culminated in the $80 billion loss that placed GM in the difficult situation Wagoner knew he had to deal with in the closing weeks of 2008. With many analysts predicting that GM would go bankrupt, banks—which themselves were barely surviving the worse financial crisis in decades—refused to loan the company more money. At the rate it was running through its cash reserves, Wagoner knew the risk of bankruptcy was growing daily. Given the company's dire straits, he decided that only a government bailout could save it.

## The National Crisis

Government bailouts were not popular. In September 2008, the George W. Bush administration asked the U.S. Congress to pass legislation creating a $700 billion fund called the Troubled Asset Relief Program (TARP). A reluctant U.S. Congress approved the TARP bill, which authorized the U.S. Treasury Department to use the funds "to purchase . . . troubled assets from any financial institution." The troubled assets were millions of mortgage loans that banks had extended to home buyers who were now unable to make their monthly mortgage payments, and whose homes were worth less than their mortgages because home prices had collapsed in early 2007. Since the homes were worth less than their mortgage loans, the mortgages could not be repaid in full when delinquent homeowners sold their homes or when banks confiscated them. Suffering huge losses, many U.S. banks were on the verge of failing as were European banks that earlier had taken over thousands of the U.S mortgages that were now in default. Many economists predicted that these widespread bank failures would turn the deepening recession into a global depression worse than the worldwide Great Depression of the 1930s.

In spite of the looming financial crisis, many had opposed the plan to bail out the banks. A hundred leading economists signed a letter to the U.S. Congress that said lack of "fairness" was a "fatal pitfall" of the plan because it was "a subsidy to investors at taxpayers' expense. Investors who took risks to earn profits must also bear the losses."[3] Calling the bank bailouts "socialism for the rich," the Nobel prize-winning economist Joseph Stiglitz wrote, "this new form of ersatz capitalism, in which losses are socialized and profits privatized, is doomed to failure. Incentives are distorted [and] there is no market discipline."[4]

## The Request

Nevertheless, if U.S. banks were able to get bailout money from Washington, perhaps GM could do the same. So Rick Wagoner and two GM board members flew to Washington on October 13, 2008, to meet with officials of President George W. Bush's administration. During the meeting, Wagoner summarized the precarious position of the company and asked for a loan from the TARP fund. Bush's people balked at the request, saying the legislation explicitly said TARP funds were for financial institutions, so they could not be used to provide loans to car manufacturers. Turned down by the administration, a desperate

Wagoner turned to the U.S. Congress. On November 18 and 19, he and the CEOs of Chrysler and Ford—the two other U.S. auto companies were also going through difficult times—came before Congressional committees and asked for legislation authorizing government funds to aid the auto industry. Committee members, however, became angry, particularly when the auto executives admitted they had not prepared plans detailing how they would use the funds nor what changes they intended to make to ensure that they could return to profitability. In the end, the three CEOs were told to come back in December with detailed financial plans for their companies. In early December, the CEOs dutifully returned to the U.S. Congress with plans in hand and repeated their requests for financial assistance. A few days later, both the U.S. House and the Senate proposed legislation to aid the auto companies. Unfortunately, while the House approved the auto aid bill on December 10, the Senate voted it down. Without the support of both the House and the Senate, the proposed legislation was dead.

Wagoner was stunned and despaired for the future of the company he had served for over 30 years. But his despair turned to elation when he got a telephone call from the Bush administration. The administration had decided the U.S. Treasury could, after all, use the TARP funds to provide loans to GM as well as to Chrysler. (Ford had decided it could survive without government money.) On December 19, 2008, President Bush announced that the U.S. Treasury would provide GM with a $13.4 billion loan from the TARP fund, while Chrysler would get a $4 billion loan. In announcing the assistance to the auto companies, the Bush administration declared, "the direct costs of American automakers failing and laying off their workers . . . would result in a more than one percent reduction in real GDP growth and about 1.1 million workers losing their jobs."[5] To get the money, Wagoner had to agree that by February 17, 2009, GM would hand over a detailed plan specifying how it would achieve "financial viability" and the plan had to be acceptable to U.S. Treasury officials. With his back to the wall, Wagoner agreed to the terms and on December 31, 2008, GM got a first installment of $4 billion from its allotted loan amount; it received another $5.4 billion on January 16, 2009, and a final installment of $4 billion on February 17, 2009.

Many objected that bailouts violated the free market philosophy embraced by many Americans and replaced it with a kind of socialism. Republican Senator Bob Corker said the GM bailout "should send a chill through all Americans who believe in free enterprise."[6] Several Republican members of Congress submitted a resolution on the bailouts that said they were "moving our free-market based economy another dangerous step closer toward socialism."[7]

## A New Administration

By February 17, 2009, newly elected President Barack Obama had taken office, and his administration would end up finishing the auto bailout that the previous administration had set in motion. As part of the "viability plan" that he had agreed to submit by February 17, Wagoner was to renegotiate GM's union contracts to make its labor costs competitive with foreign car makers in the United States, reduce the number and models of cars it made, shrink its unsecured debt of $27.5 billion down to $9.2 billion by getting creditors to cancel part of their debt in exchange for GM stock, and invest in fuel-efficient hybrid and electric vehicles.[8]

Wagoner had quickly entered negotiations with the United Auto Workers (UAW), GM's major union, and with creditors. But GM's creditors stubbornly refused to reduce their debt by the amount the government wanted. In the end, GM did not reach the debt reduction targets the U.S. Treasury wanted it to reach by February 17. Nevertheless, in the final "plan for viability" it submitted to the U.S. Treasury on February 17, GM said it would cut 37,000 blue-collar jobs and 10,000 white-collar jobs, close 14 plants over 3 years, eliminate 4 of its 8 car brands, cut manager salaries by 10 percent and all other salaries by 3 to 7 percent, and shift the costs of retiree health insurance to an independent trust funded in part with GM stock and in part with debt. However, as the plan indicated, GM would need an additional $22.5 billion from the government to continue operating to 2011.[9]

The Auto Task Force Obama had put together to review GM's proposed plan was not happy with the plan. Steven Ratner, who headed up the task force said:

> It was clear to us from the "viability plans" that the companies had submitted on Feb. 17 that GM and Chrysler were in a state of denial. Both companies needed gigantic reductions in their costs and liabilities. They had way too many plants and workers for expected car volumes. And their labor costs were out of line with those of their most direct competitors . . . I was shocked by the stunningly poor management that we found, particularly at GM, where we encountered, among other things, perhaps the weakest finance operation any of us had ever seen in a major company.[10]

"Team Auto," as the Obama task force called itself, spent over a month studying the plan and concluded that GM's optimistic assumptions that its market share would grow in the future, its costs would decline, and in a few years it would have positive cash flows were out of touch with reality. On March 30, 2009, the Obama administration told the company that its plan was not acceptable and did "not warrant the substantial additional investments . . . requested." Nevertheless, GM was given 60 days, until June 1, to try to extract deeper concessions from its creditors and was also given another loan of $6.36 billion to carry it through the next two months. Although GM continued trying to work with its creditors, the Obama task force soon realized that the only way GM would force its creditors to forgive GM's debt was by filing for bankruptcy.[11] This would give a federal judge the authority to cancel as much debt as was needed for the company to become a viable business again. On March 31, the U.S. Treasury informed the company's board of directors that if it filed for bankruptcy, the government would provide the funding it would need to emerge as a viable company.

By this time, Rick Wagoner's fate had been sealed. In mid-March, Steven Ratner asked Wagoner about his plans and he replied, "I'm not planning to stay until I'm 65 but I think I've got at least a few years left in me . . . , but I told the [Bush] administration that if my leaving would be helpful to saving General Motors, I'm prepared to do it."[12] On Friday, March 27, Wagoner attended a meeting with the Auto Task Force to discuss GM's restructuring plans. Before the meeting Steven Ratner pulled him aside and said, "In our last meeting you very graciously offered to step aside if it would be helpful. Unfortunately our conclusion is that it would be best if you did that." Wagoner agreed to step down, and on March 30 he submitted his resignation from GM.

## Bankruptcy and Restructuring

On June 1, 2009, GM entered bankruptcy. The U.S. Treasury created a new company named General Motors Company, and the now bankrupt "Old GM" sold its most profitable brands and most efficient manufacturing facilities to the new General Motors Company that used $30 billion of the government's money to buy them. The creditors of Old GM received a 10 percent share of the new company plus proceeds from the sale of the assets of the old company. A 17 percent share of the new General Motors Company was put into a trust to pay for union retiree health care benefits; the union trust also received a $2.5 billion note from the new company and $6.5 billion of its preferred stock. The government of Canada, which had contributed $10 billion to bail out several GM plants in Ottawa and Ontario, got 12 percent of the new company. The remaining 61 percent share of the company became the property of the U.S. government in return for a total of $50 billion it pumped into the enterprise. The U.S. government also retained the right to elect 10 of the 12 members of the board of directors of the New GM. The government was now the major owner of a car company.[13]

GM was not the only firm that became a (partially) state-owned company during the financial crisis. On February 27, 2009, it was announced that in exchange for $25 billion the U.S. Treasury was taking 36 percent ownership of Citigroup, Inc., a large banking company driven to the brink of failure by the financial crisis. On September 16, 2008, American International Group (AIG), an insurance company also brought to its knees by the financial crisis, announced that the government, through its Federal Reserve Bank, was taking ownership of 80 percent of the company in exchange for $85 billion.

## Super Socialism?

Many observers pointed out that the government's new ownership of companies is the kind of government ownership of the means of production that Marx and other socialists advocated. As Robert Higgs, editor of the *Independent Review*, wrote, "the government is resorting to outright socialism by taking ownership positions in rescued firms."[14] The Mackinac Center, a conservative research institute that was focused on promoting "the free market," published an article by Michael Winther that stated:

> There are only two economic systems in the world. . . . These two economic systems are generally described as "the free market" and "socialism." . . . Socialism is characterized and defined by either of two qualities: Government ownership or control of capital, or forced pooling and redistribution of wealth. . . . [T]he current bailout could be described as "super-socialism" because it involves every possible component of socialism: the forced redistribution of wealth, increased government control of capital, and even the extreme of socialism, which is government ownership of capital. Our federal government is not content to just regulate the markets (capital), but is also taking the next step of purchasing ownership interest in previously private companies.[15]

### WRITING PROMPT

**Think Critically about the GM Bailout**

1. In your view, should the GM bailout have been done? Explain why or why not using the ideas of the various thinkers discussed in this chapter. In your view, was the bailout ethical in terms of utilitarianism, justice, rights, and caring?
2. In your judgment, was it good or bad for the government to take ownership of 61 percent of GM? Explain why or why not in terms of the theories of Lock, Smith, and Marx.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

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## Case Notes

1. Tom Krisher and Kimberly S. Johnson, "GM Posts $9.6 Billion Loss," *Associated Press*, February 26, 2009, http://www.thestar.com/Business/article/593350.
2. "Motor Trend", Magazine
3. Justin Wolfers, "Economists on the Bailout," *New York Times*, September 23, 2008.
4. Joseph Stiglitz, "America's Socialism for the Rich," *Guardian*, June 12, 2009.
5. Congressional Oversight Panel, *September Oversight Report: The Use of TARP Funds in the Support and Reorganization of the Domestic Automotive Industry*, September 9, 2009, p. 8.
6. Michael D. Shear and Peter Whoriskey, "Obama Touts Auto Bailout during Michigan Trip," *Washington Post*, July 31, 2010.
7. Molly Henneberg, "Resolution Opposing Bailouts as 'socialism' Airs Rift in GOP," *Fox News*, December 31, 2008.
8. Robert Snell, "GM's Wagoner, UAW's Gettelfinger Interviewed on 'Today,'" *Detroit News*, January 9, 2009; Robert Snell, "Reaction Mixed to GM's Financial Plan," *Detroit News*, January 17, 2009.
9. See General Motors Corporation, *2019-2014 Restructuring Plan*, February 17, 2009, accessed January 19, 2011, http://www.treasury.gov/initiatives/financial-stability/investment-programs/aifp/Documents_Contracts_Agreements/GMRestructuringPlan.pdf.
10. Steven Ratner, "The Auto Bailout: How We Did It," *Fortune Magazine*, October 21, 2009.
11. Ibid.
12. Ibid.
13. General Motors Corporation, 2019-2014 *Restructuring* Plan, p. 13.
14. Chris Mitchell, "The Great Bailout Brouhaha, Free Market Economists Weigh in on Paulson's Plan," *Reason Magazine*, September 25, 2008.
15. Michael R. Winther, "Five Principles That Are Violated by the Bailouts," Mackinac Center for Public Policy, March 13, 2009, accessed September 22, 2016, at http://www.mackinac.org/10363.

# Case Study 3.2: Accolade versus Sega[15]

Accolade, Inc. is a small software company located in San Jose, California, that had prospered by making and marketing games that could be played on Sega game consoles. Its most popular game so far was a game called "Ishido: The Way of Stones." Sega had not granted Accolade a license to make games for its consoles, and Sega derived no income from sales of Accolade's games.

In the early 1990s, Sega marketed a new game console called Genesis, and Accolade engineers discovered that their games would no longer work on the new console because Sega had inserted new secret codes and security devices into its Genesis consoles that prevented other game programs from working on the console except those made by Sega. To get around this problem, Accolade engineers set to work reverse engineering Sega's new console and several of its games.

## Reverse Engineering

Reverse engineering is the process of analyzing a product to discover how it was made and how it works. First, Accolade took several Genesis consoles apart to learn how its security mechanisms worked. Then, Accolade decompiled several of Sega's game programs.

To understand what this involved, it is necessary to understand that the software that makes up a game is produced in a two-step process.

- Engineers write the program for the game using a software language that is easily understood by an engineer who knows the language and that consists of a series of comprehensible instructions such as "GOTO line 5." This version of the program is called the *source code*.
- Once they have finished writing the source code, the engineers enter the source code into a computer that compiles the code, essentially translating it into a machine language consisting of zeros and ones (such as 00011011001111001010). Although the new compiled code is virtually impossible for a human to understand, the series of zeros and ones that make up a compiled code can be read by the game console computer and provides the basic instructions that make the game operate.

Software game programs (and, in fact, all software programs) that are sold in retail stores consist of such compiled code. Decompiling is an attempt to reverse the two-step process through which the program was originally produced. Basically, the compiled or machine code that makes up the software program is fed into a computer that attempts to translate the machine language (i.e., the series of zeros and ones) back into the original source code language (i.e., instructions such as "GOTO line 5") that can be understood by the engineer. The engineer can then examine the new source code and discover exactly how the program works and how it was put together. The process of decompiling is not always completely accurate, and sometimes engineers have to work hard to figure out exactly what the original source code was. Many engineers believe that reverse engineering, particularly decompiling, is inherently unethical.

## Legal Viewpoints

Unethical or not, Accolade engineers succeeded in getting the information they wanted, and with this knowledge they were soon able to write games that would work on Sega's new Genesis consoles. Sega, however, immediately sued Accolade, claiming that the company had infringed on its copyright. Initially, the U.S. District Court in San Francisco agreed with Sega and issued an injunction forcing Accolade to withdraw its Sega-compatible games from the market.

Sega lawyers argued that when Accolade reverse engineered its software programs, Accolade had illegally made copies of Sega's source code. Because this source code was owned by Sega, Accolade had no right to copy or reverse engineer it, and Accolade in effect had stolen Sega's property by doing so. In addition, the new games that Accolade wrote had to include secret codes that were required to allow the software to work on the Genesis console. These secret codes, Sega claimed, were also owned and copyrighted by Sega and so could not be copied by Accolade and inserted into its game programs.

Accolade appealed the decision of the U.S. District Court to a higher court, the Ninth Circuit Court of Appeals. Accolade claimed that the secret codes and security devices that Sega had used and that had to be known to allow games to play on the Genesis console were in effect a public interface standard. An *interface standard* is a standardized mechanism that one kind of product must use if it is to be able to work on another product. (The standard prongs that an electric cord must have if it is to fit into a standard outlet are an example of a simple interface standard.) Such interface standards cannot be privately owned by anyone, but are public property that can be used and duplicated by everyone. It was permissible, Accolade lawyers argued, to duplicate the source code because this was merely a way of getting access to the interface standard on the Genesis consoles. It was permissible for Accolade to include copies of these secret codes in its games because they were public property. Accolade's arguments eventually won out when it appealed the decision of the U.S. District Court in the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals overturned the earlier decision and essentially agreed with Accolade.

However, many legal experts disagreed with the Ninth Circuit Court of Appeals. They felt that Accolade's arguments were wrong and that the company had really stolen Sega's property. The security devices and secret codes that Sega had developed were not like the interface standards that different companies must agree on when working on products that must be compatible with each other. It is true that when companies are working on products that must be compatible with each other—tires that must fit on cars, or electric plugs that must fit into electric sockets—they need to agree on a public standard interface that no one will own, but that everyone will be able to freely use. However, some legal experts have argued, Sega's Genesis console was a product that belonged to Sega alone and for which Sega wanted to be the sole provider of games. Thus, this was not a case of different companies having to reach an agreement over a public standard; it was a case of a single company making use of its own private technology to make its own games. So, critics of the court's decision concluded, there was no public interface standard involved in the Accolade–Sega case.

### WRITING PROMPT

**Think Critically about Accolade versus Sega**

1. Analyze this case from the perspective of each of the theories of private property described in this chapter (i.e., from the perspective of Locke's theory of private property, the utilitarian theory of private property, and the Marxist theory of private property). Which of these views do you most agree with and which do you think is most appropriate for this case?
2. In your judgment, did Accolade go too far in trying to discover the underlying source code of Sega's programs? Does a company have a right to reverse engineer any product it wants?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

### Case Notes

16. This case is based on Richard A. Spinello, "Software Compatibility and Reverse Engineering," *Case Studies in Information and Computer Ethics* (Upper Saddle River, NJ: Prentice Hall, 1997), pp. 142–45.

## Summary

1. The effects of globalization have led many people to question the ethics of free trade and free markets, especially in light of the impact that global free trade has had on workers and poor nations. A key issue is the proper roles of command systems and markets. In the United States, three thinkers historically have been responsible for the prevailing ideologies regarding the relationship between markets and government commands: John Locke, Adam Smith, and David Ricardo. A fourth thinker, Karl Marx, was a critic of capitalist free markets.
2. While John Locke did not directly discuss markets, he did argue that if there were no governments, people would be in a state of nature, in which they would have a natural right to life, liberty, and property. People form governments to protect these natural rights. Governments, therefore, should not take away people's liberty or property, except when necessary to protect others from harm to their lives, liberty, or property. Many thinkers have used Locke's views to argue that government should not interfere with the freedom of people to exchange their property in markets. Critics of Locke have countered that Locke did not show that people have these natural rights and that, even if such rights existed, they would not override all other rights. Critics also argued that free markets create inequalities and that Locke's assumption of people as atomistic individuals was incorrect.
3. Adam Smith used a utilitarian argument to support his view that government should not intervene in the free market. He argued that the invisible hand of market competition would lead market sellers to provide what consumers need at the lowest "natural price." Moreover, a system of competitive free markets would lead producers to use their resources as efficiently as possible. If government interferes with these free market forces, he argued, it would only reduce the efficiency of markets, leaving everyone worse off. Smith assumed that the kind of society he was discussing had a private property system, a type of system that earlier thinkers such as Thomas Aquinas had favored. Later economists such as Ludwig von Mises and Friedrich A. Hayek supported Smith by arguing that governments cannot allocate resources as efficiently as the free market does. Critics of Smith have argued that Smith did not consider the power of large companies or the monopolies created by patents, that he ignored external costs, and that he wrongly assumed that all humans are fundamentally self-interested. Economist John Maynard Keynes criticized Smith's claim that government intervention always makes things worse. Keynes argued that during economic depressions, aggregate demand is not sufficient to absorb an economy's aggregate supply of goods, and government spending must then make up for the deficit in order to lead the way out of the depression.
4. David Ricardo focused on free trade between nations and, like Smith, used a utilitarian argument in his defense of free trade. In what has been called the single most important argument in the history of economics, Ricardo introduced the concept of comparative advantage. He argued that if each country specializes in producing what it can make more efficiently than other countries and traded for what other countries made more efficiently, then all countries would be better off. Today Ricardo's argument remains the key rationale supporting globalization and free trade between nations. Many people have pointed out,

however, that Ricardo makes several assumptions that no longer hold, and, moreover, that he did not foresee that international rule setters might be influenced by the more powerful nations who might use those rule setters to exploit weaker nations.

5. Karl Marx was a harsh critic of the injustices of free market societies. He argued that in a capitalist free market society, workers were exploited because they do not receive the full value of what they produce with their labor. The owner unjustly takes their value as profit. Marx also made a number of other arguments. For example, the way each society organizes itself to produce the goods it needs determines its social classes. Most societies have organized their production by having a working class, which provides the labor, and a ruling class, which controls and directs that labor. Each society's government, laws, social beliefs, and social institutions are designed to protect the position of its ruling class. Capitalist societies are divided into two classes: a class of workers who must sell their labor to the capitalist owner in order to survive and a class of capitalist owners who unjustly exploit them. In capitalist societies, workers suffer immiseration: as wealth gets concentrated in ever fewer hands, economies fall into periodic depressions, unemployment rises, and wages decline. Critics say that Marx assumed that a just society must have no inequalities, but the productivity that free markets make possible may be more important than any inequalities they may produce. Critics also argue that free markets protect other forms of freedom and that Marx's predictions have not turned out to be correct.

6. Most societies today are based neither on free markets nor on government commands alone. Instead, most use mixed economies that retain a market and private property system and rely on government to remedy the inequalities and problems that free markets may create. Societies today also struggle with the question of what kind of property rights, if any, should protect intellectual property. Some have argued that Locke's notions of private property should be applied to intellectual property, while others claim a more Marxian view, that intellectual property should have a collective or common ownership and serve the good of all.

Chapter 4

# Ethics in the Marketplace

Bill Gates is retired CEO and founder of Microsoft Corporation, which was subject to government oversight until mid-2011 as the result of a judgment by a U.S. District Court that the company exercised its monopoly power by anti-competitive means to dominate the market for Web browsers.

## Learning Objectives

**4.1** Apply ethics to market competition

**4.2** Outline the conditions that must be present to achieve ethical perfect competition

**4.3** Evaluate monopoly competition in terms of ethical principles

**4.4** Differentiate the ethical implications of oligopolistic and monopolistic competition.

**4.5** Interpret how public policy is developed in relation to the effects of oligopoly

If free markets are justified, it is because they allocate resources and distribute commodities in ways that are just, that maximize the economic utility of society's members, and that respect the freedom of choice of both buyers and sellers. These ethical and moral aspects of a market system depend crucially on the competitive nature of the system. If firms join together and use their combined power to fix prices, drive out competitors with unfair practices, or earn monopolistic profits at the expense of consumers, the market ceases to be competitive and the results are injustice, a decline in social utility, and a restriction of people's freedom of choice. This chapter examines the ethics of anticompetitive practices, the underlying rationales for prohibiting them, and the moral values that market competition is meant to achieve.

# 4.1: Applying Ethics to Market Competition

**OBJECTIVE: Apply ethics to market competition**

In view of the key role of competition in the American economy, it is surprising that anticompetitive practices are so common. A report on New York Stock Exchange companies showed that 10 percent of the companies had been involved in antitrust suits during the previous five years.[1] A survey of major corporate executives indicated that 60 percent of those sampled believed that many businesses engage in price-fixing.[2] One study found that in a period of two years alone, over 60 major firms were prosecuted by federal agencies for anticompetitive practices, and hundreds more were prosecuted by state officials.

## Ethical Application

### Anticompetitive Practices

Consider the following recent news stories on anticompetitive practices.

#### International Price-Fixing in the Auto Industry

> Nine Japan-based companies and two executives have agreed to plead guilty and to pay a total of more than $740 million in criminal fines for their roles in separate conspiracies to fix the prices of more than 30 different products sold to U.S. car manufacturers, the Department of Justice announced today. The department said that price-fixed automobile parts were sold to Chrysler, Ford, and General Motors, as well as to the U.S. subsidiaries of foreign companies including Honda, Mazda, Mitsubishi, Nissan, Toyota and . . . Subaru. More than 25 million cars purchased by American consumers were affected. . . . [T]he Antitrust Division's ongoing investigation into price fixing and bid rigging in the auto parts industry [has resulted in charges for 20 companies and 21 executives]. All 20 companies have either pleaded guilty or have agreed to plead guilty and have agreed to pay more than $1.6 billion in criminal fines. Seventeen of the 21 executives have been sentenced to serve time in U.S. prisons or have entered into plea agreements calling for prison sentences.[3]

#### Price-Fixing in the Publishing Industry

> The U.S. Supreme Court today denied Apple's petition for certiorari in *United States v. Apple Inc.*, making final lower court decisions that Apple orchestrated a price-fixing conspiracy with five major e-book publishers and substantially raised e-book prices. The Supreme Court's action triggers Apple's obligation to pay $400 million to e-book purchasers under Apple's July 2014 agreement. . . . Most e-book purchasers will receive reimbursement for the higher prices Apple's conduct caused them to pay through automatic credits at their e-book retailers. They will be able to apply these credits to future purchases. With the $166 million previously paid by the conspiring publishers to settle claims against them, Apple's payment will bring to $566 million the amount repaid to e-book purchasers overcharged as a result of Apple's and the publishers' illegal conspiracy. . . . On April 11, 2012, the department filed its civil antitrust lawsuit challenging Apple's orchestration of a price-fixing conspiracy with five e-book publishers. The lawsuit. . . alleged that Apple and the defendant publishers conspired to fix prices and end e-book retailers' freedom to compete on price, and that they succeeded in substantially increasing the prices that consumers paid for e-books.[4]

#### Price-Fixing in the Shipping Industry

> An employee of Japan-based Nippon Yusen Kabushiki Kaisha (NYK) pleaded guilty today [March 10, 2015] and was sentenced to 15 months in a U.S. prison for his involvement in a conspiracy to fix prices, allocate customers and rig bids of international ocean shipping services for roll-on, roll-off cargo, such as cars and trucks, to and from the United States and elsewhere, the Department of Justice announced today. . . . [Manager Susumu] Tanaka participated in the conspiracy from at least as early as April 2004 until at least September 2012. . . . Today's sentence is the third against an individual in the division's ocean shipping investigation, and the first against an individual from NYK. Three corporations have agreed to plead guilty and to pay criminal fines totaling more than $136 million, including NYK, which has agreed to pay a criminal fine of $59.4 million, pending court approval.[5]

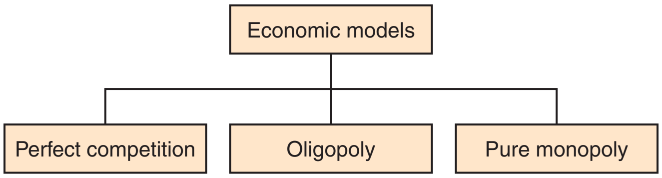
#### Price-Fixing in the Real Estate Industry

> Ten Eastern California real estate investors were sentenced yesterday for their participation in conspiracies to rig bids at public real estate foreclosure auctions in Eastern California, the Department of Justice announced. The primary purpose of the conspiracies was to suppress and restrain competition and to conceal payoffs in order to obtain selected real estate offered at San Joaquin County public foreclosure auctions at noncompetitive prices. . . . "These defendants rigged foreclosure auctions to profit at the expense of mortgage holders and homeowners," said Acting Assistant Attorney General Renata Hesse of the Department of Justice's Antitrust Division.[6]

## 4.1.1: Three Economic Models

Before studying the ethics of anticompetitive practices, it is useful to have a clear understanding of the meaning of *market competition*, particularly of what we call *perfect competition*. Of course, we all have an intuitive understanding of competition: it is a rivalry between two or more parties trying to obtain something that only one of them can have. Competition exists in political elections, in football games, on the

**Figure 4.1** Types of Economic Models




battlefield, and in courses in which grades are distributed "on the curve." Market competition, however, involves more than mere rivalry between two or more firms. To get a clearer idea of the nature of market competition, we are going to look at three economic models—perfect competition, **pure monopoly**, and **oligopoly**—that describe three degrees of competition in a market (see Figure 4.1).

If you are lucky enough to have taken a course in basic economics, you may already have seen some of these models of market competition. However, your course in basic economics did not explain the ethical concepts related to these models of competition, particularly to the model of perfect competition. As we will see, the ethical concepts of utility, justice, and rights are closely tied to the model of perfect competition; that is, perfect market competition tends to result in just outcomes, to respect moral rights, and to satisfy utilitarianism (more precisely, perfectly competitive markets achieve a certain kind of justice, they satisfy a certain version of utilitarianism, and they respect certain kinds of moral rights). It is surprising and important that perfectly competitive markets have these three ethical features. Most nations of the world have embraced and tried hard to maintain competitive market systems precisely because competitive markets tend to maximize utility, because they are just, and because they respect people's moral rights. If we are going to understand why market competition is morally desirable then, we will have to understand why market competition maximizes utility, produces justice, and respects human rights. However, to understand why perfect competition tends to have these results, we will need to understand how perfectly competitive markets operate. In particular, we have to understand how perfect competition tends to move toward an equilibrium point, and why this economic model results in markets that maximize utility, establish justice, and respect people's moral rights.

Once we understand why perfectly competitive markets lead to these three moral outcomes, we will be able to see why markets and market behaviors that *depart* from perfect competition tend to diminish utility, tend to be unjust, and tend to violate people's moral rights. That is, we will be able to see why departures from perfect competition tend to be morally defective. In turn, with that understanding, we should be able to see why it is unethical to engage in behaviors such as price-fixing and other anticompetitive activities that undermine or destroy market competition.

To truly understand the ethics of market behaviors, then, it is absolutely necessary to first understand why perfect market competition is morally desirable, which requires understanding some basic ideas of economics. There is, unfortunately, no shortcut path to a solid understanding of the ethics of markets and market behaviors. Any attempt to understand the ethics of, say, price-fixing, without a rudimentary understanding of some basic economic principles, will be superficial and easily dislodged when the opportunity to fix prices presents itself in real life. Without an understanding of some basic ideas of economics, we will not truly understand what is wrong with behaviors like price-fixing and can easily rationalize them. The news stories presented in "Ethical Application" indicate that price-fixing and other anticompetitive behaviors are surprisingly common among businesspeople. Part of the reason is because people involved in price-fixing conspiracies can often rationalize their behavior and say they did not think what they were doing was morally wrong.[7] In fact, they often say they were just trying to be morally upright citizens by preventing "cut-throat competition" that would harm everyone, or that they were trying to establish a "reasonable return" or a "fair price" in the market, or that they were not trying to "gouge" consumers but just exercising their right to compete aggressively in a free enterprise economy. Without a good understanding of the ethics of market competition, it is easy to be taken in by such rationalizations which, after all, seem at first sight to make a lot of sense. However, as we will now see, with a firm understanding of the ethics of market competition, it will be clear that price-fixing and other anticompetitive practices are exactly the opposite of what these rationalizations claim.

## 4.2: Perfect Competition

**OBJECTIVE:** **Outline the conditions that must be present to achieve ethical perfect competition**

**A *market* is any forum in which people come together to exchange ownership of goods, services, or money.**

Markets can be small and very temporary (two friends trading clothes can constitute a tiny transient market) or quite large and relatively permanent (the oil market spans several continents and has been operating for decades).

A perfectly competitive free market is one in which no buyer or seller has the power to significantly affect the prices at which goods (we will use the term *goods* to include services and products) are being exchanged.[8]

Perfectly competitive free markets are characterized by the following seven defining features:

1. There are numerous buyers and sellers, none of whom has a substantial share of the market.
2. All buyers and sellers can freely and immediately enter or leave the market.
3. Every buyer and seller has full and perfect knowledge of what every other buyer and seller is doing, including knowledge of the prices, quantities, and quality of all goods being bought and sold.
4. The goods being sold in the market are so similar to each other that no one cares from whom each buys or sells.
5. The costs and benefits of producing or using the goods being exchanged are borne entirely by those buying or selling the goods and not by any other external parties.
6. All buyers and sellers are utility maximizers: each tries to get as much as possible for as little as possible.
7. No external parties (such as the government) regulate the price, quantity, or quality of any of the goods being bought and sold in the market.

The first two features are the basic characteristics of a "competitive" market because they ensure that buyers and sellers are roughly equal in power and none can force the others to accept its terms. The seventh feature is what makes a market qualify as a "free" market: It is one that is free of any externally imposed regulations on price, quantity, or quality. (So-called *free* markets, however, are not necessarily free of all constraints, as we see later in this chapter.) Note that the term *free enterprise* is sometimes used to refer to perfectly competitive free markets.

In addition to the seven defining features, competitive markets also need the following:

- an enforceable private property system (otherwise, buyers and sellers would not have any ownership rights to exchange)
- an underlying system of contracts (which allows buyers and sellers to forge agreements that transfer ownership)
- an underlying system of production (that generates goods or services whose ownership can be exchanged)

## 4.2.1: The Equilibrium Point and Moral Outcomes

In a perfectly competitive free market, the price buyers are willing to pay for goods rises when fewer goods are available, and these rising prices induce sellers to provide greater quantities of goods. Thus, as more goods are made available, prices tend to fall, and these falling prices lead sellers to decrease the quantities of goods they provide. These fluctuations produce a striking outcome: in a perfectly competitive market, prices and quantities always move toward what is called the *equilibrium point*.

The *equilibrium point* in a market is the point at which the amount of goods buyers want to buy equals the amount of goods sellers want to sell and at which the highest price buyers are willing to pay equals the lowest price sellers are willing to take. At the equilibrium point, every seller finds a willing buyer and every buyer finds a willing seller. Moreover, this surprising result of perfectly competitive free markets has an even more astonishing outcome: it satisfies three of the moral criteria—justice, utility, and rights. That is, perfectly competitive free markets achieve a certain kind of justice, satisfy a certain version of utilitarianism, and respect certain kinds of moral rights.

Why do perfectly competitive markets achieve these three surprising moral outcomes? The well-known supply and demand curves of economists can be used to explain the phenomenon. Our explanation proceeds in two stages:

- We examine why perfectly competitive free markets always move toward the equilibrium point.
- We examine why markets that move toward equilibrium in this way achieve these three moral outcomes.

## 4.2.2: The Mechanics of Perfectly Competitive Markets

A **demand curve** is a line on a graph indicating the most that consumers (or buyers) would be willing to pay for a unit of some product when they buy different quantities of those products. As we mentioned, the fewer the units of a certain product consumers buy, the more they are willing to pay for those units, so the demand curve slopes down to the right. A **supply curve** is a line on a graph indicating the prices producers must charge to cover the average costs of supplying a given amount of a commodity. See Figure 4.2 for sample demand and supply curves.

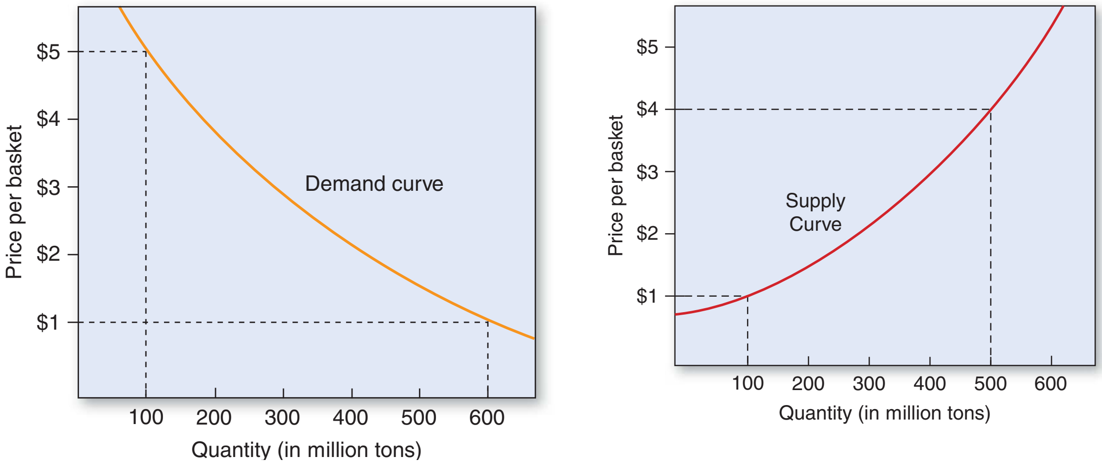
**DEMAND AND THE PRINCIPLE OF MARGINAL UTILITY** Notice that the demand curve slopes downward to the right, indicating that consumers are willing to pay less for each unit of a good as they buy more of those units; the value of each additional potato falls for consumers as they buy up more potatoes. Why is this? This phenomenon is explained by a principle we assume that human nature always follows—the so-called *principle of diminishing marginal utility*. This principle states that each additional item a person consumes is less satisfying than each of the earlier items the person consumed: the more we consume, the less utility or satisfaction we get from consuming more. The second pizza a person eats at lunch, for example, is much less satisfying than the first one; the third will be substantially less tasty than the second; while the fourth may be positively disgusting. Because of the principle of diminishing marginal utility, the more goods consumers purchase in a market, the less satisfying additional goods are to them and

**Figure 4.2** Demand and Supply Curves for Potatoes

The demand curve and the supply curve for potatoes are depicted in these two graphs.

In the sample curve in the figure on the left, buyers are willing to pay $1 per basket of potatoes if they buy 600 million tons of potatoes, but they are willing to pay as much as $5 per basket if they buy only 100 million tons of potatoes. Notice that the demand curve slopes downward to the right, indicating that consumers pay less for each unit of a good as they buy more of those units.

In the sample curve in the figure on the right, for example, it costs farmers on average $1 per basket to grow 100 million tons of potatoes, but it costs them $4 per basket to grow 500 million tons. Beyond a certain point, the more units produced, the higher the average costs of producing each unit, and the curve slopes upward to the right.




the less value they place on each additional good. Thus, the buyer's demand curve slopes downward to the right because the principle of diminishing marginal utility ensures that the price consumers are willing to pay for goods diminishes as the quantity they buy increases.

The demand curve thus indicates the value consumers place on each unit of a product as they purchase more units. Consequently, if the price of a product were to rise above their demand curve, average buyers would see themselves as losers—that is, as paying out more for the product than what it is worth to them. At any point below the demand curve, they would see themselves as winners—that is, as paying out less for a product than what it is worth to them. Therefore, if prices should rise above the demand curve, buyers would have little motive to buy, and they would tend to leave the market to spend their money in other markets. However, if prices were to fall below the demand curve, new buyers would tend to flock into the market because they would perceive a chance to buy the product for less than what it is worth to them.

**SUPPLY AND THE PRINCIPLE OF INCREASING MARGINAL COSTS** Now, let us look at the other side of the market: the supply side. The supply curve rises upward to the right indicating that the more the seller produces for the market, the more the cost of producing each unit increases and so the higher the price he must charge to cover those increasing costs. At first sight, it may seem odd that producers or sellers must charge higher prices when they are producing large volumes than when producing smaller quantities. We are accustomed to thinking that it costs less to produce goods in large quantities than in small quantities. However, the increasing costs of production are explained by a principle that we call the *principle of increasing marginal costs*. This principle states that, after a certain point, each additional unit the seller produces costs more to produce than earlier units. Why? Because of an unfortunate feature of our physical world: its productive resources are limited. A producer will use the best and most productive resources to make the first few goods and at this point, costs will decline as production expands. A potato grower farming in a valley, for example, will begin by planting the level fertile acres in the floor of the valley where the more acreage planted, the more the costs per unit decline. However, as the farm continues to expand, the farmer eventually runs out of these highly productive resources and must turn to using less productive land. As the acreage on the floor of the valley is used up, the farmer is forced to start planting the sloping and less fertile land at the edges of the valley, which may be rocky and may require more expensive irrigation. If production continues to increase, the farmer will eventually have to start planting the land on the mountainsides, and costs will rise even higher. Eventually, the farmer reaches a situation where the more that is produced, the more it costs to produce each unit because the farmer is forced to use increasingly unproductive materials. The predicament of the potato farmer illustrates the principle of increasing marginal costs: after a certain point, added production always entails increasing costs per unit. That is the situation illustrated by the supply curve. The supply curve rises upward to the right because it depicts the point at which sellers must begin to charge more per unit to cover the costs of supplying additional goods.

The supply curve, then, indicates what sellers must charge per unit to cover the costs of bringing given amounts of a product to market. It is important to note that these costs include more than the ordinary costs of labor, materials, distribution, and so on. The costs of producing a product also include the profits sellers must make to motivate them to invest in producing this product and forgo the profits they could have made by investing in other products. So the seller's costs include the costs of production plus the normal profits he or she could have made but gave up to make this product. These forgone normal profits are a cost of bringing a product to market. What is a "normal" profit? A normal profit is the average profit one could make in other markets with similar risks. The prices on the supply curve, then, must cover the ordinary costs of production plus the average profit the seller could have made by investing in other similar markets. A normal profit is part of the cost of bringing a product to market.

The prices on the supply curve, then, represent the minimum producers must receive to cover their ordinary costs and make a normal profit. When prices fall below the supply curve, producers see themselves as losers: they are receiving less than what it costs them to produce the product (keep in mind that "costs" include ordinary costs plus a normal profit). Consequently, if prices fall below the supply curve, producers will tend to leave the market and invest their resources in other, more profitable markets. However, if prices rise above the supply curve, then new producers will come crowding into the market, attracted by the opportunity to invest their resources in a market where they can derive higher profits than in other markets.

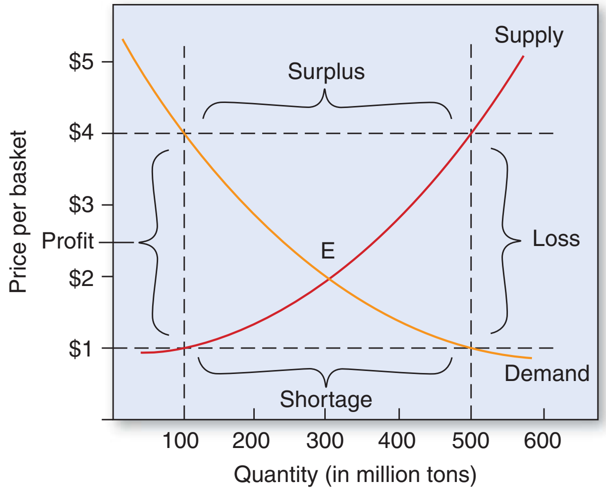
**EQUILIBRIUM POINT: WHERE SUPPLY AND DEMAND CURVES MEET** Sellers and buyers, of course, trade in the same markets, so their respective supply and demand curves can be superimposed on the same graph. Typically, when this is done, the supply and demand curves will meet and cross at some point. The point at which the supply and demand curves meet is the point of *equilibrium*. The point at which they meet is the point at which the price buyers are willing to pay for a certain amount of goods exactly matches the price sellers must take to cover the costs of producing that same amount (i.e., the "equilibrium price"). This point of intersection is indicated in Figure 4.3 by the letter E.

**WHY THE MOVE TOWARD EQUILIBRIUM IN PERFECT COMPETITION?** We mentioned that in a perfectly competitive free market, prices, the amounts supplied, and the amounts demanded all tend to move toward the point of equilibrium. Why does this happen? Notice in Figure 4.3 that if the price of potatoes rises above the point of equilibrium, say to $4 per basket, producers will supply more goods (500 million tons) than at the equilibrium price level (300 million tons). However, at that high price, consumers will purchase fewer goods (only 100 million tons) than at the equilibrium price. The result will be a surplus of unsold goods (500 − 100 = 400 million tons of unsold potatoes). To get rid of their unsold surplus, sellers will be forced to lower their prices and decrease production. Eventually, equilibrium prices and amounts will be reached.

**Figure 4.3** The Point of Equilibrium for Potatoes

The point at which the demand and supply curves meet is the equilibrium price for potatoes.

This point of intersection, E, at which the supply and demand curves meet, is called the *point of equilibrium* or *equilibrium price*. On the graph, the point of equilibrium is at $2 per basket for 300 million tons.




In contrast, if the price drops below the point of equilibrium in Figure 4.3, say to $1 per basket, then producers will start losing money and so will supply less than consumers want at that price. The result will be an excessive demand and shortages will appear. The shortages will lead buyers to bid up the price. Subsequently, prices will rise and the rising prices will attract more producers into the market, thereby raising supplies. Eventually, again, equilibrium will reassert itself.

Notice also what happens in Figure 4.3 if the amount being supplied, say 100 million tons, for some reason is less than the equilibrium amount. The cost of supplying such an amount ($1 per basket) is below what consumers are willing to pay ($4 per basket) for that same amount. Producers will be able to raise their prices up to the level the consumer is willing to pay ($4) and pocket the difference ($3) as abnormally high profits (i.e., profits above the normal profit, which we defined earlier). The abnormally high profits, however, will attract more producers into the market, thereby increasing the quantities supplied and bringing about a corresponding decrease in the price consumers are willing to pay for the larger quantities. Gradually, the amounts supplied will increase to the equilibrium point, and prices will drop to equilibrium prices.

The opposite happens if the amount being supplied, say 500 million tons, is for some reason more than the equilibrium amount. Under these circumstances, sellers will have to lower their prices to the very low levels that consumers are willing to pay for such large amounts. At such low price levels, producers will leave the market to invest their resources in other, more profitable markets, thereby lowering the supply, raising the price, and once again reestablishing equilibrium levels.

At this point, you may be trying to think of an industry that fits the description of perfect competition we have just given. You will have some difficulty finding one. Only a few commodity markets, including agricultural markets such as grain and potato markets, come close to embodying the seven features that characterize a perfectly competitive market.[9] The fact is that the model of perfect competition is a theoretical construct of the economist that characterizes only a few real-world markets. Although the model does not describe many real markets, as we will now see, it does provide us with a clear understanding of the moral advantages of competition and an understanding of why it is morally desirable to keep markets as competitive as possible.

***Quick Review 4.1***
**Equilibrium in Perfectly Competitive Markets**
Price and quantity move to equilibrium in a perfectly competitive market for the following reasons:

- If price rises above equilibrium, surplus appears and drives the price down to equilibrium.
- If price falls below equilibrium, shortage appears and drives the price up to equilibrium.
- If quantity is less than equilibrium, profits rise, attracting sellers who increase the quantity to equilibrium.
- If quantity is more than equilibrium, prices fall, driving sellers out, which lowers the quantity to equilibrium.

## 4.2.3: Ethics and Perfectly Competitive Markets

As we have seen, perfectly competitive free markets incorporate forces that inevitably drive buyers and sellers toward the point of equilibrium. In doing so, they achieve three major moral values:

1. They lead buyers and sellers to exchange their goods in a way that is just (in a certain sense of *just*).
2. They maximize the utility of buyers and sellers by leading them to allocate, use, and distribute their goods with perfect efficiency.
3. They bring about these achievements in a way that respects buyers' and sellers' right of free consent.

As we examine each of these moral characteristics of perfect competition, it is important to keep in mind that they are characteristics only of the perfectly competitive free market—that is, of markets that have the seven features we listed. Markets that fail to have one or the other of these features do not necessarily achieve these three moral values.

**CAPITALIST JUSTICE** To understand why perfectly competitive free markets lead buyers and sellers to make exchanges that are just, we begin by recalling the capitalist view of justice described in Chapter 2. According to the capitalist view of justice, benefits and burdens are distributed justly when individuals receive in return at least the value of the contribution they made to an enterprise: fairness is getting paid fully in return for what one contributes. It is this form of justice (and only this form) that is achieved in a perfectly competitive free market.

Perfectly competitive free markets embody capitalist justice because such markets necessarily converge on the equilibrium point, and the equilibrium point is the one (and only) point at which buyers and sellers on average receive the value of what they contribute.

There is only a single point at which the price and quantity of a good lies both on the buyer's demand curve (and is thus fair from the standpoint of the value the average buyer places on the goods) and on the seller's supply curve (and is thus fair from the standpoint of what it costs the average seller to produce those goods), and that point is the equilibrium point. Thus, the equilibrium point is the one and only point at which prices are just (in terms of capitalist justice), both from the buyer's and the seller's point of view. When prices deviate from the equilibrium point, either the average buyer or the average seller is unjustly getting less than he or she contributes, or else one or the other is unjustly getting more than he or she contributes: in either case, the outcome is unjust. However, as we saw, in perfectly competitive markets prices and quantities are either at the equilibrium point, or forces drive them back to the equilibrium point. The perfectly competitive market thus continually—almost magically—reestablishes capitalist justice for its participants by continually leading them to buy and sell goods at the one quantity and the one price at which each receives the value of what he or she contributes, whether this value is calculated from the average buyer's or the average seller's point of view.[10]

***Quick Review 4.2***
**Justice in a Perfectly Competitive Market**

- For the buyer, prices are just (capitalist justice) only on the demand curve.
- For the seller, prices are just (capitalist justice) only on the supply curve.
- Perfectly competitive markets move the price to the equilibrium point, which is on both supply and demand curves and so is just for both buyer and seller.

### Seller's and Buyer's Perspective on What Is Just

Let's study how the mechanics of perfect competition delivers a just result from both the seller's and buyer's perspectives.

Interactive

**Fair Price from the Seller's Perspective**

Consider the matter, first. from the seller's point of view. The supply curve indicates the price producers must receive to cover what it costs them to produce given quantities of a good. Consequently, if prices (and quantities) fall below the seller's supply curve, consumers are unfairly shortchanging the seller because they are paying him less than the seller contributed to produce those goods in those quantities. (Ordinarily, the seller would not supply those goods if he is getting less for them than it costs him to make them, but the seller can be forced to sell them if, for example, he has already produced them and he will lose even more money if he fails to sell them at all.) On the other hand, if prices rise above the seller's supply curve, the average seller is unfairly overcharging consumers because they are being charged more than what the seller knows those goods are worth in terms of what it costs to produce them. Thus, from the standpoint of the seller's contribution, the price is fair (i.e., the price equals the costs of the seller's contribution) only if it falls somewhere on the seller's supply curve.

**Fair Price from the Buyer's Perspective**

**UTILITY** In addition to establishing a form of justice, competitive markets also maximize the utility of buyers and sellers by leading them to allocate, use, and distribute goods with perfect efficiency. To understand this aspect of perfectly competitive markets, we must consider what happens not in a single isolated market, but in an economy that consists of a system of many markets. A market system is perfectly efficient when all goods in all markets are allocated, used, and distributed in a way that produces the highest level of satisfaction possible from these goods.

***Quick Review 4.3***
**Utility in a Perfectly Competitive Market**

- Prices in a perfectly competitive market attract resources when demand is high and drives them away when demand is low, so resources are allocated efficiently.
- A perfectly competitive market encourages firms to use resources efficiently to keep costs low and profits high.
- A perfectly competitive market lets consumers buy the most satisfying bundle of goods, so it distributes goods in a way that maximizes utility.

**HOW PERFECT COMPETITION IS PERFECTLY ETHICAL** Perfectly competitive markets also respect certain negative rights of buyers and sellers. First, in a perfectly competitive market, buyers and sellers are free (by definition) to enter or leave the market as they choose. That is, individuals are neither forced into nor prevented from engaging in a certain business, provided they have the expertise and the financial resources required.[11] Perfectly competitive markets thus embody the negative right of freedom of opportunity.

Second, in a perfectly competitive free market, all exchanges are fully voluntary. That is, participants are not

### Four Ways of Achieving Efficiency

A perfectly competitive market system achieves efficiency in three main ways.

Interactive

**Investing Resources**

A perfectly competitive market motivates firms to invest resources in those industries where consumer demand is high and to move resources away from industries where consumer demand is low. Resources will be attracted into markets where high consumer demand creates shortages that raise prices above equilibrium, and they will flee markets where low consumer demand leads to surpluses that lower prices below equilibrium. The perfectly competitive market system allocates resources efficiently in accordance with consumer demands and needs; the consumer is "sovereign" over the market.

1 of 4 Previous Next

forced to buy or sell anything other than what they freely and knowingly consent to buy or sell. In a competitive free market, all participants have full and complete knowledge of what they are buying or selling, and no external agency (such as the government) forces them to buy or sell goods they do not want at prices they do not choose in quantities they do not desire.[12] Moreover, buyers and sellers in a perfectly competitive free market are not forced to pay for goods that others enjoy. In a perfectly competitive free market, by definition, the costs and benefits of producing or using goods are borne entirely by those buying or selling the goods and not by any other external parties. Perfectly competitive free markets thus embody the negative right of freedom of consent.

Third, no single seller or buyer will so dominate the perfectly competitive free market that others are forced to accept the terms or go without.[13] In a perfectly competitive market, industrial power is decentralized among numerous firms so that prices and quantities are not dependent on the dictates of one or a few businesses. Perfectly competitive free markets thus embody the negative right of freedom from coercion.

***Quick Review 4.4***
**Rights in a Perfectly Competitive Market**

- A perfectly competitive market respects the right to freely choose the business one enters.
- In a perfectly competitive market, exchanges are voluntary, so it respects the right of free choice.
- In a perfectly competitive market, no seller exerts coercion by dictating the prices, quantities, or kinds of goods consumers must buy.

**SUMMARY AND CAUTION** The discussion so far, then, has shown that perfectly competitive free markets are perfectly ethical in three important respects:

1. Each continuously establishes a capitalist form of justice.
2. Together they maximize utility in the form of market efficiency.
3. Each respects certain important negative rights of buyers and sellers.

Several cautions are in order, however, when interpreting the moral features of perfectly competitive free markets.[14]

***Quick Review 4.5***

**Perfectly Competitive Free Markets . . .**

- Achieve capitalist justice (but not other kinds of justice, such as justice based on need)
- Satisfy a certain version of utilitarianism (by maximizing utility of market participants, but not of all society)
- Respect some moral rights (negative rights but often not positive rights)
- Can lead to ignoring the demands of caring and value of human relationships
- Can encourage vices of greed and self-seeking and discourage virtues of kindness and caring
- Can be said to embody justice, utility, and rights only if seven defining features are present

WRITING PROMPT

**The Pros and Cons of a Perfectly Competitive Market**

1. Explain the pros and cons of a perfectly competitive market from the standpoints of a market participant and a market outsider. Include an evaluation of the presence of justice, utility, and positive and negative rights.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Ethical Imperfections of Perfectly Competitive Markets

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**Other Forms of Justice Excluded**

Perfectly competitive free markets do not establish other forms of justice. Because they do not respond to the needs of those outside the market or those who have little to exchange, for example, they cannot establish a justice based on needs. Moreover, perfectly competitive free markets impose no restrictions on how much wealth each participant accumulates relative to the others, so they ignore egalitarian justice and may incorporate large inequalities.

**Utility Not Necessarily Maximized**

**Positive Rights of Non-Participants at Risk**

**Demands of Caring Disregarded**

**Moral Character at Risk through Motivation for Profit**

**Capitalist Justice, Utility, and Negative Rights Must Be Present**

# 4.3: Monopoly Competition

**OBJECTIVE: Evaluate monopoly competition in terms of ethical principles**

What happens when a free market (i.e., one without government intervention) ceases to be perfectly competitive? We begin to answer this question in this section by examining the opposite extreme of a perfectly competitive market: the free (unregulated) monopoly market. We then examine some less extreme varieties of noncompetition.

## Ethical Application

### The Operating System Monopoly Market

A contemporary example of a monopoly market is the worldwide market for operating systems for desktop personal computers (PCs). The market for operating systems for desktop PCs is dominated by Microsoft's Windows, which had a total global market share of 91 percent in 2015. While Microsoft does not hold 100 percent of this market, most observers characterize its control of the market as a monopoly. In November 1999, a U.S. District Court ruled that Microsoft was a monopoly, and in April 2000 it ruled that it had engaged in monopoly practices. Other companies that want to come into this market would have to overcome several barriers to entry:

- One barrier is sheer total cost and risk: today it costs more than $10 billion to develop a new operating system like Windows, and it would be extremely risky for a company to gamble $10 billion on the chance it might overcome Microsoft's dominance of the market.[15]
- A second barrier is economies of scale which occur when the amount of product a company makes has grown so large that it costs it less to make each unit of its products than it would cost any smaller firm. Since Microsoft makes and sells many more units of Windows and MS Office than its competitors, Microsoft's costs per unit (e.g., its research costs, its marketing and administrative costs, etc.) are lower than its competitors'.
- Another barrier is brand loyalty: if a company tried to take some of the 95 percent market share MS Office has, it would have to overcome the strong brand loyalty it commands, and this would require another large and risky investment in brand development.
- Yet another barrier is the "network effect," in which the value of a product increases as the number of users increases. Consumers prefer Windows over other operating systems such as Unix because there are many more software programs available for Windows than for Unix. The reason why there are many more programs for Windows is because software developers would much rather develop programs for Windows' many users than for Unix's few users. So, the more Windows users there are, the more programs will be written for it, and the more valuable it is to users. An operating system such as Unix has a hard time competing with Windows because network effects continually make Windows more valuable to users than Unix.
- And, finally, we might note that some observers say that other companies are not eager to enter one of Microsoft's markets because it has a reputation of retaliating aggressively against companies that try to compete. That reputation serves as another barrier that keeps other companies away from Microsoft's markets.

Although few companies have global monopolies like Microsoft, numerous companies have local or regional monopolies; that is, monopolies over markets that serve specific geographical areas such as a city, a county, or a state. Examples of companies with local or regional monopolies include public utilities, cable companies, trash collectors, road construction companies, postal services, water supply companies, phone companies, and electrical power companies. Other companies have monopolies in small niche markets. Sirius XM Radio, for example, held 100 percent of the satellite radio market in 2015.

***Quick Review 4.6***
**Monopoly Markets**

- One dominant seller controls all or most of the market's product.
- The seller has the power to set the quantity and price of its products on the market.
- The seller can extract monopoly profit by producing less than equilibrium quantity and setting the price below the demand curve but high above the supply curve.
- High entry barriers keep other competitors from bringing more product to the market.

## 4.3.1: Monopoly Control and Profit

Monopoly markets are those in which a single dominant firm sells all or virtually all the product in the market and which new sellers cannot enter or have great difficulty entering because of barriers to entry. A seller in a monopoly market can control the prices (within a certain range) of the available goods. A monopoly seller, for example, can set prices above their equilibrium level—at, say, $3. By limiting supply to only those amounts buyers will purchase at the monopolist's high prices (at 300 units in Figure 4.4), the monopoly firm can ensure that it sells all its products and reaps substantial profits from its business. The monopoly firm will, of course, calculate the price–amount ratios that will secure the highest total profits (i.e., the profit-per-unit multiplied by the number of units), and it can then fix its prices and production volume at those levels. At the turn of

### Differences between a Monopoly Market and a Perfectly Competitive Market

We noted earlier that a perfectly competitive market is characterized by seven features. In a monopoly, two of these features are not present.[16]

Interactive

**Dominant Seller**

First, instead of "numerous sellers, none of whom has a substantial share of the market," the monopoly market has only one dominant seller, and that dominant seller has a substantial share of the market. Technically, a company must have 100 percent of the market to be a monopoly, but in practice a company with less than 100 percent of the market can be considered a monopoly; that is, a monopoly market can consist of a single dominant firm with, say, 90 percent of the market and dozens of other companies, each with less than 1 percent of the market. The key feature that determines whether a company has a monopoly is whether that one company has such control over a product that the company largely determines who can get some of the product and what the product will sell for.

**Barriers to Entry**

the century, for example, the American Tobacco Company, with a monopoly in the sale of cigarettes, was making profits equal to about 56 percent of its sales.

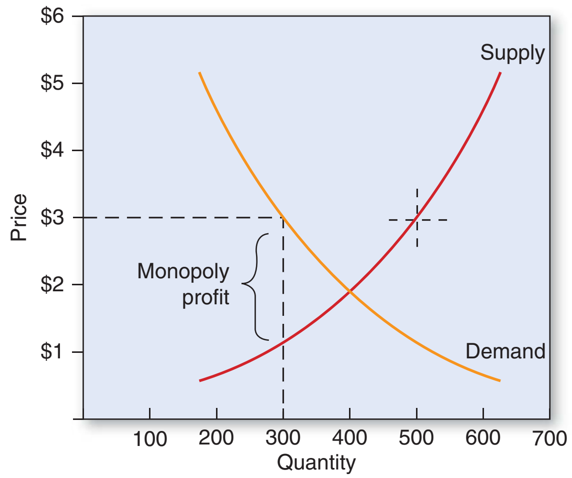
If entry into the market were open, of course, the excess profits reaped by monopolies would draw other producers into the market, resulting in an increased supply of goods and a drop in prices until equilibrium was attained. In a monopoly market, where "barriers to entry" make it virtually impossible or too costly for other firms to enter the market, this does not happen, and prices will remain high if the monopolist chooses to keep them high. As we have noted, barriers to entry can consist of legal barriers such as copyrights, patents, licenses, tariffs, quotas, grants, or other means by which government keeps new firms from entering a certain market. However, as our discussion of Microsoft indicated, there are many other kinds of barriers to entry. They include long-term customer contracts that make it too hard for a new entrant to capture the customers of an established incumbent; low manufacturing costs that allow the established incumbent to threaten to lower prices and win a price war if a new firm tries to enter the market; high start-up costs, high fixed costs, high advertising costs, or high research and development costs that the new entrant will not be able to recover if the firm has to leave the market, thus making entry too risky (firms risk huge losses if they try to enter); and "network effects" that give an established company with many users an advantage that a new firm with few users will not have.

Will the monopolist necessarily choose to maximize its profits? If a seller sets its prices above what buyers are

**Figure 4.4** Monopoly Profit

This graph illustrates fundamental conditions in a monopoly market.

The monopoly firm is able to fix its output at a quantity that is less than the equilibrium quantity and at which demand is so high that it allows the firm to reap an excess monopoly profit by charging prices well above the supply curve and even above the equilibrium price.




willing to pay (i.e., above the demand curve), or if the seller's costs are higher than buyers can pay, of course, then even if it is the only seller in the market, it will not make a profit because few would buy its products. There are limits (i.e., the demand curve) to how much even a monopoly can charge. However, it is sometimes suggested that even when monopoly companies *can* make monopoly profits, they *actually* do not try to make monopoly profits.[17] Although it is conceivable that the managers of a monopoly firm may altruistically forgo potential profits and fix their prices at the equilibrium level—that is, the level that just gives them a normal rate of profit—this seems unlikely. It is difficult to see why a monopoly company would give up profits it could make for its shareholders. If a company has come to monopolize its market through legal means (perhaps it invented and now holds the patent on the only product known to be capable of meeting a consumer demand), then its monopoly profits are legal and shareholders will surely demand such profits.

## 4.3.2: Monopolists as Utility Maximizers

A legal monopolist might forgo some of its monopoly profits if government regulators force it to do so or if it is pressured to do so by an angry public. Drug company Burroughs Wellcome (now part of GlaxoSmithKline), for example, was pressured by angry activists to lower its price for AZT when it was the only treatment for AIDS. However, in the absence of any external regulatory authority (such as the government), or of any external public pressures, monopolists are utility maximizers like every other company in a market and will, therefore, seek to maximize their profits if they are able to do so. If a monopoly can, it actually will seek monopoly profits. Is there any empirical evidence to support this claim? An overwhelming amount of empirical statistical evidence shows that monopoly companies seek monopoly profits, although strong labor unions and executives can siphon off up to half of a company's monopoly profits as wages, benefits, salaries, and bonuses.[18]

## On the Edge

### Drug Company Monopolists and Profits

Drug companies in the United States are granted a patent on any new pharmaceutical drug they develop, which gives them a monopoly on that drug for 20 years. Not surprisingly, high monopoly profits (i.e., profits well beyond the average rate of profits in other industries) are characteristic of the pharmaceutical industry. During the 1970s and 1980s, drug companies listed in the Fortune 500 had average profit rates (as a percentage of revenues) that were double the average for all other industries in the Fortune 500.[19] During the 1990s, drug company profit rates averaged four times the average profit rates of all other industries, and during the first decade of the twenty-first century, drug company profit rates were about three times the average rates of all other manufacturing industries. Today their rate of profit remains higher than any other industry in the Fortune 500.[20] Drug companies say they need these profits to cover the costs of research for new drugs. However, drug companies spend only a small portion of their revenues—14 percent—on research. They hand out a larger portion of their revenues—17 percent—to shareholders as dividends, and they spend much, much more—31 percent—on advertising and administration. A study of drug manufacturing costs found that prescription drugs have markups of 5,000 percent, 30,000 percent, and 500,000 percent over the cost of their ingredients. The ingredients in 100 tablets of Norvasec, which sold for $188, cost 14 cents; of Prozac, which sold for $247, 11 cents; of Tenormin, which sold for $104, 13 cents; of Xanax, which sold for $136, 3 cents, and so on.[21]

### Scenes from the Pharmaceutical industry

William Weldon, the CEO of Johnson & Johnson, and drug manufacturing.

Interactive

William Weldon is CEO of Johnson & Johnson, whose 2010 profits of $13.3 billion were the highest in the U.S. pharmaceutical industry.





WRITING PROMPT

**Your Views on the Drug Industry**

1. Is the drug industry a good illustration of the market theories described in this chapter? Explain your answer.
2. What changes, if any, do you think we should make to U.S. drug patent laws? Explain.
3. How should the relationship between drugs and human life/health affect your views on drug industry monopoly profits? Explain.

The response entered here will appear in the performance dashboard and can be viewed by your instructor.

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## 4.3.3: Monopoly Competition and Ethics

How well does an unregulated monopoly market succeed in achieving the moral values that characterize perfectly competitive free markets? For the most part, not well. Unregulated monopoly markets can fall short of the three values of capitalist justice, utilitarian efficiency, and respect for negative rights that perfect competition achieves.

The most obvious failure of monopoly markets lies in the high prices they enable the monopolist to charge and the high profits they enable the monopolist to reap—a failure that violates capitalist justice. Why do the high prices and profits the monopolist can command violate capitalist justice?

Capitalist justice says that what each person receives should equal the value of the contribution that person made. As we saw, the equilibrium point is the one (and only) point at which buyers and sellers each receive in return the value of what each contributes to the other, whether this value is determined from the average buyer's or the average seller's point of view. In a monopoly market, however, prices for goods can be set above the equilibrium level, and quantities can be set at less than the equilibrium amount. As a result, the seller can charge the buyer more than the goods are worth (from the average seller's point of view) because prices are more than the costs of making those goods. Thus, the high prices the seller can force the buyer to pay are unjust, and these unjustly high prices are the source of the seller's excess profits.

A monopoly market allows resources to be used in ways that will produce shortages of those things buyers want and cause them to be sold at higher prices than necessary. The high profits in a monopoly market indicate a shortage of goods. However, because other firms are blocked from entering the market, their resources cannot be used to make up the shortages indicated by the high profits. This means that the resources of these other firms are deflected into other markets where they do less good because they may not have similar shortages. Moreover, the monopoly market allows the monopoly firm to set its prices well above costs instead of forcing the firm to lower its prices to cost levels. The resulting excess profits absorbed by the monopolist represent resources that are not needed to supply the amounts of goods it produces.

A monopoly market, then, is one that can, and generally will, deviate from the ideals of capitalist justice, economic utility, and negative rights. Instead of continually establishing a just equilibrium, the monopoly seller can impose unjustly

### Further Injustice in Monopoly Markets

In addition to violation of capitalist justice, monopoly markets deviate from economic utility and force restrictions on negative rights.

Interactive

| Deviation from Economic Utility | Restrictions on Negative Rights |
|---|---|

A monopoly market does not encourage the monopolist to minimize the resources consumed to produce its goods. A monopoly firm has little incentive to reduce its costs because it knows its monopoly profits can more than cover all its costs, and for the same reason it has little incentive to find less costly ways to make its product, and little incentive to invest a great deal in innovation and in improving its product. Because profits are high anyway, there is little incentive for it to develop new technology that might give it a competitive edge over other firms, for there are no other competing firms.

high prices on the buyer and can generate unjustly high profits for him or herself. Instead of maximizing efficiency, monopoly markets provide sellers incentives for waste, misallocation of resources, and profit-gouging. Instead of protecting the negative rights of freedom, monopoly markets create an inequality of power that allows the monopoly firm to dictate terms to the consumer. The producer then replaces the consumer as "sovereign" of the market.

***Quick Review 4.7***
**Ethical Weaknesses of Monopolies**

- They violate capitalist justice by charging more for products than producer knows they are worth.
- They violate utilitarianism by keeping resources out of monopoly market where shortages show more are needed and diverting them to markets without such shortages; and by removing incentives to use resources efficiently.
- They violate negative rights by forcing other companies to stay out of the market, by letting monopolists force buyers to purchase goods they do not want, and by letting monopolists make price and quantity decisions that consumers are forced to accept.

# 4.4: Oligopolistic Competition

**OBJECTIVE: Differentiate the ethical implications of oligopolistic and monopolistic competition**

Few industries are monopolies. Most major industrial markets are not dominated by a single firm, but more usually by a few—two, four, eight, or even more firms, depending on the market. Such markets lie somewhere on the spectrum between the two extremes of the perfectly competitive market with numerous sellers and the pure monopoly market with one dominant seller. Market structures of this "impure" type are referred to as *imperfectly competitive markets*, of which the most important kind is the oligopoly.

In an oligopoly market, two of the seven features that characterize the purely competitive market are not present:

1. Instead of many sellers, there are only a few significant sellers. That is, most of the market is shared by a relatively small number of large firms that together can exercise some influence on prices. The firms controlling the oligopoly market may be only 2 or as many as 50, depending on the industry.
2. Other sellers are not able to easily enter the market. As with monopoly markets, barriers to entry may be due to the prohibitively high costs of starting a business in that industry, may be the result of long-term contracts that have tied all the buyers to the firms already in the industry, or may be due to enduring loyalties created by brand-name advertising.

## 4.4.1: Highly Concentrated Markets

Oligopoly markets, which are dominated by a few (e.g., three to eight) large firms, are said to be *highly concentrated markets*. Examples of such oligopoly markets are not hard to find because they include many of the largest manufacturing industries.

## 4.4.2: How Oligopolies Form

Although oligopolies can form in a variety of ways, the most common causes of an oligopolistic market structure are horizontal mergers.[22]

> **A *horizontal merger* is simply the unification of two or more companies that were formerly competing in the same line of business.**

If enough companies in a competitive industry merge, the industry can become an oligopoly composed of a few very large firms with low levels of competition.

## Ethical Application

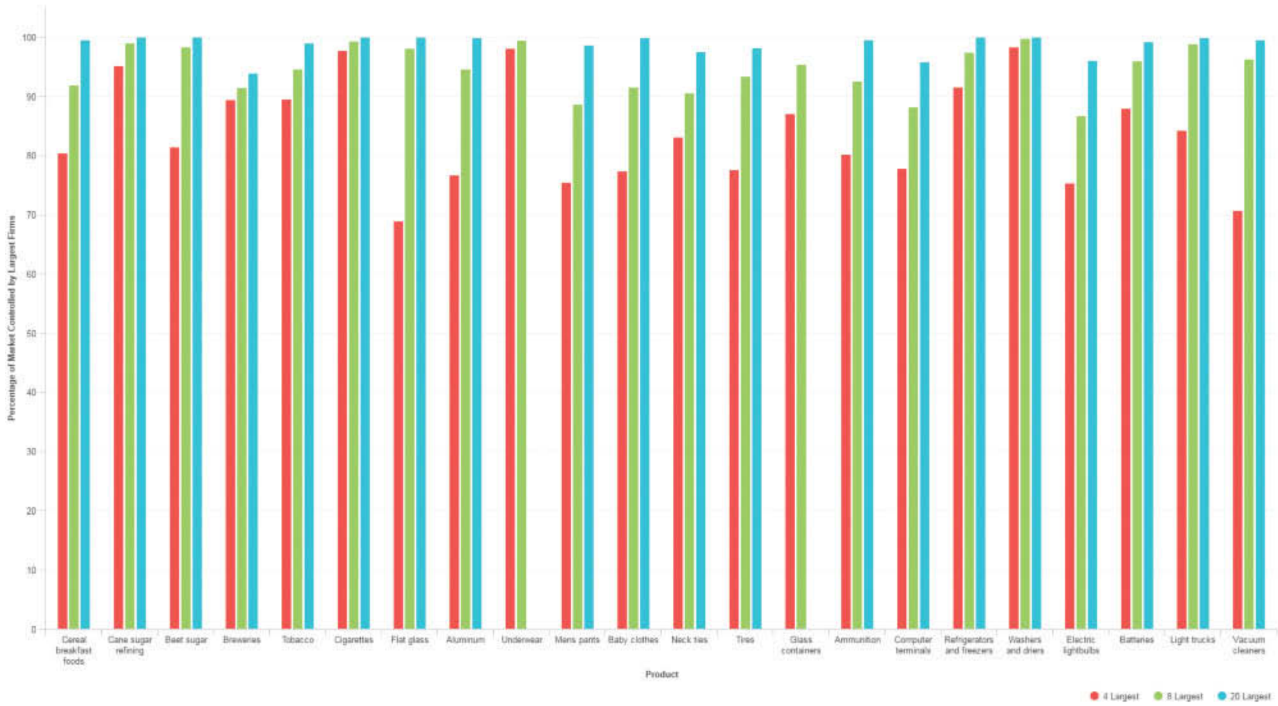
### The Airline Oligopoly

The airline industry in the United States is now an oligopoly. However, during the late 1970s and 1980s, it consisted of several tiny local airlines plus about two dozen small and moderate-sized regional, national, and international airlines, including Alaska, Jet America, Ozark, Trans World, Aircal, American, Braniff, Republic, Western, Delta, Eastern, Hawaiian, Pan American, Southwest, Charter One, New York Air, People Express, Continental, United, Empire, Piedmont, Pacific Southwest, US Air, and America West. In 1978, the airline industry was deregulated, which allowed new airlines to enter the market and let each airline charge what it wanted. Competition became intense, airfares fell, price wars were frequent, and three of the airlines went bankrupt (Braniff, Eastern, and Pan American). To reduce their intense rivalry, the airlines embarked on a series of mergers, and by the beginning of the twenty-first century, the two dozen U.S. airlines of the 1980s had combined into about a dozen: Alaska, Trans World, American, Republic, Northwest, Delta, Airtran, Southwest, Continental, United, US Airways, JetBlue, and America West. Competition remained fairly high, however, and over the next 15 years the airlines continued to consolidate. America West merged with US Airways, while Trans World merged with American. Then American and US Airways got together to form the largest airline in the United States (20 percent domestic market share). Airtran and Southwest merged to form the second largest (18 percent). Republic merged with Northwest, and Northwest then merged with Delta to form the third-largest airline (17 percent). New York Air and People Express merged with Continental, which then joined United to form the fourth largest (15 percent). By 2015, the two dozen small and moderate-sized companies of the 1980s had combined to form an oligopoly with six major airlines: American, Delta, Southwest, United, JetBlue, and Alaska. As the airlines consolidated, competition gradually declined, and they began charging significantly higher airfares. In 2009, an average domestic airline fare was \$310, and by 2015 it was almost \$400.[23] Airlines also began charging fees for meals, checked baggage, priority boarding, seat selection, returning items left onboard, making a reservation by phone, redeeming frequent flyer miles, etc.

## Combined Market Shares of the Largest Firms in Highly Concentrated Oligopoly Industries

The following table shows several highly concentrated U.S. industries, as indicated by the large share of the market that the biggest firms control. The firms that dominate the highly concentrated U.S. industries tend, by and large, to be among the largest corporations in the United States.[24]

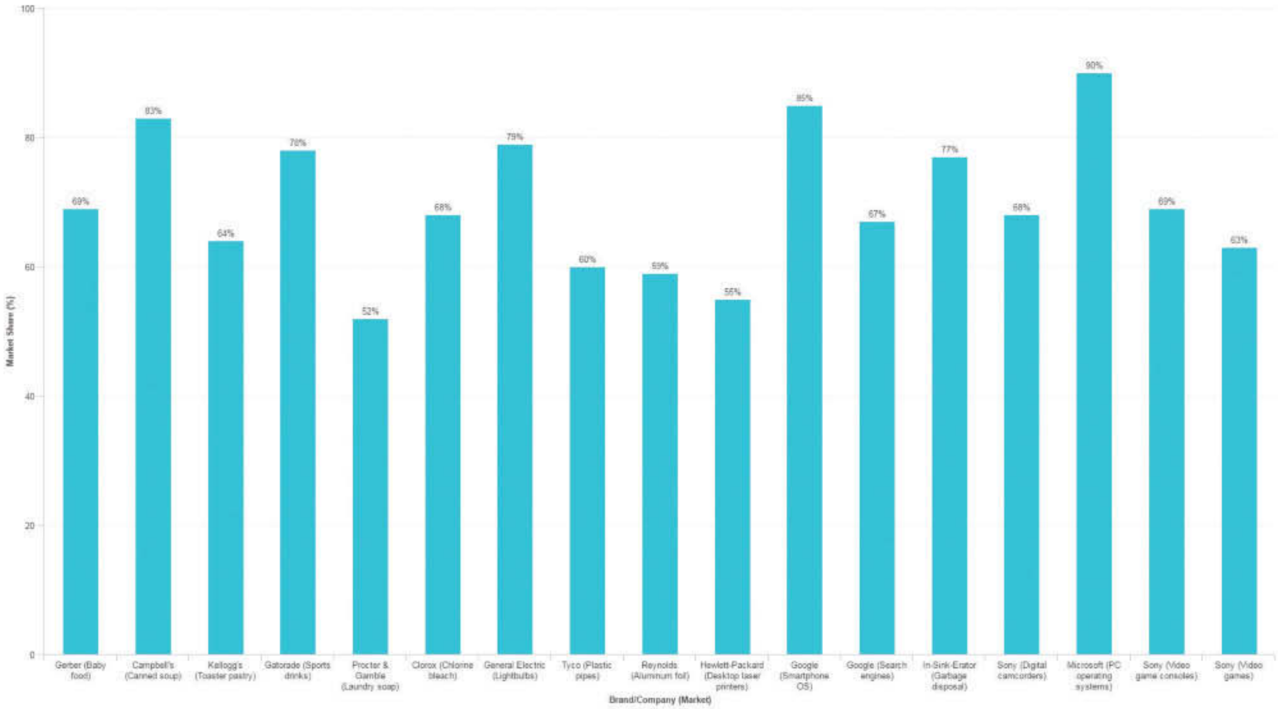
Interactive



### Dominant Brands and Companies in Oligopoly Markets

The following table lists several major corporations dominant in various oligopoly industries, together with the approximate market share controlled by these firms. The table includes many of the most well-known and largest U.S. firms operating in several of the most basic U.S. industries.[25]

Interactive




## 4.4.3: Effects of Oligopoly on Consumers and Markets

How do oligopoly markets affect consumers? As the history of the airline oligopoly suggests, consumers do not benefit when an industry consolidates into an oligopoly. Because a highly concentrated oligopoly has a relatively small number of firms, it is relatively easy for the managers of these firms to join forces and act as a unit. By explicitly or tacitly agreeing to set their prices at the same levels and to restrict their output accordingly, the oligopolists can function much like a single giant firm. This uniting of forces, together with the barriers to entry that are characteristic of oligopoly industries, can result in high prices and low supply levels that are very similar to those found in monopoly markets. As a consequence, oligopoly markets, like monopolies, can do the following:

- fail to exhibit fair prices
- generate a decline in social utility
- fail to respect basic economic freedoms

It has been shown, for example, that generally the more highly concentrated an oligopoly industry is, the higher the profits it is able to extract from its customers.[26] Studies also have estimated that the overall decline in consumer utility as a result of inefficient allocation of resources in highly concentrated oligopoly industries ranges between 0.5 percent and 4.0 percent of the nation's gross national product, equal to between $91 billion and $725 billion in 2015.[27]

In a market economy like ours, and like most of the world now has, competition is what business is about. Everything a company does is normally aimed at making products or providing services that consumers will want to buy from the company rather than its competitors. To succeed in that competition, a company has to provide consumers with products and services that are cheaper or better (or both) than competitors'. Companies normally prevail in this competition only if they can lower their costs below those of competitors (which lets them offer lower prices than competitors or make higher profits than competitors) or if they can develop products and services that are of higher quality than those of competitors. In either case, the company is competing in a way that ultimately benefits consumers and society. Best practices for success include the following:

- To cut costs, companies can make better and more efficient use of the resources they have.
- To improve their products, companies can continually innovate and offer consumers and society increasingly better products.

Cutting costs and improving quality are the normal and honest ways in which companies in market economies compete and, as we have seen, competitive markets are fair, socially beneficial, and respectful of people's negative rights. However, there are other ways to "compete" that are not aimed at lowering costs or improving quality, but instead aim at destroying competition itself. We are now going to turn to look at some of the specific ways in which employees and managers who operate in monopoly or oligopoly markets can manipulate the power they have in these markets to

- undermine competition and treat consumers unfairly
- violate rights
- diminish utility

That is, we are going to look at specific ways in which businesses can use their market power to unfairly harm consumers as well as competitors, instead of working at honestly lowering their costs and improving their products.

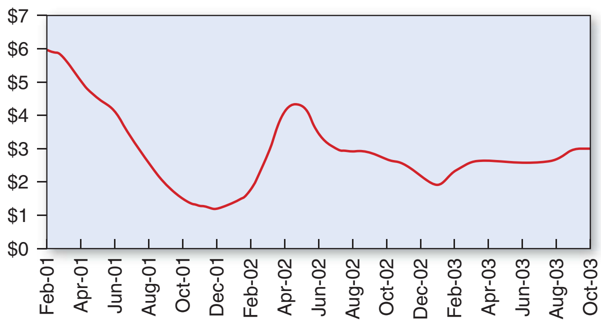
**EXPLICIT AGREEMENTS AND OTHER ANTICOMPETITIVE TACTICS** Prices in an oligopoly can be set at profitable levels through explicit agreements that restrain competition. The managers of the few firms operating in an oligopoly can meet and agree to act as a unit, for example, by charging the same price for their products. By uniting together, the oligopoly firms act like a single seller and, in effect, turn the oligopoly market into a monopoly. The greater the degree of market concentration present in an industry, the fewer the managers that have to be brought into the agreement, and the easier it is for them to fix their prices. Because such agreements reproduce the effects of a monopoly, they curtail justice, utility, and rights as discussed in the first sections of this chapter.

## On the Edge

### Fixing the Computer Memory Market

All PCs need memory chips, called DRAM for "dynamic random access memory," which are sold in units of gigabytes (Gb) or megabytes (Mb). The $20 billion per year DRAM market is dominated by Micron, Infineon, Samsung, Hynix, and a few smaller companies who sell their DRAM to computer makers such as Dell, Compaq, Gateway, and Apple. In the late 1990s, the DRAM makers invested in bigger factories leading to a market glut, large inventories, and intense price competition. By February 2001, unsold inventories and a recession took DRAM prices into a steep fall (see Figure 4.5), dropping to about $1 a unit by the end of 2001, a price well below manufacturing costs. In early 2002, while inventories were still high and the recession was in full swing, prices strangely rose and peaked at about $4.50 a unit in April (see Figure 4.5). That month, Michael Dell of Dell Computers accused the companies of "cartel-like behavior," and the U.S. Department of Justice (DOJ) began to investigate the possibility of price-fixing. Prices now reversed, falling to $2 by the end of 2002, about 20 to 40 percent below manufacturing costs. The DOJ later released a November 26, 2001, e-mail written by Kathy Radford, a Micron manager, in which she described plans by Micron, Infineon, and Samsung to move their prices upward in unison: "the consensus from all [DRAM] suppliers is that if Micron makes the move, all of them will do the same and make it stick." On September, 2004, Infineon pled guilty to "participating in meetings, conversations, and communications" with other DRAM makers during 2001 and "agreeing during those meetings, conversations, and communications" to "fix the prices for DRAM." Infineon paid the U.S. government $160 million in fines. The DOJ announced it was investigating the other DRAM makers.[28]

**Figure 4.5** 128 Mb DRAM Prices in the United States



WRITING PROMPT

**Did DRAM Makers Engage in Cartel-Like Behavior?**

1. Estimate the equilibrium price from the graph.
2. Who ultimately paid for any monopoly profits above the equilibrium price?
3. Did the companies do anything unethical? Explain.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## 4.4.4: Anticompetitive Strategies

We should note at least briefly that monopoly companies can also engage in anticompetitive behavior. For example, a company that has a monopoly in one market may try to use its power to create a monopoly in another market.

### Ethical Application

#### Bundling Software

Microsoft, which monopolized the market for PC operating systems with Windows, was accused of trying to establish another monopoly in media players when it began to bundle Windows Media Player with each copy of Windows, so that a consumer could not buy Windows without also buying Windows Media Player. Somewhat disingenuously Microsoft protested that it was "giving Windows Media Player away for free." Of course, Microsoft paid for the costs of developing the media player out of what consumers paid for its operating system, so part of what consumers were paying for Windows was really being used to pay for Windows Media Player.

If the justice, freedom, and social utility that competitive markets achieve are important values for society, then it is morally wrong for the managers of oligopoly companies to unite together in a collusive agreement. Only if markets function competitively will they exhibit the justice, freedom, and utility that justify their existence. These beneficial aspects of a free market are reaped by society only as long as managers of oligopoly firms refrain from agreeing to practices that recreate a monopoly market.

The following sections present specific ways in which the managers of oligopoly companies can agree to act together in conspiracies that injure society and can unfairly destroy smaller competitors.

**PRICE-FIXING** When firms operate in an oligopoly market, their managers can meet secretly and agree to set their prices at artificially high levels (i.e., at prices well above the supply curve and generally above the equilibrium price). This activity is straightforward *price-fixing*, and it reproduces the effects of a monopoly. In 2010, for example, the managers of six companies—Sharp Corp., LG Display Co., Hitachi Displays Ltd., Epson Imaging Devices Corp., Chunghway Picture Tubes Ltd., and Chi Mei Optoelectronics—admitted they had put together a worldwide scheme to fix the prices of thin-film-transistor liquid-crystal display (TFT-LCD) panels, which serve as the screens for flat televisions, computer monitors, laptop screens, cell-phone displays, and media players. The managers confessed they got together several times in secret meetings in Japan, Korea, and the United States, where they discussed and agreed on the prices they would all charge for their TFT-LCD panels and agreed to limit the quantity of panels they would produce. By limiting their production, they created artificial shortages that let them raise their prices above the normal equilibrium level, thereby increasing their revenues even though throughout the period of the conspiracy their costs were constant and there was little competition on quality.[29] Through their price-fixing scheme, they defrauded their buyers out of hundreds of millions of dollars. When this price-fixing scheme was discovered, their companies had to pay $860 million in fines, and those managers who were involved in the scheme were given jail sentences and fined thousands of dollars. In addition, each of their many direct buyers (e.g., television and cell-phone manufacturers) then had the legal right to sue these companies and recover *three times* the amount of money the managers overcharged them.

**MANIPULATION OF SUPPLY** Managers in an oligopoly industry do not have to agree to fix prices to recreate the effects of a monopoly market. Instead, they only need to agree to limit the quantity of goods they supply to the market at a level that is below the equilibrium quantity. Doing this will create a shortage because demand for the goods will be higher than the supply of goods (i.e., at the quantity they set, the demand curve is well above the supply curve). The shortages will make prices rise higher than the equilibrium prices that would result from free competition. This kind of conduct is called **manipulation of supply**. In June 2015, for example, several potato-growing companies and cooperatives agreed to settle a California lawsuit accusing them of agreeing to limit the number of acres of potatoes they planted so that the market price of potatoes would rise.[30] Between 2004—the year before their agreement began—and 2006, the average grower price of potatoes in the United States almost doubled, increased another 40 percent by 2008, and remained high except for a dip in 2009 and 2012.[31] Note that manipulation of supply is often combined with price-fixing, as was the case in the global TFT-LCD price-fixing scheme described above.

**MARKET ALLOCATION** *Market allocation* (sometimes called "market division") occurs when companies in an oligopoly divide up the market among themselves and each company agrees to sell only to customers within its own part of the market and not enter the parts allocated to the other companies. Managers can divide up the market in one of three ways:

- by territory ("You get India and I get China.")
- by customers ("You sell to hospitals and I'll sell to doctors.")
- by time ("You have lower prices during the first half of the month, and I'll have lower prices during the second half.")

When markets are allocated among companies in this way, each section of the market has only one seller giving that company a monopoly in the section of the market allocated to it.

**BID RIGGING** Large buyers, especially government buyers, often ask companies to submit secret bids that indicate the quality of the product or service they are offering to sell and the price at which they will sell that product or service to the buyer. The buyer then chooses the seller that offers the best combination of quality and price. **Bid rigging** occurs when managers in an oligopoly market agree in advance which of them will submit the best or winning bid. The others may then not bid at all, or they may submit bids that they know are too high or that contain conditions they know the buyer will not accept. The sellers take turns offering the winning bid, or they may agree beforehand that whoever wins the bid will give each of the others a share of the buyer's business. Bid rigging, like price-fixing, eliminates competition. Because only one company will offer the buyer a satisfactory bid, the buyer unknowingly faces a monopoly and will get unfairly overcharged, while the companies can stop working at lowering their costs or innovating in quality.

**EXCLUSIVE DEALING ARRANGEMENTS** A firm institutes an *exclusive dealing arrangement* when it sells to a retailer on condition that the retailer will not purchase any products from competitors and/or will not do business outside of a certain geographical area. For several years, for instance, American Can Company would lease its can-closing machines (at low prices) only to those customers who agreed not to purchase any cans from Continental Can Company, its major competitor.[32] Exclusive dealing arrangements tend to remove price competition between retailers who are selling the company's products, and to this extent they reduce competition. However, sometimes an exclusive dealing arrangement may give retailers an incentive to become more aggressive in selling the products of the company with which they have the exclusive dealing arrangement. In such cases, an exclusive dealing arrangement may actually increase competition between retailers selling the products of different companies. For this reason, managers who require their buyers to enter exclusive dealing arrangements must carefully examine their actions and determine whether their overall effect is to dampen or promote competition.[33]

**TYING ARRANGEMENTS** A firm enters into a *tying arrangement* when it sells a buyer a certain good only on condition that the buyer agrees to purchase a certain other good from the firm. For example, Eastman Kodak Company makes photocopy machines and sells replacement parts to repair its machines. Kodak also sells repair services for its machines. When Kodak first began selling its photocopy machines, several small businesses stepped forward and began offering repair services for Kodak machines, often for less than Kodak charged for the same repair services.[34] So Kodak announced it would sell replacement parts only to those customers who also purchased their repair services from Kodak. Since other repair companies could not repair Kodak machines without the replacement parts, Kodak was able to effectively shut them out of the market even when they charged less for their services. Image Technical Services, Inc., and several other competing repair companies, sued Kodak for "tying" its services to its replacement parts. Image Technical Services won the case because, the court said, Kodak's monopoly of the supply of replacement parts gave it enough power to force buyers to also buy its repair services and to shut out other sellers of repair services, and this was an abuse of its market power. In effect, Kodak was using the monopoly it had in one market (the market for repair parts for its machines) to create a monopoly in another market (the market for repair services for its machines) and thereby, eliminate competition in two markets.

**RETAIL PRICE MAINTENANCE AGREEMENTS** If a manufacturer sells to retailers only on condition that they agree to charge a certain set retail price for its goods, it is engaged in *retail price maintenance agreements*. Until 2007, retail price maintenance was automatically judged to be an illegal anticompetitive practice because it forced retailers to stop competing on price. In 2007, however, the U.S. Supreme Court, in the case of *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, pointed out that retail price maintenance is not always anticompetitive. It is possible, the Supreme Court held, that by forcing retailers to maintain a certain price for its products, a manufacturer could, in some circumstances, actually increase competition. For example, forcing retailers to sell a product at a premium price may give retailers enough funds to provide extra services, and these extra services may make the product more competitive than the products of other sellers. Many economists, however, have disagreed with the Supreme Court and continue to hold that retail price maintenance generally reduces competition between retailers and removes from the manufacturer the competitive pressure to lower prices and cut costs.

**PREDATORY PRICE DISCRIMINATION** When a seller charges different prices to different buyers for identical goods or services, the seller is engaged in *price discrimination*. Price discrimination becomes *predatory price discrimination* when it is directed at destroying a competitor, particularly when a company tries to eliminate a competitor by selling the product in the competitor's market (but not in other markets) for less than it cost to make it.

Predatory price discrimination was used by Continental Baking Company, the "predator," against Utah Pie Company, its "prey." Continental Baking Company operated in Salt Lake City, Utah, when it tried to drive out Utah Pie Company, a competitor that had entered the market and managed to take away much of the Salt Lake City business of Continental Baking Company. Continental retaliated by selling its pies to Salt Lake City stores for less than the cost of making the pies, and at prices that were much lower than those it sold to stores in other areas, all in an attempt to undercut Utah Pie Company's sales and run it out of business. The predator, in short, was selectively cutting its prices only in the areas were its prey was operating precisely in order to drive it out of the market and, thereby, create a local monopoly for itself. Although Continental sold its pies at a loss, it planned to make up for the loss by raising prices when Utah Pie Company was gone. The Supreme Court ruled that price discrimination is "unfair" and illegal when its effect is "substantially to lessen competition or tends to create a monopoly in any line of commerce." In addition, Continental's below-cost pricing was "predatory," since it was intended to drive a competitor out of business. Price discrimination aimed at reducing competition or creating a monopoly by driving competitors out of business, particularly with below-cost prices, said the court, is wrong unless the price differences are based on real differences in the company's costs of manufacturing, packaging, marketing, transporting, or servicing goods, or when the company is merely trying to match the lower prices of other competitors in the market.

## Ethical Application

### Rockefeller and Predatory Pricing

One of the most vicious examples of predatory pricing occurred in the late nineteenth century when John D. Rockefeller monopolized 91 percent of the oil refining industry by selectively cutting his prices in the local markets of his competitors, driving them into bankruptcy, and then buying them out.[35] In 1911, the U.S Supreme Court ruled that "unfair methods of competition, such as local price cutting . . . to suppress competition" were illegal and broke up his "Oil Trust" into 34 separate companies.[36] Rockefeller's contemporary, James Buchanan Duke, also used predatory pricing to force 250 tobacco companies to become part of his "Tobacco Trust," and it too was broken up in 1911.[37] Read more on trusts in Module 4.5.

**BRIBERY** Many a company has secretly bribed government officials so they will purchase goods from the company and not its competitors. From 2001 to 2007, for example, Siemens Corporation paid $1.4 billion in bribes to government officials in Venezuela, China, Russia, Argentina, Nigeria, and Israel to get them to purchase Siemens equipment instead of buying from competitors. The U.S. Foreign Corrupt Practices Act (FCPA) makes it a crime for a company operating in the United States to bribe foreign government officials to make a sale. Because of the FCPA and similar European laws, Siemens paid more than $2.6 billion in fines.[38]

When a company bribes government officials to make a sale, the market is no longer competitive, since the company no longer has to compete with other sellers. Instead, the bribe shuts competitors out of the market and serves as a barrier to entry. The bribing company becomes a monopoly seller and can engage in the unfairness and inefficiencies of monopolies: monopoly prices and shoddy quality. Moreover, the briber induces the government official to violate the moral obligation to act in his or her country's best interests. Government officials themselves, however, sometimes demand or "extort" a bribe from companies or threaten to harm a company unless it pays a bribe. Such extortion may mitigate a company's moral responsibility, but paying the bribe will still violate the FCPA. However, the FCPA allows payment of "petty" bribes to low-level officials (e.g., customs officials) who demand a bribe just to do their jobs.[39]

**PRESSURES AND INCENTIVES, OPPORTUNITIES, AND RATIONALIZATIONS** We have looked at several ways in which managers and employees can inflict serious injuries on society by trying to reduce or eliminate the competition they face. Instead of competing honestly by working to lower their costs or improve the quality of their products and services, they try to establish, maintain, or expand a monopolistic market position. Why do managers engage in such wrongful behaviors when they risk going to jail and destroying their own careers and families? Under what conditions do employees or managers decide to engage in such behaviors? Sociologist Donald Cressey has argued that employees and managers tend to engage in "white collar" crimes such as price-fixing when the three components of the "fraud triangle" are present:

1. *Pressures and incentives*: The person is pressured or has strong incentives to engage in the wrongdoing.
2. *Opportunities:* The person sees an opportunity to engage in the wrongdoing.
3. *Rationalizations:* The person can rationalize his or her actions.[40]

Pressures and incentives for fraud can consist of organizational pressures to achieve objectives, pressures from peers, deteriorating business or market conditions, or more personal incentives such as medical bills, paying for an addiction, financial problems, or even simply greed. Opportunities arise under the following conditions:

1. When a person has the ability to carry out the crime
2. When a person is presented with circumstances that allow the crime to be carried out
3. When the risk of detection is low

Rationalizations, as we saw in Chapter 1, are the countless ways of framing or thinking about one's action so that it seems morally justified to oneself and/or others. For example, a wrongdoer may see participation in a fraud as an attempt to help his or her company, or an attempt to get a "fair" profit from customers. The wrongdoer may also see financial fraud as "what everyone does," as "borrowing" money he or she will pay back, or as something he or she "deserves," or what "they" deserve, or something he or she will do "just this once."

In a detailed study of employees whose companies had been implicated in price-fixing arrangements, researchers Sonnenfeld and Lawrence found several industry and organizational factors that tended to lead individuals into price-fixing.[41]

The failure of top managers to deal with these industry and organizational factors can put significant pressures on individuals who are otherwise striving to do what is best for a company. One CEO describes the pressures that an irresponsible management can place on young new salespeople. According to the executive, young employees that are new to a company are particularly vulnerable. For example, suppose that a young salesman is married with two kids, has significant financial demands on him, and is worried about how secure his job is. The

### The Fraud Triangle

The "fraud triangle" indicates that the most important factors that tend to lead to price-fixing are pressures and incentives, opportunities, and rationalizations.

Interactive

**Pressures and Incentives**

1. *A crowded and mature market*: Mature industries are sometimes subject to oversupply because demand begins to fall or companies all increase production at the same time, or many new companies come into the market. As prices fall and revenues decline, middle managers can feel pressured to do something to halt their losses and may respond by allowing, encouraging, and even ordering their sales teams to engage in price-fixing.
2. *Undifferentiated products*: In some industries, the products of each company are so similar to those of the other companies in the industry that the companies have no choice but to compete on price alone. This situation can lead to periodic price wars or a continuous slide in prices that makes salespeople feel that the only way to keep prices from collapsing and to protect themselves and their jobs is by getting together with the salespeople of competitor companies and forging an agreement to fix prices.
3. *Personnel practices*: In some companies, managers are evaluated and rewarded solely or primarily on the basis of revenues and sales volume, so that bonuses, commissions, advancement, and other rewards are dependent on achieving these objectives. Such incentive systems send the message that the company demands they achieve these objectives any way they can, thereby making managers feel pressured to take any means, including price-fixing, to achieve their objectives.

1 of 3 Previous Next

rules of his new organization, like those of any organization, will have a certain degree of looseness and lack of clarity. So he might start to accept practices that may look somewhat questionable to him, but that he accepts because he feels that he may just not know enough about how the system works. Given the newness and uncertainty of his position, he will be forced to rely on what other sales people tell him. Suppose, further, that he is working in an industry that is in decline so that the market for his product is shrinking and its profit margins are falling. Lastly, suppose that he knows that there are any number of other people just like him who would like to have his job, and that his employer could easily hire to take his place if he doesn't succeed in selling enough of the product at a good enough price. In such a situation, the executive concludes, the young employee may find it very hard to resist engaging in questionable price-fixing or other kinds of anticompetitive behaviors.[42]

***Quick Review 4.8***
**The Fraud Triangle**

- Pressures or strong incentives to do wrong, such as organizational pressure, peer pressure, company needs, personal incentives
- The opportunity to do wrong, which includes the ability to carry out a wrongdoing, being presented with circumstances that allow a wrongdoing, and having a low risk of detection
- The ability to rationalize one's action by framing it as morally justified

**TACIT AGREEMENTS** Although most of the forms of explicit market agreements enumerated above are illegal, price-setting in oligopolies is more often accomplished through some unspoken form of cooperation against which it is difficult to legislate. How does this take place? The managers of the major firms in an oligopoly can learn by hard experience that competition is not in their personal financial interests. Price-cutting competition, they find, will only lead to minimal profits. The firms in an oligopoly, therefore, may each come to the conclusion that cooperation is in the best interests of all. Each firm may then reach the independent conclusion that they will all benefit if, when one major firm raises its prices, all other firms set their prices at the same high levels. Through this process of "price-setting," all the major firms will retain their share of the market and will all gain by the higher price. For example, since the 1930s, the major tobacco companies have charged identical list prices for cigarettes. When one company decides it has a reason to raise or lower its cigarette prices, the other companies will always follow suit within a short period of time. The officials of these companies, however, have made no explicit agreement to act in concert; without ever having talked the matter over among themselves, each realizes that all will benefit as long as they continue to act in a unified fashion. In 1945, incidentally, the U.S. Supreme Court found the dominant cigarette companies guilty of tacit collusion, but the companies reverted to identical pricing after the case was settled.

To coordinate their prices, some oligopoly industries will recognize one firm as the industry's **price leader**.[43] Each firm will tacitly agree to set its prices at the levels announced by the price leader, knowing that all other firms will also follow its price leadership. Because each oligopolist knows it will not have to compete with another firm's lower prices, it is not forced to reduce its margin of profit to the levels to which open competition would reduce them. There need be no overt collusion involved in this form of price-setting, only an unspoken understanding that all firms will follow the price leadership of the dominant firm and will not engage in the price-lowering tactics of competition.

Whether prices in an oligopoly market are set by explicit agreements or implicit understandings, it is clear that social utility declines to the extent that prices are artificially raised above the levels that would be set by a perfectly competitive market. Consumers must pay the unjust prices of the oligopolists, resources are no longer efficiently allocated and used, and the freedom of both consumers and potential competitors diminishes.

***Quick Review 4.9***
**Unethical Practices in Oligopoly Markets**

- Price-fixing
- Manipulation of supply
- Market allocation
- Bid rigging
- Exclusive dealing arrangements
- Tying arrangements
- Retail price maintenance agreements
- Predatory price discrimination

# 4.5: Oligopolies and Public Policy

**OBJECTIVE: Interpret how public policy has developed in relation to the effects of oligopoly**

Oligopolies are not a modern phenomenon. Toward the end of the nineteenth century, as we suggested above, many businesspeople began using anticompetitive practices to force competitors to sell out to them, eventually creating gigantic **trusts** that would then monopolize their markets, raise prices for consumers, cut prices for their suppliers such as farmers, and continually terrorize their remaining competitors with predatory pricing. Businesspeople created trusts in the sugar, salt, whiskey, tobacco, and cottonseed oil industries. Earlier, competing railroads had been consolidated into huge enterprises by the so-called Robber Barons—Andrew Carnegie, Jay Gould, J. P. Morgan, and John D. Rockefeller. These gigantic trusts elicited the public's fear, suspicion, and hatred. Newspaper editorials and politicians railed against the unscrupulous ruthlessness with which the trusts ground down their competitors, monopolized crucial industries, and bullied the farmers who supplied them with raw materials. Intellectuals argued that the concentrated power of the trusts was dangerous and would give these businesses unfair political influence.

The rise of the trusts coincided with the Progressive movement, a political reform movement directed against big business abuses of power with the avowed aim of "busting" up the trusts. Responding to this movement, particularly the lobbying of struggling small farmers, the U.S. Congress in 1887 passed the Interstate Commerce Act to regulate the large railroad companies. Then, in 1890, Congress passed what was to become the most important single piece of antitrust legislation, the **Sherman Antitrust Act**. The two key sections of the act are as follows:

> Section 1: Every contract, combination . . ., or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared illegal . . .
>
> Section 2: Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony . . .

In the two decades following the passage of the Sherman Antitrust Act, little was done to enforce it. However, in 1908, the federal government filed suit against the Tobacco Trust, claiming that its ruthless tactics against competitors had violated the Sherman Antitrust Act. In a May 1911 decision, the Supreme Court agreed and ordered the Tobacco Trust to be broken up into 15 separate companies. Encouraged by the victory, the "trust busters" in government went on to successfully prosecute Standard Oil, DuPont, and other large trusts. The U.S. Supreme Court, in fact, went so far as to say that the Sherman Antitrust Act was "the Magna Carta of free enterprise, . . . as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms."[44]

## 4.5.1: Interpretations of Sherman Antitrust Act

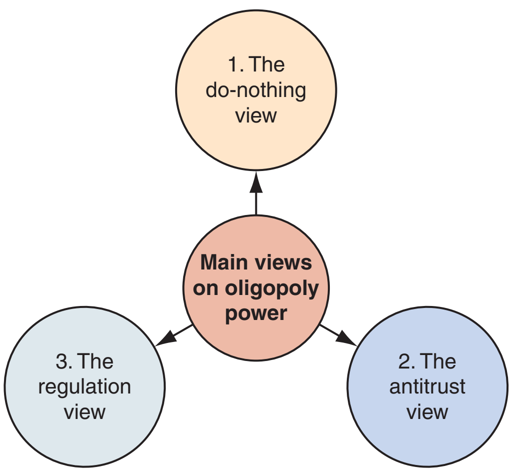
Since 1911, section 1 of the Sherman Antitrust Act has been interpreted as prohibiting competing companies from making agreements to fix prices, to divide up territories or customers, or to restrict the quantity of goods they bring to market. Section 2 has been interpreted as prohibiting a company that already holds a monopoly from using its monopoly power to maintain its monopoly or to extend its monopoly into other markets. Thus, the Sherman Antitrust Act does not prohibit a company from acquiring a monopoly through legitimate business dealings (e.g., having a better product, a shrewd strategy, or sheer luck). However, if a company that acquires a monopoly then tries to use its monopoly power to acquire a new monopoly, or to maintain its current monopoly, it is "guilty of a felony." In 1911, the U.S. Supreme Court ruled that although some agreements between competitors could be "reasonable" and legal if they "promote competition," nevertheless, certain agreements (including agreements to fix prices or quantities) were so inherently anticompetitive that they were always illegal.

The antitrust laws were expanded in 1914 by the Clayton Act, which prohibits price discrimination, exclusive dealing contracts, tying arrangements, and mergers between companies "where the effect may be to substantially lessen competition." This latter section of the Clayton Act also gives the federal government the power to prohibit two companies from merging if the government believes that their merger will "substantially lessen competition."

Although the United States has a long history of antitrust legislation, there is still a great deal of debate concerning what government should do about the power of oligopolies. Some have argued that the economic power held by oligopoly corporations is actually quite small and insufficient to affect society, whereas others have claimed that it dominates modern economies, and still others have argued that several social factors inhibit the use of this power. These differences have given rise to three main views on oligopoly power, which appear in Figure 4.6.

Let's look at each of these views in detail.

**Figure 4.6** Three Main Views on Oligopoly Power



### Examining Views on Oligopoly Power

The three main views on oligopoly power are the do-nothing view, the antitrust view, and the regulation view.[45, 46, 47, 48, 49, 50]

Interactive

**The Do-Nothing View**

Some economists hold that nothing should be done about the economic power held by oligopoly corporations because the power of large oligopoly corporations is actually not as large as it may first appear. Several arguments have been given to support this claim.

1. *Competition is between industries with substitutable products*: It is argued that although competition within industries has declined, it has been replaced by competition between industries with substitutable products. The steel industry, for example, is now in competition with the aluminum and cement industries. Consequently, although there may be a high degree of market concentration in a single industry like steel, a high level of competition is still maintained by its relation to other competing industries.
2. *Economic power of one corporation is restrained*: As economist John Kenneth Galbraith once argued, the economic power of any large corporation may be balanced and restrained by the "countervailing power" of other large corporate groups in society. Government and unions, for example, both restrain the power of big businesses. Although a business corporation may have a large share of an industrial market, it is faced by buyers that are equally large and equally powerful. A large steel company, for example, must sell to equally large automobile companies. This balance of power between large corporate groups, Galbraith claimed, effectively reduces the economic power any single corporate giant can exert.

**1 of 5** Previous Next

**COMPETITIVE MARKET RELATIONSHIPS** Which of the three views on oligopoly power is correct: the do-nothing view, the antitrust view, or the regulation view? Readers will have to decide this issue for themselves because at the moment there does not appear to be sufficient evidence to answer this question unequivocally. Whichever of these three views readers may find most persuasive, it is clear that the social benefits generated by free markets cannot be secured unless the managers of firms maintain competitive market relationships among themselves. The ethical rules prohibiting collusion are meant to ensure that markets are structured competitively. These rules may be voluntarily followed or legally enforced. They are justified insofar as society is justified in pursuing the utilitarian benefits, justice, and negative rights that free competitive markets can secure.

## On the Edge

### Oracle and PeopleSoft

Oracle Corporation makes extremely complicated and large customized software programs that can support thousands of simultaneous users and that are capable of administering the personnel records and financial records of very large businesses (called *enterprise software*). PeopleSoft and SAP were the only two other major competitors making such massive enterprise software. Oracle held 18 percent of the market in customized software capable of handling the personnel records of very large businesses, SAP held 29 percent, and PeopleSoft held 51.5 percent. Moreover, Oracle held 17 percent, SAP held 39 percent, and PeopleSoft held 31 percent of the market for customized software capable of managing the financial records of very large businesses. On June 6, 2003, Oracle attempted a hostile takeover of PeopleSoft by offering to buy PeopleSoft's shares for $5.1 billion, or $16 a share. PeopleSoft's board of directors rejected Oracle's offer, and on June 18 Oracle raised its bid to $6.3 billion, or $19.50 per share. Then, on February 4, 2004, Oracle raised its offer to $9.4 billion, or $26 per share. PeopleSoft stock was by then selling for $22 a share, and its board rejected the new offer. PeopleSoft also passed a "poison pill" provision by promising customers cash refunds of up to five times what they paid for their software if PeopleSoft were taken over by another company.

On February 26, 2004, the U.S. Department of Justice (DOJ) sued to block Oracle's bid, claiming the takeover would reduce the market's competitors from three to two and "such a reduction in competition is likely to result in higher prices, less innovation, and decreased support" for large business customers. Oracle challenged the government's definition of the "enterprise software market" as too narrow and asserted that if the market was defined as the market for all "business software," then there were many dozens of companies competing in the market and not just three. Moreover, Oracle claimed, large companies such as Microsoft planned to enter the enterprise software market, and, anyway, large customers could negotiate low prices even when there were only two competing sellers in a market. On September 9, 2004, the court ruled in Oracle's favor against the DOJ, and Oracle shortly acquired PeopleSoft.[51]

### WRITING PROMPT

**Consider Market Concentration**

1. Does an Oracle takeover of PeopleSoft leave the market too concentrated?
2. Do large companies do more good than bad?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

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## Web Resources

Readers who want to conduct online research on the market issues in this chapter might want to start with the American Antitrust Institute, which provides cases, articles, and links on price-fixing, mergers, vertical price restraints, and so on at their website (*http://www.antitrustinstitute.org*). The Federal Trade Commission (FTC) provides access to its antitrust decisions and proceedings (*http://www.ftc.gov*), and the U.S. Justice Department does the same (*http://www.usdoj.gov/atr/index.html*). Additional links and important legal cases relating to all of these issues can be found through the excellently organized and copious resources of Hieros Gamos (*http://hg.org/antitrust.html*), or through the American Bar Association (*http://www.americanbar.org/groups/antitrust_law.html*).

### SHARED WRITING

**Public Policy and Business Competition**

1. What kind of public policy do you think the United States should have with respect to business competition? Develop moral arguments to support your answer (i.e., arguments showing that the kinds of policies you favor will advance the public welfare, or secure certain important rights, or ensure certain forms of justice).

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit **0 characters | 140 minimum**

### SHARED WRITING

**Price-Fixing in a Foreign Country**

1. In your judgment, should a U.S. company operating in a foreign country in which collusive price-fixing is not illegal obey the U.S. laws against collusion? Explain your answer.

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit **0 characters | 140 minimum**

## Case Study 4.1: Intel's Rebates and Other Ways It "Helped" Customers

On November 12, 2009, Intel Corp. gave Advanced Micro Devices (AMD) $1.25 billion to settle a lawsuit AMD filed against it in 2005. Intel's CEO Paul Otellini said he agreed to pay $1.25 billion to settle AMD's lawsuit because he no longer felt the "time and money [spent fighting it] makes sense."[1] AMD's lawsuit accused Intel of being a monopoly and of using its monopoly power to unfairly keep computer companies from buying AMD's microprocessors. With about 70 percent of the market, Intel Corp. is the world's largest manufacturer of PC microprocessors—also called computer chips, microchips, or processors—tiny electronic devices that serve as the "brain" of a PC and carries out its basic operations. As the world's second-largest maker of PC microprocessors, AMD is Intel's only real competitor, although it holds only about 20 percent of the PC processor market. It is difficult for other companies to get into the business of making PC microprocessors because of several "barriers to entry," which are as follows:

1. Intel and AMD hold the patents for making the kind of microprocessors almost all PCs use.
2. It costs several billion dollars to build facilities for making microprocessors.
3. Intel and AMD are so big and experienced that they can now make microprocessors for a lot less than a new company could, so if a new company tried to enter the market, its prices would likely not be competitive with Intel's or AMD's.

AMD was not the only one that had accused Intel of using monopoly power to stifle competition. On May 5, 2009, the European Commission fined Intel a record $1.5 billion and said the company had used its monopoly power to unfairly block AMD from the market.[2] On November 4, 2009, New York Attorney General Andrew Cuomo sued Intel for harming New York's consumers by using its monopoly power to keep computer makers from buying better AMD microprocessors. In June 2008, South Korea's Fair Trade Commission ruled that Intel had used its monopoly power in violation of its antitrust laws. In 2005, Japan's Fair Trade Commission ruled that Intel had violated Japanese antitrust laws by paying companies to buy all or almost all of their processors exclusively from Intel.

## A Strategic Mistake and a New Product

Many of the activities Intel was being blamed for originated in a strategic mistake the company made in the late 1990s, when it invested hundreds of millions of dollars developing a new type of microprocessor that would not use "x86 technology." x86 technology consists of certain instructions that are built into "x86 microprocessors." All microprocessors must contain instructions that allow them to "read" and run software programs like games, word processors, or web browsers. Because all x86 microprocessors contain the same instructions, the newest x86 microprocessors can generally read and use the same data and programs that ran on older x86 microprocessors. This means that when a customer who has been using a computer with an x86 processor buys a new computer with a more advanced x86 microprocessor, he or she does not have to throw away all his or her old programs and data because they will still work on the new computer.

This ability of each new generation of x86 microprocessors to run most of the programs that previous generations of x86 microprocessors could run is a major advantage for both consumers and businesses alike. However, from Intel's perspective, x86 microprocessors have a major disadvantage: AMD can legally make x86 microprocessors, so Intel is forced to compete with AMD. Intel's biggest nightmare was that AMD someday might come up with an x86 microprocessor that was faster and more powerful than any of Intel's and then take over the market.

So when it invested in a new generation of microprocessors in the 1990s, Intel decided to develop and patent a microprocessor that did not use x86 technology. Since Intel alone would hold the patent for this new non-x86 processor, AMD would be legally barred from making it. With luck, Intel might eventually have the entire PC processor market to itself.

Intel called its new PC processor "Itanium," and it was faster and more powerful than all previous generations of PC processors. However, there was a problem. Since the Itanium processor did not use x86 technology, all software designed to run on current and older x86 processors would not work on the new Itanium unless the user first ran an "emulation" program that, in effect, forced Itanium to imitate an x86 processor. However, the emulation program slowed down the programs designed for x86 processors, sometimes to a frustrating crawl. Thus, when a consumer or business bought a new computer with the Itanium processor inside, its current software and data would not work well on the new computer. This issue was a major deterrent for buyers.

AMD had also developed a more advanced generation of PC processors during the 1990s. However, AMD decided to stick with the x86 technology so that its new processor could run software designed for x86 processors without using an emulation program. AMD called its new processor "Athlon." Since Athlon was not slowed down by an emulation program when it ran x86 programs, all x86 programs ran extremely fast and smoothly on computers equipped with AMD's new processor. AMD's Athlon could run x86 programs much faster and better than Intel's Itanium, and Athlon also used less electricity and sold for less than Itanium. Intel's worse nightmare had come true.

## Actions and Reactions

When AMD and Intel marketed their new microprocessors in 1999, reviewers and users raved about AMD's fast and low-priced Athlon and heaped scorn on Intel's clunky Itanium. PC manufacturers flocked to put AMD's processor into their new computers, and AMD's market share grew from about 9 percent to about 25 percent of the PC processor market, while Intel's fell from 90 percent to 74 percent.

However, in 2003 and 2004, AMD's sales hit a wall. Computer manufacturers suddenly refused to buy AMD's processors. In 2002, Sony had put AMD's Athlon into 23 percent of its computers; by 2004, it had stopped using Athlon completely. NEC went from using Athlon in 84 percent of its desktop computers to using it in virtually none. Toshiba went from using it in 15 percent of its computers in 2000 to using it in none by 2001.[3] Altogether, AMD's share of the Japanese PC processor market fell from 25 percent in 2002 to 9 percent in 2004.

What had happened? Tom McCoy, AMD's executive vice president for legal affairs, claimed in an article that the drop in orders for Athlon chips was "a matter of sheer exercise of monopoly power" by Intel.[4] McCoy claimed that Intel paid the Japanese companies—Sony, NEC, and Toshiba—millions of dollars in "rebates" provided that they stopped buying AMD's microprocessors and used only Intel microprocessors inside their computers. However, McCoy claimed, these payments were not really rebates. A true rebate is a payment based on the number of products a customer purchases, and so it is in effect a discount that is paid after the customer buys the product (unlike a regular discount, which is subtracted from the price before the purchase). However, the payments Intel was giving computer makers, McCoy asserted, were not related to the number of processors they bought. Instead, Intel handed over these payments when a company agreed to stop buying from AMD, regardless of the number of processors the company subsequently purchased.

Moreover, McCoy wrote, Intel threatened companies by warning them that if they did not stop using AMD's microprocessors, Intel might stop supplying them with any microprocessors at all. The threat was a powerful one because even if they used AMD's microprocessors on some of their top-quality computers, every computer manufacturer still depended on Intel for the microprocessors in all their other computers.[5] Because of its small size, AMD could not provide the full range of microprocessors that the larger companies needed.

Convinced that Intel was using unfair and illegal means to block it out of the market, AMD sued Intel on June 27, 2005. Intel's general legal counsel, Bruce Sewell, responded to AMD's claims by arguing that the reason computer makers stopped buying AMD's microchips was because once they started using them in large numbers and running many different programs on them, they found AMD chips did not run the programs as fast as they had first appeared to. "When AMD has good parts, they do fine," said Sewell, "When AMD has lousy parts, they don't do so well. That's what a competitive market is all about."[6]

Sewell also defended Intel's rebates. If it is not wrong, he said, for a small company to build loyal customers by giving them more rebates when they agree to use your products exclusively, why should it be wrong for a larger company to do the same? Moreover, rebates in effect lowered the price of its computer chips, and what was wrong with that? Ultimately, didn't that benefit the consumer? Why was it so important to relate rebates to the number of units a customer buys? If Intel gave larger rebates to those companies that agreed to use its products exclusively, and smaller rebates to those companies that would not make the same commitment, what was wrong with that? Wasn't a company's agreement to use Intel as its exclusive supplier valuable to Intel, and so shouldn't Intel be allowed to reward that company with larger rebates than the discounts it offered other companies?

Because the AMD lawsuit was complicated and required gathering and reviewing a great deal of documentary evidence, it had still not gone to trial by the end of 2009. By then, however, AMD's allegations had convinced several foreign governments—including the European Union, South Korea, and Japan—that they should investigate Intel, and their investigations ended with substantial fines of Intel for violating antitrust laws. However, the United States did very little until, toward the end of 2009, the FTC sued Intel for "illegal monopolization," "unfair methods of competition," and "deceptive acts and practices in commerce."[7]

## The Federal Trade Commission Lawsuit

The FTC said in its suit that its investigations had discovered what Intel's legal counsel Bruce Sewell had suggested: some software programs ran slowly on AMD's processors. The reason was not because AMD's processors were inherently slow. They had found that Intel had changed the programs sold by software companies so that their programs would not work well on computers using AMD's computer chips. All software companies use "compilers" to convert their programs into a form that will run on particular kinds of computer chips. The compilers are provided by the companies that make the chips, in this case Intel and AMD, that are each supposed to provide compilers that will allow programs to run on both their processors. The FTC said that Intel changed its compilers in 2003 so that programs compiled with Intel's compilers would run fine on Intel processors, but would run slowly or poorly on AMD's. Without their knowledge, when software companies used Intel's compilers to process one of their programs, Intel's compiler secretly inserted bugs into the program that slowed it down when it ran on an AMD processor, but not on an Intel processor. Customers and reviewers blamed AMD's processor when their new programs did not run well on a computer that had an AMD chip inside.[8]

The FTC also claimed that Intel had provided software companies with "libraries" of software code that were also designed to trip up programs when they ran on AMD microchips. The software code the FTC was talking about were short bits of software that carry out certain frequently used, but routine operations on x-86 processors. Software engineers insert these short bits of code into their programs instead of writing them out each time they need them. Intel provided software engineers with "libraries" consisting of dozens of these bits of code. However, the FTC claimed, Intel changed the software codes in its library so they would not work well on AMD processors. Consumers and reviewers again blamed AMD's chips when a program containing Intel's codes did not run well on a computer that used an AMD microchips.[9]

The FTC also said that Intel had paid computer makers to boycott AMD's processors by giving them what Intel called "rebates." However, these payments required only that a company agree not to buy AMD processors and were unrelated to the amount of Intel processors the company bought. Computer manufacturer Dell, Inc., is a good example of how Intel paid computer makers to boycott AMD. Intel had begun making significant quarterly "rebates" to computer manufacturer Dell, Inc. in 2001, and Dell at that time stopped using AMD's processors, even though many of its customers said they wanted computers with AMD's processor.

## Dell and Intel

Dell was founded in 1984 by its current CEO, Michael Dell. A student at the University of Texas at Austin at the time, Michael Dell began by selling computers out of his dorm room. By 2001, Dell had become the largest PC manufacturer in the world and held 13 percent of the worldwide PC market. The company finished 2001 with a net income of $2.24 billion.

In 2002, according to a Dell memo, Dell's chief operating officer (COO) met with several Intel officials. Before the meeting, Dell's lead negotiator had explained what he expected Intel's officials would say to Dell's COO: "[w]ithout being blatant, [the Intel representative] will make it clear that Dell won't get more [payments] if we do [use] AMD [processors]. We'll get less, and someone else will get ours."[10] During the meeting, Intel officials said they were willing to do "whatever it takes" to get Dell not to use any AMD processors in its computers. According to the memo, Intel agreed at the meeting that its quarterly payments to Dell "should increase from the $70 million this quarter to $100 million."[11] However, Dell had to continue to refuse to use AMD's processors.[12]

It was not difficult for Intel to pay the hundreds of millions of dollars it was giving Dell. Intel had unusually high profit margins of 50 percent that allowed it to accumulate $10.3 billion of cash at the end of 2001, and by the end of 2005 it held $14.8 billion of cash. In a February 2004 e-mail, Michael Dell remarked on Intel's profitability: "[Intel's] profits in the 2nd half of 2001 were $1.397 billion on revenues of $13.528 billion. In the 2nd half of 2003 they were $4.885 billion on revenues of $16.574 billion. In other words their sales went up 22.5% and their profits went up 350%! Or said another way, their revenues went up $3.046 billion and their profits went up $3,488 billion!! Not even Microsoft can do that."[13]

Although many smaller companies started using AMD's chips, Dell feared retaliation from Intel if it tried to do the same. In an e-mail, a Dell executive noted that if "Dell joins the AMD exodus," the consequences would be costly for Dell. He noted that Intel's CEO and chairman "are prepared for jihad if Dell joins the AMD exodus. We [will] get ZERO MCP [payments] for at least one quarter while Intel 'investigates the details''there's no legal/moral/threatening means for us to apply and avoid this."[14]

Although Dell complained that its refusal to use AMD processors was hurting its sales, Intel kept Dell loyal throughout 2004 by increasing its quarterly payments to $300 million per quarter, an amount equal to almost a third of Dell's quarterly net income and apparently enough to compensate Dell for any sales declines.

Dell continued to lose market share, and CEO Michael Dell became increasingly frustrated. On November 4, 2005, Intel's CEO, Paul Otellini, wrote an e-mail saying that he had just received "one of the most emotional calls I have ever, ever had with [Michael Dell]."[15] Otellini noted:

> [Michael Dell] opened by saying "I am tired of losing business" . . . he repeated it 3–4 times. I said nothing and waited. [He said] he has been traveling around the USA. He feels they are losing all the high margin business to AMD-based sku's [computers] . . . "Dell is no longer seen as a thought leader."[16]

A week later, Michael Dell sent an e-mail to Otellini complaining that "We have lost the performance leadership and it's seriously impacting our business in several areas."[17] Otellini responded to Dell's complaints by pointing out how much Intel was paying Dell: "[W]e are [now] transferring over $1 billion per year to Dell for meet comp efforts. This was judged by your team to be more than sufficient to compensate for the competitive issues."[18] On November 25, Michael Dell wrote in an e-mail to Otellini: "None of the current benchmarks and reviews say that Intel based systems are better than AMD. We are losing the hearts, minds and wallets of our best customers."[19]

In spite of realizing that boycotting AMD's processors was hurting its revenues, Dell remained so loyal to Intel that in February 2006, Otellini joked that Dell's CEO was "[t]he best friend money can buy."[20] Intel continued to increase its payments to Dell through 2005 and 2006 until they reached a high of $805 million a quarter in early 2006, an amount equal to 104 percent of Dell's net income per quarter that year.

In 2006, Dell finally broke away from its agreement to not use AMD processors. That year, it purchased Alienware, a computer manufacturer that made high-end gaming computers with AMD microprocessors. In April of that year, Michael Dell sent an e-mail to his top executives, which said: "We have been looking at the situation for a long time, and have decided to introduce a broad range of AMD based systems into our product line to provide the choice our customers are asking for."[21] In the second quarter of the year, perhaps testing Intel's reaction, Dell announced a single new line of high-end computers with AMD chips inside. That quarter its payments from Intel dropped to $554 million. The next quarter Dell announced additional lines of PCs with AMD processors inside and Intel paid it only $200 million.

Intel's board chairman told Intel's CEO that the company should respond harshly to Dell's actions: "I think you should reply in kind. Not a time for weakness on our part. Stop writing checks immediately and put them back on list prices [i.e., on prices with no discounts or rebates] asap."[22] The next day, Intel CEO Otellini instructed his people as follows: "[W]e should be [pre]pared to remove all [payments] and related programs. Post haste . . . then we ought to enter negotiations."[23]

Now subject to Intel's punishment, Dell received no more "rebates." In 2007, Dell's net income fell to $2.58 billion, down from $3.57 billion in 2006. The company recovered a bit in 2008, a year in which it posted a net income of $2.95 billion, but then it began a downward slide to $2.48 billion in 2009 and $1.43 billion in 2010. Between 2001 and 2006, Intel had pumped an estimated total of about $6 billion into Dell's income figures. Because Dell had not reported that most of its profits during those years were cash it was receiving from Intel, the U.S. Securities and Exchange Commission (SEC) accused Dell and its officers of deceiving investors, who had been told by the company that its high profits were due to its ultra-efficient management of its supply chain, its direct-sales strategy, its cost reduction initiatives, and the declining costs of computer parts.[24] Dell had become one of the most admired companies in America because it was falsely assumed that its strong profits were due to the company's management skills.

## The Federal Trade Commission Settles

Intel pressured other big companies, like HP and IBM, into refusing to use AMD processors. Unlike Dell, HP and IBM did not agree to completely boycott AMD's processors. In HP's case, Intel got HP to agree to limit its purchases of AMD processors to 5 percent or less, and Intel agreed to give HP a "rebate" of $130 million, spread out over a year.[25] IBM agreed to only use AMD processors in its "High Performance Computers."[26]

The FTC's lawsuit against Intel never made it to court. On Wednesday, August 4, 2010, the FTC announced that without admitting guilt, Intel had agreed to settle the FTC's antitrust lawsuit. In a press release, the FTC wrote that under the settlement, Intel would be prohibited from the following:

> "conditioning benefits to computer makers in exchange for their promise to buy chips from Intel exclusively or to refuse to buy chips from others; and retaliating against computer makers if they do business with non-Intel suppliers by withholding benefits from them."[27]

In addition, Intel was prohibited from using its compilers or its libraries of software code to inhibit the ability of programs to run on competitors' microprocessors. Some observers argued that the restrictions of the settlement no longer mattered since Intel had once again taken the lead in the x86 processor market and AMD was again a trailing competitor. In the first quarter of 2006, according to CPU Benchmarks, AMD's market share had climbed as high as 48 percent and Intel's had fallen to 51 percent. However, AMD's share dropped after that and by 2011, Intel had 71 percent of the x86 microprocessor market, while AMD was down to 25 percent.

## WRITING PROMPT

**Market Perspective on Intel**

1. In your judgment, is Intel a monopoly? Did Intel use monopoly-like power; in other words, did Intel achieve its objectives by relying on power that it had due to its control of a large portion of the market? Explain your answers.
2. In your judgment, were Intel's rebates ethical or unethical? Explain your answer.
3. Was it unethical for Intel to use its compilers and its "libraries" of software code in the way it did, or were its actions permissible in a free market economy? Explain your answer.
4. Were Intel's rebates unethical? Explain why or why not.
5. In your view, did Intel violate either of the two key sections of the Sherman Antitrust Act? Explain.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

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## Case Notes


1. David Goldman, "Intel and AMD Reach $1.25B Settlement," *CNNMoney.com*, November 12, 2009.
2. Ibid.
3. Roger Parloff, "Intel's Worst Nightmare: Dwindling Market Share Isn't the No. 1 Chipmaker's only Problem, says *Fortune's* Roger Parloff. It needs to Mount a Fierce Defense to AMD's Epic Antitrust Lawsuit," *Fortune*, November 16, 2006.
4. Ibid.
5. Ibid.
6. Ibid.
7. David Goldman, "FTC Sues Intel over Chip Dominance," *CNNMoney.com*, December 16, 2009.
8. *In the Matter of Intel Corporation, a Corporation, The United States of America Before the Federal Trade Commission*, Docket No. 9341, Complaint, December 16, 2009, paras. 56–61.
9. Ibid., paras. 62–71.
10. *State of New York, by Attorney General Andrew W. M. Cuomo, Plaintiff, vs. Intel Corporation, a Delaware Corporation, Defendant*, Complaint in the United States District Court for the District of Delaware, November 3, 2009, para. 90, http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/antitrust/litigation/09-11-03%20Complaint.pdf.
11. Roger Parloff, "Intel Settlement: The Power of Emails," *Fortune*, November 13, 2009.
12. Ibid.
13. *State of New York*, para. 27.
14. Ibid., para. 105.
15. Ibid., para. 135.
16. Ibid.
17. Ibid., para. 136.
18. Ibid.
19. Ibid., para. 137.
20. Ibid., para. 139.
21. Ibid., para. 141.
22. Ibid., para. 142.
23. Ibid., para. 143.
24. Justin Scheck and Kara Scannell, "SEC: Intel Cash Inflated Dell," *Wall Street Journal*, July 23, 2010.
25. *In the Matter of Intel Corporation*, para. 170.
26. Ibid., para. 211.
27. Federal Trade Commission, "FTC Settles Charges of Anticompetitive Conduct against Intel," news release, August 4, 2010, https://www.ftc.gov/news-events/press-releases/2010/08/ftc-settles-charges-anticompetitive-conduct-against-intel.


# Case Study 4.2: Archer Daniels Midland and the Friendly Competitors

By 1995, Archer Daniels Midland Company (ADM) had become one of the world's largest agricultural companies. ADM processes corn, wheat, soybeans, peanuts, and other oilseeds to make products used by the food, beverage, and chemical industries. Its global sales in 1994 were about $13 billion. Since 1966, the company had been headed by Dwayne Andreas, a hard-driving executive who pushed the company toward greater productivity and rapid expansion. Dwayne brought in his son, Michael D. Andreas, who became the company's executive vice president of sales and marketing.

In early 1989, Dwayne and Michael Andreas decided that ADM should enter the lysine business. Lysine is an amino acid derived from corn that is used as an additive in animal feed because it promotes the growth of lean muscle. Because lysine is an undifferentiated commodity, it is price sensitive—a characteristic that is normally indicative of a highly competitive market. However, Dwayne and his son had noticed that the world market in lysine was dominated by only three companies:

1. Ajinomoto (a Japanese company)
2. Kyowa (also Japanese)
3. Miwon (a Korean company)

Cheil, a Korean company, had plans to enter the market in 1991. The fact that there were only a handful of players supplying the market attracted the two Andreas: the market looked more like a staid gentlemen's club than an aggressive rivalry.

To manage ADM's entry into the lysine business, Dwayne and Michael Andreas hired an extremely bright and energetic young man named Mark Whitacre. Whitacre would run ADM's lysine business and would report to Michael Andreas. Only 32 years old, Whitacre had a B.S. and an M.S. in animal science from Ohio State University, had a Ph.D. in nutritional biochemistry from Cornell University, and had worked five years for Degussa, a

German chemical company. Married to Ginger Gilbert, his girlfriend since high school, where he had been senior class president, Whitacre now became president of ADM's new lysine division.[28] He thrived at ADM, where he enjoyed the absence of bureaucracy and the dynamic and quick moving "can-do" company culture. During his first few years, he later said, he "loved" his work and his new company. In fact, he said, he was "very proud" of the company and the way it was run, and felt "enthusiastic" and "excited" about what he was doing.[29]

## The Method

ADM started building its new $100 million lysine production plant in September 1989 and finished in February 1991, a surprisingly short period of 17 months. Capable of producing 250 million pounds of lysine a year—enough to supply half of the annual worldwide demand—the new plant was the largest in the world. With the resources of ADM behind him, Whitacre could hire the best people from around the world to work for him in ADM's new lysine business.

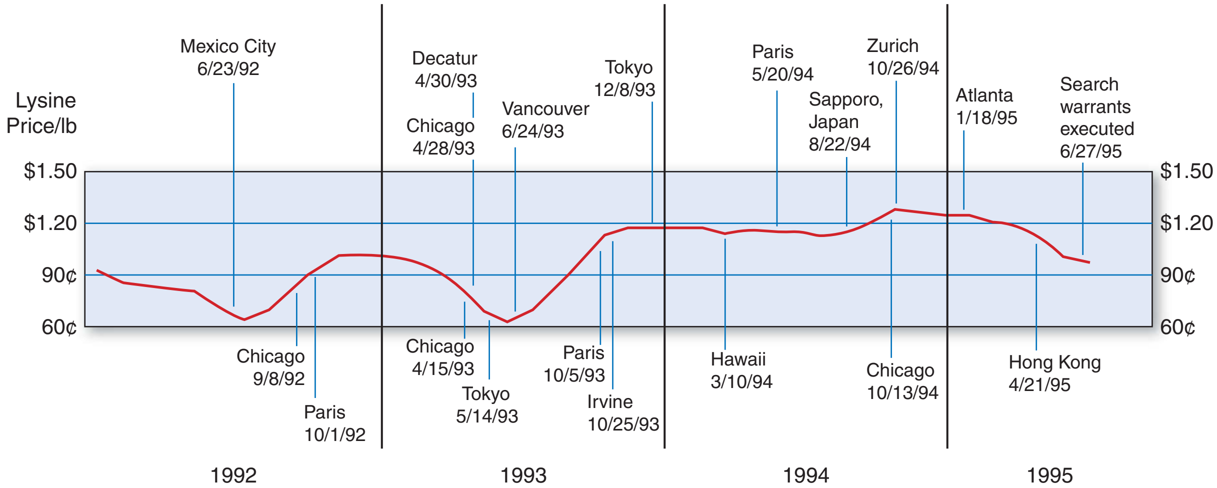
When Whitacre began selling lysine, it was selling for $1.30 a pound. ADM's large new plant, however, brought a huge volume of new product into the market, and prices quickly began to fall. (See Figure 4.7 for a timeline of meetings and prices in the lysine price-fixing case.) Whitacre felt that in order to get customers to buy from a newcomer, he had to price his product below established competitors. However, his tactic led to a disastrous and costly price war among the five companies in the industry. According to Whitacre, when he first brought ADM into the market and began selling lysine at prices slightly below the $1.30 per pound at which it had previously been selling, a "tremendous price war" broke out. All the lysine companies began rapidly reducing their own prices, and the market price plummeted all the way down to 60 cents per pound. At that price, according to Whitacre, ADM was losing "a few million dollars" each month.[30]

ADM was in fact losing about $7 million a month. Managers at all five lysine-producing companies—all of whom were also losing money—felt the devastating situation could not continue. Whitacre knew something had to change or his new career would be over just as it was starting. Then, he learned that ADM had a method of dealing with such situations. Terry Wilson, president of ADM's Corn Processing Division, had developed the "method" and then introduced it to the managers at other divisions of ADM. Michael Andreas talked with Whitacre and asked him to go and learn from Terry Wilson "how ADM does business."[31] Whitacre began discussing his problems with Terry Wilson and learned that the company had often had to deal with tight markets. Wilson proposed that he and Whitacre meet with top managers of the other four companies producing lysine. He would show Whitacre what to do. A meeting was arranged, and on June 23, 1992, Wilson and Whitacre met in a Mexico City hotel with the managers of Ajinomoto and Kyowa, the two Japanese producers of lysine.[32] Absent from the meeting were managers from the two Korean companies, Miwon and Cheil. Among them, however, ADM, Ajinomoto, and Kyowa controlled most of the world's lysine market.

## The Customer Is the Enemy

During the June 1992 Mexico City meeting, Terry Wilson stood in front of a flip chart and asked the representatives of the companies how many million pounds of lysine each of them produced in a year in their plants. He wrote the quantities on the flip chart and added them together, including estimates for the two absent Korean companies. Wilson then turned the page over. He now asked the group for their estimates of how many million pounds of lysine were actually purchased each year in Europe, Latin America, Asia, and the United States. He wrote down these quantities and added them together on a second page. Finally, he compared the amounts on the two pages and pointed to "our problem": The total amount they were producing was 25 percent more than the total amount of worldwide demand. Wilson next multiplied their estimate of worldwide demand by 60 cents, the current price of a pound of lysine. He also multiplied their estimate of worldwide demand by $1.30, the price the Japanese companies were maintaining before ADM had entered the market. The difference was $200 million. Wilson declared that $200 million was the amount that the five companies were giving away to their customers. This meant, he continued, that the benefits were going to their customers, not to the five competing companies who had each spent hundreds of millions of dollars

**Figure 4.7** Timeline of Meetings and Prices in the Lysine Price-Fixing Case



building their plants. At ADM, Wilson said, "We believe the competitor is our friend and the customer is our enemy." Whitacre was listening. "We should be trusting," Wilson added, "and have competitive friendliness" among the companies.

Whitacre joined the conversation when Wilson and the representatives of the two Japanese companies turned to discussing a "target" price at which the companies could agree to sell lysine "if we stop the competition." The purpose of their meeting, it was noted, was to end the price war among them that had driven prices downward. Their aim could be achieved, however, only if all five companies agreed to sell lysine at the same price, without undercutting each other. The managers of the two Japanese companies volunteered to contact the two absent Korean companies and talk them into coming on board and joining their agreement. Toward the end of the meeting, the representative of Ajinomoto summed up the agreement: "[i]f the discussions [with the Korean companies] go smoothly, we will aim for prices at the level of $1.05/lb del[ivered] for North America/Europe . . . by October, and $1.20/lb . . . in December."[33] Terry Wilson suggested that to hide the real purpose of any future meetings, they should form a "trade association" that would meet periodically with a fake public agenda. This, he said, was how ADM had arranged secret price-fixing meetings for other commodities the company produced.

After the meeting, Whitacre and Wilson flew home. Over the next few days, Mark gradually raised his prices as they had agreed. So did the other four companies, including the Koreans, who had evidently been talked into joining the agreement. In the United States, the price of lysine rose to $1.05/lb by the end of the summer of 1992 (see Figure 4.7). For a while, Whitacre felt that the price wars had ended.

When Whitacre was contacted by managers of the four other lysine companies, he agreed they should all meet in Paris on October 1, 1992, to launch the newly formed International Amino Acid Producers Association. They published a fake agenda stating that they would discuss animal rights and other environmental concerns. However, they never discussed those topics. Instead, Whitacre and the other managers spent their meeting time congratulating themselves on the success of their earlier agreement and worked to reach a new agreement on future prices for each region of the world where they sold lysine.

## Volume Agreement

After the Paris meeting, Whitacre realized they still had a problem. Instead of rising, the price of lysine stayed at $1.05 through the end of 1992, and then began to gradually decline. The price fell through January, February, and March of 1993, and reached 70 cents by April (see Figure 4.7). In April, Whitacre met with Michael Andreas and Terry Wilson, and discussed scheduling an urgent meeting with the representatives of the other companies to talk about the deteriorating situation. Since Ajinomoto was the largest lysine producer, they decided to begin by meeting with officials of Ajinomoto. The meeting took place in Decatur and then continued in Chicago. At the meeting, Andreas and Wilson explained to the Ajinomoto managers that the major problem with their price-fixing agreement was that the five companies had not agreed to limit their production quantity. In the absence of any quantity agreement "from the supply side," each of the companies had tried to produce and sell as much lysine as it could. Together, they had flooded the market with more product than was being demanded, and so could not hold to their price agreements. The only way to bring "stability" to the market was by controlling volume on the supply side. Unless volume is controlled, Wilson noted, "prices go down." The Ajinomoto representatives said they would think about it.

With prices still falling, Whitacre, Wilson, and the Ajinomoto officials again met—this time in Tokyo—on May 14, 1993, and they again discussed limiting the quantity they were producing in order to improve prices. At the meeting, Wilson explained that in other markets ADM had met with competitors, and each competitor had agreed to sell only a specific quantity of the product to ensure that their cumulative supply did not outstrip demand. Once specific volumes are allocated to each company, he pointed out, there is no need to even monitor prices because "[a]s long as the volume [of each company] turns out okay[,] [i]f they want to sell [their assigned volume] for less money, that's their business."[34] The Ajinomoto people were still hesitant.

Whitacre realized that an agreement to limit the volume of lysine each company could sell would require an agreement with all four companies, not just Ajinomoto. He was feeling increasingly stressed because by now the price of lysine had dropped to 60 cents a pound, so that ADM as well as the other companies were losing money (see Figure 4.7). He talked by phone with the managers of the other companies, and they agreed to meet on June 24, 1993, in Vancouver, Canada. That meeting only frustrated Whitacre. Although the managers again reached an agreement on prices, they quarreled over accepting restrictions on the amount each could sell because "everybody wanted a bigger share." Ajinomoto, especially, was still not willing to limit how much it could sell. They all agreed, however, to at least hold to their current levels of production and to raise their prices together to the newly agreed levels.

After the Vancouver meeting, Whitacre breathed a sigh of relief as he watched prices gradually move upward in tune with their agreement. The experience of the past several months, however, had convinced him that the companies would have to agree on a volume allocation if they were to hold the line on prices. On October 25, 1993, Andreas, Wilson, and Whitacre set up another meeting with officials of Ajinomoto in Irvine, California, so they could again try to hammer out a volume agreement. The representatives of the two companies finally agreed that in 1994 each company would limit itself to selling the same quantity it had sold in 1993, plus a certain amount of the quantity by which they estimated the industry would grow in 1994. If they did not stick to this agreement to limit their volumes, Michael Andreas warned, then ADM would use its huge lysine capacity to again flood the market and drive down prices for everyone, and "there becomes a free-for-all." The next step was to bring the other companies into their volume agreement.

On December 8, 1993, representatives of ADM, Ajinomoto, Kyowa, and Miwon met in Tokyo; Cheil was not represented at the meeting. In Tokyo, the companies agreed on prices for the coming quarter. More important, they finally also agreed to a schedule indicating the amount of lysine (in tons) that each could sell in each region of the world. They also agreed on a method of ensuring that none of them would be tempted to sell more than they were allowed to sell: if a company sold more than its allocated share, then at the end of the year, it would have to make amends by buying that amount of lysine from another company that had sold less than its allocated share. Moreover, every month each company would send a report to an official at Ajinomoto, indicating the amount of lysine it had sold the previous month. These reports would be audited, and Ajinomoto would distribute the reports to the other companies.

A few months later, on March 10, 1994, the companies met in Hawaii where Cheil joined the group and also agreed to limit its sales volume to a specified amount. Now, at last all five companies had succeeded in reaching an agreement to set both their prices and their production volumes.

Whitacre and, sometimes, Wilson and Andreas, continued to meet once a quarter with top managers of Ajinomoto, Kyowa, Miwon, and Cheil for the rest of 1994 and through the first half of 1995. Lysine prices from December 1993 until April 1995 remained at about $1.20 per pound in accordance with the agreements the companies had hammered out (see Figure 4.7).

## The FBI Catches Up

The agreement ended abruptly on June 27, 1995, when FBI officials raided the offices of ADM and questioned Michael Andreas at his home about price-fixing in the lysine market. Andreas said that it was impossible to fix prices in the lysine industry and denied that ADM had ever exchanged price or production information with competitors. A few days later, however, the FBI revealed that in November 1992, it had convinced Mark Whitacre to become an FBI informer. Subsequently, when Whitacre attended price-fixing meetings, he had carried hidden audio or video recorders that had recorded the discussions among the companies. All the conversations among Andreas, Wilson, Whitacre, and the managers of Ajinomoto, Kyowa, Miwon, and Cheil had been recorded on audiotapes, and some had even been videotaped.

A month later came another surprise. It was revealed that while Whitacre was recording the price-fixing discussions between ADM and the competitors, he had secretly been taking money from ADM. Altogether, he had taken $2.5 million from the company. Whitacre claimed that this sum was a "bonus" and that the company often let its executives pay themselves such bonuses under the table to avoid taxes.

Based on the tapes that Whitacre turned over to the FBI, ADM was indicted as a company for price-fixing and fined $100 million. On July 9, 1999, Andreas and Wilson were each fined $350,000 and given 20-month prison sentences for price-fixing, sentences the court reaffirmed on June 26, 2000. Whitacre, whose theft of money from ADM nullified the immunity agreement he had worked out with the FBI, was sentenced to nine years in prison for embezzlement plus 20 months for price-fixing and was forced to return the money he took. The managers of the Korean and Japanese companies that participated in the price-fixing meetings were fined $75,000 each, but were granted immunity from serving time in prison in exchange for agreeing to testify against ADM and its executives. On July 6, 2000, the European Union fined ADM an additional $46 million for fixing lysine prices in Europe.

Mark Whitacre spent eight and a half years in federal prison and was released on December 2006. He was given what he calls "a second chance" when Cypress Systems, Inc., a California biotechnology company, agreed to hire him. He is now COO for the company. He greatly regrets what he did. In a 2009 interview, Whitacre said that "ego and greed" were behind his "poorly made deciisons."[35] He had been trying so hard to win, he said, that "truth and ethics" had not mattered to him. "I cannot explain how I lost my way" he said. But he did.

### WRITING PROMPT

**Analyze ADM Price-Fixing**

1. This chapter cites a number of factors that cause companies to engage in price-fixing. Identify the specific factors that you think were present in the ADM case and explain.
2. In your view, was Mark Whitacre to blame (i.e., morally responsible) for what he did? Were any of the obstacles to moral behavior operating in his situation?
3. According to the case, the ADM plant produced "250 million pounds of lysine a year—enough to supply half of the annual worldwide demand," so the worldwide demand for lysine was about 41.7 million pounds a month. Using figure 4.7, Estimate the equilibrium price for a pound of lysine during 1992–1995, and determine the monopoly profit the companies made per pound of lysine when they fixed the price at or about $1.20 a pound. How much was the total monopoly profit the companies made worldwide during the months (in figure 4.7) that they seem to have successfully fixed the price at or about $1.20 a pound? Explain fully the ethics of extracting this monopoly profit from buyers.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Case Notes

28. James B. Lieber, *Rats in the Grain* (New York: Four Walls Eight Windows, 2000), pp. 8–11.
29. Mark Whitacre and Ronald Henkoff, "My Life as a Corporate Mole for the FBI," *Fortune*, September 1995, pp. 52–59.
30. Ibid.
31. Ibid.
32. The times and contents of the discussions at the various meetings described here and in what follows are based on the sources above plus the following additional sources: *U.S. v. Michael D. Andreas, Mark E. Whitacre, and Terrance S. Wilson*, Brief for Appellee and Cross-Appellant United States of America, in the United States Court of Appeals for the Seventh Circuit, No. 99-3097, October 19, 1999, accessed June 5, 2004, http://www.usdoj.gov/atr/cases/f3700/3757.htm; and USA v. Michael D. Andreas and Terrance S. Wilson, Appeals from the United States Court for the Northern District of Illinois, Eastern Division, No. 96 CR 762, June 26, 2000, accessed June 6, 2004, http://www.justice.gov/atr/cases/f220000/220009.htm. Some details are also drawn from Angela Wissman, "ADM Execs Nailed on Price-Fixing," *Illinois Legal Times*, October, 1998, p. 1; Lieber, *Rats in the Grain*; and Kurt Eichenwald, *The Informant: A True Story* (New York: Random House, 2000).
33. U.S. v. Michael D. Andreas, Mark E. Whitacre, and Terrance S. Wilson, Brief for Appellee.
34. Ibid.
35. Feedinfo News Service, "Interview: Mark Whitacre-Lysine Cartel Whistleblower on Price-Fixing and Rebuilding his Life after Prison," June 13, 2009, accessed July 28, 2010, http://www.feedinfo.com/console/PageViewer.aspx?page=1202114?public=yes.

# Summary

1. Although many companies engage in anticompetitive practices, such practices are unethical. To understand why anticompetitive practices are unethical requires an understanding of why market competition is desirable and of what happens when markets are not competitive.
2. A market is "perfectly competitive" when it consists of numerous buyers and sellers, none of whom can dictate prices, and each of whom is free to enter or leave the market. The demand curve of a market is a line indicating the price buyers are willing to pay for a unit of a product when a given quantity of the product is available. Prices on the demand curve are just (in terms of capitalist justice) for the buyer because they equal what the buyer believes the product is worth at each given quantity. The supply curve indicates the price sellers must get to cover the costs (including a normal profit) of supplying a given quantity of a product. Prices on the supply curve are just (in terms of capitalist justice) for the seller because they equal what the seller knows the value of the product is in terms of what it costs to produce it.
3. The point at which supply and demand curves cross is the equilibrium point, and it is the only point at which prices are just from both the buyer's and the seller's perspective. In a perfectly competitive market, prices continually move to this equilibrium point for the following reasons: if prices rose above equilibrium, surpluses would appear that would drive prices down to equilibrium; if prices fell below equilibrium, shortages would appear that would drive prices up to equilibrium; if the quantity of goods being sold were less than equilibrium, profits would rise, which would attract more sellers into the market, thereby increasing the quantity up to the equilibrium level; and if the quantity of goods being sold were more than equilibrium, prices would fall, which would drive sellers out, thereby bringing the quantity down to the equilibrium level.
4. In a perfectly competitive market, since prices and quantities always move toward the equilibrium point, they always move toward the point at which the price is just for both the seller and the buyer. In other words, a perfectly competitive market tends to produce just prices. Perfectly competitive markets also satisfy the utilitarian principle by allocating resources efficiently, pressuring companies to use their resources efficiently, and allowing consumers to efficiently purchase the most satisfying bundle of goods they can. Finally, perfectly competitive markets respect the rights of participants to freely choose the business they will enter, respect the rights of consumers to make their buying and selling decisions freely, and ensure that no single seller dictates the prices, quantities, or kinds of goods consumers must buy.
5. The opposite of a perfectly competitive market is the monopoly market. A monopoly market has no competition because there is only one seller and there are barriers to entry that keep other sellers out. The monopoly seller can limit the quantity of goods released into the market and can force prices to rise above the equilibrium point. In spite of the high monopoly profits, other sellers cannot enter the market to establish equilibrium because of the barriers to entry. Monopoly markets therefore can violate (capitalist) justice because they enable the monopoly seller to unjustly charge more for products than the monopolist knows they are worth. They also violate the utilitarian principle by creating shortages and by removing incentives to use resources efficiently. They also violate the rights of market participants by letting the monopolist dictate prices and quantities.
6. Imperfectly competitive markets are those with a few sellers and some barriers to entry. Because sellers in an imperfectly competitive market are few, they can join together to act as if they were a single seller (e.g., in an oligopoly). When they do so, they reproduce the effects of a monopoly market and so can violate justice, the utilitarian principle, and the rights of market participants. Some of the unethical anticompetitive practices that imperfectly competitive markets allow include price-fixing, manipulation of supply, market allocation, and bid rigging. Both imperfectly competitive markets and monopoly markets also allow tying arrangements and predatory price discrimination. The "fraud triangle" theory suggests that business people engage in these practices when they are pressured into them, when they have the opportunity to do so, and when they are able to rationalize their actions. Nevertheless, the Sherman Antitrust Act passed in 1890 makes these anticompetitive practices illegal and imposes heavy fines and jail sentences on companies and individuals who engage in them.
7. What should be done to prevent the unethical anticompetitive practices that monopoly markets and imperfectly competitive markets allow? There are three main views on this question. The do-nothing view holds that market forces exist that limit unethical anticompetitive practices, so nothing needs to be done about them. The antitrust view holds that when monopolies or large oligopoly firms become anticompetitive, they should be broken up into smaller, more competitive firms. The regulation view holds that large monopoly and oligopoly firms can be beneficial, so they should not be broken up but restrained by government regulations.

# Chapter 5
# Ethics and the Environment

Workers clean the beach after the BP Deepwater Horizon oil well exploded in the Gulf of Mexico on April 20, 2010.

## Learning Objectives

**5.1** Identify environmental threats related to the production of consumer goods

**5.2** Examine the important ethical considerations of pollution control

**5.3** Assess the approaches to internalizing the external costs of pollution

**5.4** Evaluate the ethics related to the conservation of resources for future generations

The process of producing goods forces businesses to engage in exchanges and interactions with two main external environments: the natural environment and the consumer environment. It is from the natural environment that business ultimately draws the raw materials that it transforms into its finished products. These finished products are then externally promoted and sold to consumers. Thus, the natural environment provides the raw material input of business, whereas the consumer environment absorbs its finished output. This chapter discusses the two basic issues related to the natural environment: pollution and resource depletion. We will evaluate the main environmental threats; identify ethical issues raised by pollution from commercial and industrial enterprises; and examine our obligations to conserve Earth's resources. The next chapter will look at consumer issues.

# 5.1: The Dimensions of Pollution and Resource Depletion

**OBJECTIVE:** **Identify environmental threats related to the production of consumer goods**

Modern industry has provided us with a material prosperity unequaled in our history. It has also created unparalleled environmental threats to ourselves and to future generations. The very technology that has enabled us to manipulate and control nature has also polluted our environment and rapidly depleted our natural resources. According to the U.S. Environmental Protection Agency (EPA) emissions inventories, the United States in 2013 pumped more than 94 million tons of common air pollutants (such as smoke, lead, and carbon monoxide) into the air, in addition to the 6.6 billion tons of carbon dioxide emissions with which we seem to be heating up our atmosphere. We produced 3.9 billion tons of toxic wastes, of which 247 million pounds was released as surface water discharge. Our total energy consumption for the year was 100 quadrillion British thermal units (BTUs), which is equivalent to about 17.24 billion barrels of oil or 721 billion gallons of gasoline.[1] Each U.S. citizen annually accounts for the consumption of about 1,300 pounds of metal and 18,500 pounds of other minerals, and each produces over 7 pounds of garbage every day of the year.

Although the nation has made some progress in controlling certain types of pollution and in conserving energy, significant environmental problems remain, especially at an international level. In the introduction to the Worldwatch Institute's *State of the World 2015* report, Michael Renner describes many of these problems and suggests that they are rooted in our economic system and the commitment to growth by business and political leaders:

> Endless economic growth driven by unbridled consumption is so central to modern economies and is so ingrained in the thinking of corporate and political leaders that environmental action is still often seen as in conflict with the economy, and is relegated to inferior status. . . . The challenge, therefore, is broader than merely a set of technological changes. As activist Naomi Klein has argued, saving the climate requires revisiting the central mechanisms of the world's pre-eminent economic system: capitalism. . . .
>
> Humanity's climate predicament is only the latest—if by far the most challenging—manifestation of its collision course with planetary limits. Ecological stress is evident in many ways, from species loss, air and water pollution, and deforestation to coral reef die-offs, fisheries depletion, and wetland losses. The planet's capacity to absorb waste and pollutants is increasingly taxed.
>
> [E]ven a decade ago, more than 60 percent of the world's major ecosystem goods and services were degraded or used unsustainably. Some 52 percent of commercial fish stocks are now fully exploited, about 20 percent are overexploited, and 8 percent are depleted. The number of oxygen-depleted dead zones in the world's oceans that cannot support marine life has doubled each decade since the 1960s; in 2008, there were more than 400 such zones, affecting an area equivalent in size to the United Kingdom. The decline of bees and other pollinators is jeopardizing agricultural crops and ecosystems. Urban air pollution causes millions of premature deaths each year. The World Health Organization recently revised its estimates of global deaths from air pollution to about 7 million people in 2012—more than double previous estimates and making air pollution the world's single worst environmental health risk. . . .
>
> Global resource extraction—of fossil fuels, metals, minerals, and biomass—grew 50 percent in the 25 years between 1980 and 2005, to about 58 billion tons of raw materials (and another 40 billion tons of material removed simply to gain access to coveted resources). . . .
>
> We have gradually come to comprehend that we are depleting resources at unsustainable rates, spreading dangerous pollutants, undermining ecosystems, and threatening to unhinge the planet's climate balance. . . .
>
> Economic growth drives most environmental problems, and it has produced a world in which human activities have grown too large for the planet to accommodate them sustainably. Forests are scalped, rivers run dry, species are going extinct, and humans are changing the climate, all driven by the pursuit of growth.[2]

## 5.1.1: Essential Questions and Issues

The severity of the environmental problems Renner describes is exacerbated by the continuing growth of the world's population, which stood at about one billion in 1800, increased to 3 billion by 1960, to 7.3 billion by 2015, and is predicted to reach about 9.7 billion by 2050.[3] As environmental stresses put pressure on our capacity to sustain humanity, population growth can only add to those pressures. So intractable and difficult are the problems raised by these environmental threats that many observers believe that they cannot be solved. For example, William Pollard, a physicist, despaired of our ability to deal with these problems:

> My own view is that [mankind] will not do so until he has suffered greatly and much that he now relies upon

> has been destroyed. As the earth in a short few decades becomes twice as crowded with human beings as it is now, and as human societies are confronted with dwindling resources in the midst of mounting accumulations of wastes, and a steadily deteriorating environment, we can only foresee social paroxysms of an intensity greater than any we have so far known. The problems are so varied and so vast and the means for their solutions so far beyond the resources of the scientific and technological know-how on which we have relied that there simply is not time to avoid the impending catastrophe. We stand, therefore, on the threshold of a time of judgment more severe, undoubtedly, than any mankind has ever faced before in history.[4]

Environmental issues, then, raise large and complicated ethical, economic, and technological questions for our business society. What is the extent of the environmental damage produced by the processes through which we manufacture our products, grow our food, and power our cities? How large a threat does this damage pose to our well-being? What values must we give up to halt or slow such damage? Whose rights are violated by pollution, and who should be responsible for paying for the costs of polluting the environment? How long will our natural resources last? What obligations do firms have to future generations to preserve the environment and conserve our resources?

This chapter explores these environmental issues. It begins with an overview of various technical aspects of environmental resource use. This overview is followed by a discussion of the ethical basis of environment protection. The final sections discuss two controversial issues: our obligations to future generations and the prospects for continued economic growth.

Environmental damage inevitably threatens the welfare of human beings as well as plants and animals. Threats to the environment come from two sources: pollution and resource depletion.

> ***Pollution* refers to the undesirable and unintended contamination of the environment by human activities, such as manufacturing, waste disposal, burning fossil fuels, etc.**

> ***Resource depletion* refers to the consumption of finite or scarce resources.**

In a certain sense, pollution is really a type of resource depletion because contamination of air, water, or land diminishes their beneficial qualities. However, for purposes of discussion, we keep the two issues distinct.

## 5.1.2: Air Pollution

Air pollution is not new—it has been with us since the Industrial Revolution introduced the world to the belching factory smokestack. However, the costs of air pollution increased exponentially as industrialization expanded. Today, air pollutants affect vegetation, decreasing agricultural yields and inflicting losses on the timber industry; they deteriorate exposed construction materials through corrosion, discoloration, and rot; they are hazardous to health and life, raising medical costs and lessening the enjoyment of living; and they threaten catastrophic global damage in the form of **global warming** and destruction of the stratospheric ozone layer.[5]

**GREENHOUSE GASES AND GLOBAL WARMING** *Greenhouse gases*—carbon dioxide ($CO_2$), nitrous oxide, methane, and chlorofluorocarbons—are gases that absorb and hold heat from the sun, preventing it from escaping back into space, much like a greenhouse absorbs and holds the sun's heat. Of these gases, methane is able to capture more heat than an equal amount of any of the others, but there is much more carbon dioxide, so it is the gas that actually makes the greatest contribution to heating the atmosphere. Greenhouse gases occur naturally in the atmosphere and, in fact, they have kept Earth's temperature about 33 °C warmer than it would otherwise have been, enabling life to evolve and flourish. However, industrial, agricultural, and other human activities have been increasing the levels of carbon dioxide in the atmosphere.

**CARBON DIOXIDE LEVELS AND FOSSIL FUELS** The rising levels of carbon dioxide are primarily the result of our continued burning of increasing amounts of fossil fuels such as oil, gas, and coal, all of which emit carbon dioxide. Samples of air trapped in ice cores dug from the ice that covered the Antarctica thousands of years ago show that there is now more carbon dioxide in the atmosphere than the range of 180 to 300 ppm that prevailed during the last 800,000 years. We have known since the late nineteenth-century work of scientist Svante Arrhenius that carbon dioxide traps heat, which gradually increases global temperatures.

**STUDIES AND FORECASTS OF CLIMATE CHANGE** The UN Intergovernmental Panel on Climate Change (IPCC) is an international group of scientists that studies and monitors global warming.[6] The IPCC's studies confirm that our carbon emissions are responsible for the unequivocal heating of the atmosphere that we have witnessed, and they

### Atmospheric Carbon Dioxide Levels and Greenhouse Gas Concentration Trends

Measurements at Mauna Loa, Hawaii, conducted since 1958, indicate that carbon dioxide in the atmosphere is currently increasing at the rate of about 2 parts per million (ppm) a year (see Figure 5.1). As a result, since the beginning of the industrial era 150 years ago, the amount of carbon dioxide in the atmosphere has increased by about 40 percent, from 280 to 400 ppm as of 2015 (see Figure 5.2).[7, 8, 9]

**Interactive**

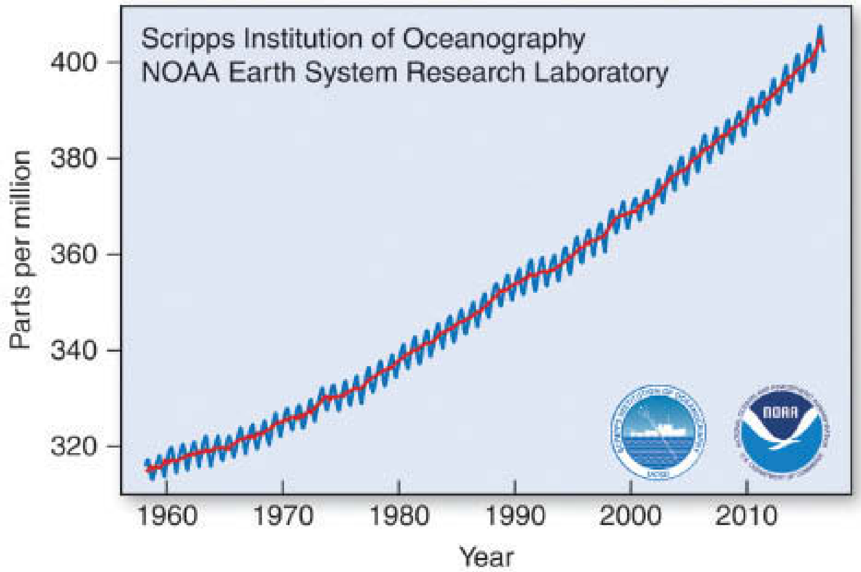
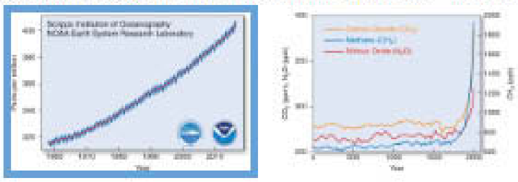



**Figure 5.1: Atmospheric Carbon Dioxide at Mauna Loa Observatory**

The figure above presents the Mauna Loa Observatory's atmospheric carbon dioxide record from 1958 to 2015. It indicates an average increase each year of 0.53 percent, or two parts per million of carbon dioxide in the atmosphere. The regular rise and fall of the



indicate that it is imperative that global temperatures not rise more than 2 °C higher than preindustrial levels:

> [H]uman influence on the climate system is clear and growing, with impacts observed across all continents and oceans. Many of the observed changes since the 1950s are unprecedented over decades to millennia. The IPCC is now 95 percent certain that humans are the main cause of current global warming. In addition, [the IPCC] … finds that the more human activities disrupt the climate, the greater the risks of severe, pervasive and irreversible impacts for people and ecosystems, and long-lasting changes in all components of the climate system. . . . [S]tabilizing temperature increase to below 2 °C relative to pre-industrial levels will require an urgent and fundamental departure from business as usual. Moreover, the longer we wait to take action, the more it will cost and the greater the technological, economic, social and institutional challenges we will face.[10]

Although its effects are increasingly visible all around us, global warming is an extremely difficult problem to solve for technological, political, and economic reasons.

**OZONE DEPLETION** Chlorofluorocarbons (CFCs) are gases that gradually break down ozone gas in the stratosphere above us. This layer of ozone in the stratosphere screens life on Earth from the harmful ultraviolet radiation the sun emits. The ozone layer is destroyed by CFC gases, which were once widely used in aerosol cans, refrigerators, air conditioners, industrial solvents, and industrial

## Changes in Global Temperatures

Average global temperatures today are already 0.85 °C (1.53 °F) higher than in 1880 and are expected to rise an additional 1.5 °C to 4.5 °C by the year 2100 as they continue to track our growing carbon emissions. This rising heat is expanding the world's deserts; it is melting glaciers and the polar ice caps; it is causing sea levels to rise; it is intensifying heat waves, droughts, and other extreme weather events; and it is driving species of plants and animals into extinction. Figures 5.3 to 5.5 provide more details.[11, 12, 13, 14]

**Interactive**

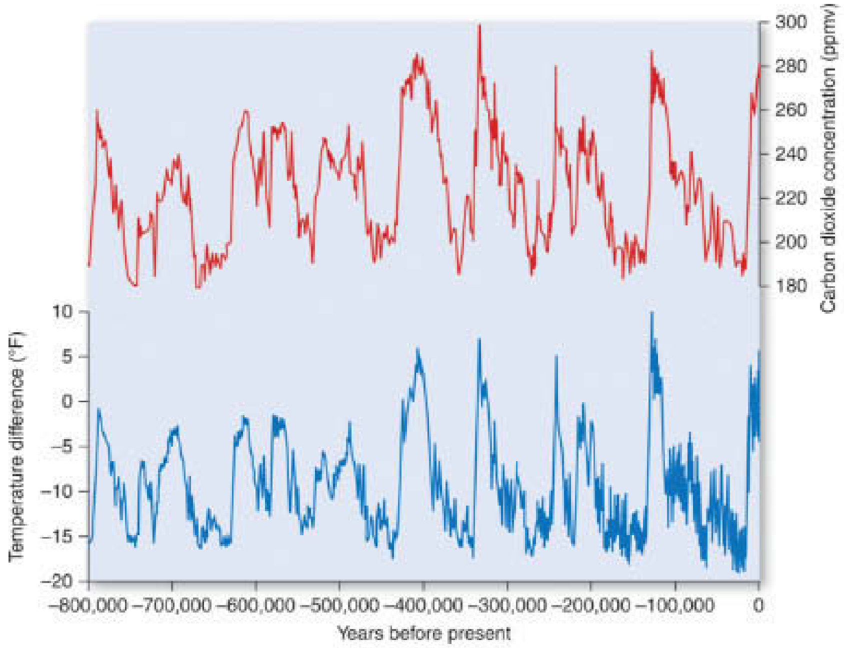



**Figure 5.3: Ice Core Records from Vostok, Antarctica**

The figure above presents ice core records from Vostok, Antarctica. Data from ice cores show that during the last 800,000 years, changes in global temperatures (shown by the lower line) have closely tracked changes in carbon dioxide concentrations (shown by the upper line). Note that carbon dioxide concentrations always varied within a range of about 180 to 300 ppm and that the figure does not include the rapid rise to 400 ppm that has occurred over the last 150 years.

**1 of 3** Previous Next

foam blowers. When released into the air, CFC gases rise, and in 7 to 10 years they reach the stratosphere, where they destroy ozone molecules and remain for 75 to 130 years, continuing all the while to break down additional ozone molecules. Studies predict that the shrinking of the ozone layer and the subsequent increase of ultraviolet rays may cause several hundred thousand new cases of skin cancer and injure the 75 percent of the world's major crops that are sensitive to ultraviolet light. Other studies suggest that the plankton that float on the surface layers of the Earth's oceans and on which the entire food chain of the world's oceans ultimately depends, is sensitive to ultraviolet light and may suffer widespread destruction. International agreements to which the United States is a party pledged to gradually phase out the use of CFC gases by 2000, and emissions of CFCs have dropped by 87 percent from their peak in 1988.[15] However, scientists warn that even if the use of CFC gases were completely halted, CFC levels in the atmosphere would still continue their dangerous upward climb because those gases already released will continue to rise upward for many years and will persist for perhaps a century.[16] Moreover, not all countries have agreed to cease making and producing CFC gases, and CFC gases are still sometimes released when refrigeration or air-conditioning systems built many years ago are repaired or disposed of.[17]

### Effects of Climate Change

The IPCC forecasts large shifts of vegetation into higher latitudes and elevations and rapid changes in the mix of species in these areas, as a result of global warming. Because forest species grow, reproduce, and evolve much more slowly than the climate is changing, entire forests and woodlands will likely die, burn, and disappear, as is already happening in much of the southwest United States and other parts of the world. Bodies of water, such as lakes and oceans will warm, which will dramatically shift the geographical distribution of fish and other marine species.[18, 19, 20, 21, 22]

Interactive

**Decrease in Safe Drinking Water and Agricultural Yields**

Currently, some 750 million people (two and one half times the population of the United States) do not have safe supplies of drinking water, which results in about 1.6 million deaths a year (of which 1.4 million are of children). Rising temperatures increase the frequency and magnitude of droughts, thereby increasing the number of people without water. Currently, 795 million people in poor countries do not have enough food to eat. Climate changes will decrease agricultural yields in the tropics and subtropics, worsening famine in these areas.

**Increase in Natural Disasters**

**Increase in Diseases**

## On the Edge

## Ford's Toxic Wastes

Making cars produces a steady stream of toxic liquids and solids, and from the mid-1950s to about 1980 Ford Motor Company dumped thousands of tons of its Mahwah factory wastes on a wooded hilly 500-acre area of Ringwood, NJ, including unused paints, solvents, paint thinners, battery acids, and other chemicals. It was legal to dump wastes on bare land then, and Ford owned the wooded area. Yet a memo written at the time by a Ford executive said, "The area used as a dumpsite for many years is leaching into a public water supply and represents a contingent liability."[23] The colorful sludge, which contained benzene, lead, arsenic, antimony, xylenes, and other poisonous substances—some carcinogenic, like chromium which causes nosebleeds—was dumped on what locals call "Sludge Hill." The slippery goo attracted local children who played with it and often came home with bad nosebleeds. A resident, Wayne Mann, said in 2009: "I was one of those children who used to go up on Sludge Hill . . . [I would] take a car hood and ride down, hand steering in the wet sludge. You paint your face. You lick it, whatever."[24] Many residents, including Mann, are sick. Some have already died of cancer. Adults and children suffer mysterious rashes, rare blood disorders, cancers, asthma, and other unusual diseases. The 600 people living in the area think the toxic sludge caused their illnesses and that too many are sick or dying to blame the sicknesses on chance. The area is populated by Ramapough, an impoverished Indian group who say they are victims of **environmental injustice**.

Although Ford admits they dumped the chemicals, John Holt, a company spokesperson, insists that the chemicals are not causing the sicknesses: "They've found no higher incidence of cancer or anything else here besides lung cancer."[25] Federal officials have reported that bladder cancer and non-Hodgkin's lymphoma rates are also elevated but their numbers are too small to rule out coincidence. Statistics do not show cause-and-effect, so there is no way to know for sure what caused the diseases.

Holt points out that Ford spent 10 years cleaning up the site and in 1994, the U.S. EPA and the New Jersey Department of Environmental Protection certified Ford did an adequate job. However, in 2006, the EPA found Ford's cleanup had left much of the wastes behind, so they relisted the site as contaminated. Ford was forced to agree to another cleanup, which by late 2015 they had yet to complete. Holt argued that the company had done a good job the first time: "This site was done and excavated and restored to its natural state . . . [according to] the requirements of the state of New Jersey and the EPA."[26] However, federal officials say that much of the sludge remains. A state official said, "Ford made false or misleading submissions to federal regulators" about their earlier cleanup.[27] Rain has now carried the chemicals into streams, rivers, and underground. They have also entered the local food chain. By 2015 Ford had hauled out more than 40,000 tons of the sludge,[28] but tens of thousands more remain. Much of the sludge had been poured into deep underground caves that are now almost impossible to access. Ringwood is just one of the country's 1,300 Superfund (most contaminated) sites. Twelve million Americans live within 1 mile of a similarly contaminated Superfund site, and about 53 million live within 3 miles of one.[29]

## WRITING PROMPT

**Evaluate Ford's Business Ethics**

1. Should Ford be held responsible for the sicknesses of the residents? Why or why not?
2. Check the videos at *http://toxiclegacy.northjersey.com*. Do the videos suggest that the contamination should concern you? If yes, why?
3. What would the various forms of environmental ethics described in this chapter say about Ford's actions?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

**ACID RAIN** *Acid rain* occurs when coal containing high levels of sulfur is burned and releases large quantities of sulfur oxides and nitrogen oxides into the atmosphere. Coal-burning electric power plants account for 70 percent of annual sulfur oxide emissions and 30 percent of nitrogen oxides.[30] When these gases are carried into the air, they combine with water vapor in clouds to form nitric acid and sulfuric acid. These acids are then carried down in rain, which often falls hundreds of miles away from the original sources of the oxides. The acidic rainfall—Sometimes as acidic as vinegar—gets carried into lakes and rivers, where it raises the acidity of the water. Consider the effects of acid rain:

- Many fish populations and other aquatic organisms—including algae, zooplankton, and amphibians—are unable to survive in lakes and rivers that have become highly acidic due to acid rain.[31]
- Acid rain directly damages or destroys trees, plants, lichens, and mosses.
- Acid rain leaches toxic metals—cadmium, nickel, lead, manganese, and mercury—from soil and carries them into waterways, where they contaminate drinking water or fish.
- Acid rain corrodes and damages buildings, statues, and other objects, particularly those made of iron, limestone, and marble.

While regulations and limits imposed on power plant emissions have lowered emissions of sulfur oxides down to half of what they were in 1990, some areas of the northeastern United States still experience acid rain.

**AIRBORNE TOXICS** Less catastrophic but still worrisome air pollution threats are the 4 billion pounds of airborne toxic substances released annually into our nation's atmosphere, including phosgene, a nerve gas used in warfare, and methyl isocyanate, which killed more than 2,000 people in Bhopal, India. The chemical brew released into the air annually includes more than 230 million pounds of carcinogens, such as benzene and formaldehyde, and over 500 million pounds of neurotoxins, such as toluene and trichloroethylene. Although levels of most airborne toxics have been declining gradually across the nation, some states have registered increases in the levels of several carcinogenic toxics in the air.[32] The EPA has estimated that 20 of the more than 329 toxics released into the air alone cause more than 2,000 cases of cancer each year and that living near chemical plants significantly raises a person's

### Technological, Political, and Economic Factors

Interactive

Technological | Political | Economic

The IPCC calculates that halting the increase in levels of greenhouse gases would require reducing current worldwide emissions of greenhouse gases by 60 to 70 percent —an amount that would seriously affect the economies of both developed and developing nations and that would require the development of new energy sources and technologies. This kind of reduction is so large, in fact, that few governments are ready to attempt the political negotiations required to mandate it, and so most nations are still increasing their carbon dioxide emissions by substantial amounts.

chances of cancer. Exceptionally high cancer rates have been found near plants in several states, including West Virginia and Louisiana.

**COMMON AIR POLLUTANTS** The most prevalent forms of air pollution, however, are the six kinds of gases and particulates spewed out by autos and industrial processes that the EPA calls "common air pollutants." These six affect the quality of the air we breathe, injure human health, harm the environment, and damage property.

More recent long-range studies have indicated that the deterioration of lung function in human beings caused by their chronic exposure to air pollutants, whether it be auto smog or industrial smokestack emissions, is long lasting and often irreversible.[33] Some of the 2,500 subjects in the studies suffered as much as 75 percent loss of lung capacity during a 10-year period of living in Los Angeles communities—a region with very high levels of air pollution—leaving them vulnerable to respiratory disease, emphysema, and impairment of their stamina. Damage to the still-developing lungs of children was especially serious. The health, environmental, and climate effects associated with various air pollutants appear in Table 5.1.

***Quick Review 5.1***

**Major Types of Air Pollution**

- Greenhouse gases: carbon dioxide, methane, nitrous oxide
- Ozone depleting gases: chlorofluorocarbons
- Acid rain gases: sulfur oxides
- Airborne toxics: benzene, formaldehyde, toluene, trichloroethylene, and 329 others
- Common air pollutants: carbon monoxide, sulfur oxides, nitrogen oxides, airborne lead, ozone, particulates.

**Table 5.1** Health, Environmental, and Climate Effects of Air Pollutants

The six common air pollutants are carbon monoxide, sulfur oxides, nitrogen oxides, airborne lead, ozone (or “smog”), and particulates (airborne mixtures of extremely small particles and liquid droplets). The effects of these pollutants and others, which were recognized more than four decades ago, are summarized below.[34]

| Pollutant | Health Effects | Environmental and Climate Effects |
|---|---|---|
| Ozone ($O_3$) | Decreases lung function and causes respiratory symptoms, such as coughing and shortness of breath; aggravates asthma and other lung diseases leading to premature mortality. | Damages vegetation and decreases crop yields. Ozone damage to plants may alter ecosystems, reduce biodiversity, and decrease plant uptake of $CO_2$. Ozone is also a greenhouse gas that contributes to global warming. |
| Particulate Matter (PM) | Short-term and long-term exposures can cause or aggravate heart or lung diseases leading to premature mortality. | Impairs visibility, and damages soils structures and property. Black carbon particles absorb heat and lead to warming. Also change the timing and location of traditional rainfall patterns. |
| Lead (Pb) | Damages the nervous system, resulting in IQ loss and impacts on learning, memory, and behavior in children. Cardiovascular and renal effects in adults and early effects related to anemia. | Harms plants and wildlife, accumulates in soils, and adversely impacts both terrestrial and aquatic systems. |
| Oxides of Sulfur ($SO_x$) | Aggravate asthma; very high levels can cause respiratory symptoms in people without lung disease. | Contributes to the acidification of soil and water. Causes injury to vegetation and local species losses in aquatic and terrestrial systems. |
| Oxides of Nitrogen ($NO_x$) | Aggravate lung diseases leading to respiratory symptoms and increased susceptibility to respiratory infection. | Contributes to the acidification and eutrophication of soil and surface water. Leads to biodiversity losses. |
| Carbon Monoxide (CO) | Reduces the amount of oxygen reaching the body’s organs and tissues; aggravates heart disease, resulting in chest pain and other symptoms. | Contributes to the formation of $CO_2$ and other greenhouse gases that warm the atmosphere. |
| Ammonia($NH_3$) | Contributes to particle formation with associated health effects. | Contributes to eutrophication of surface water and nitrate contamination of ground water. |
| Volatile Organic Compounds (VOCs) | Some are toxic air pollutants that cause cancer and other serious health problems. Contribute to ozone formation with associated health effects. | Contributes to ozone formation with associated environmental and climate effects. Contributes to the formation of greenhouse gases. |
| Mercury (Hg) | Causes liver, kidney, and brain damage and neurological and developmental damage. | Deposits into rivers, lakes, and oceans where it accumulates in fish, resulting in exposure to humans and wildlife. |
| Other Toxic Air Pollutants | Cause cancer; immune system damage; and neurological, reproductive, developmental, respiratory, and other health problems. | Harmful to wildlife and livestock. Some toxic air pollutants accumulate in the food chain. |

**AIR QUALITY IMPROVEMENTS** The major sources of the six common air pollutants are utilities, industrial smokestacks, and automobiles. In congested urban areas such as Los Angeles, automobiles cause about 80 percent of the air pollution. Industrial pollution is derived principally from power plants and plants that refine and manufacture basic metals. Electrical power plants that depend on fossil fuels—such as oil, coal, or natural gas—throw tons of sulfur oxides, nitrogen oxides, and ashes into the air. The last decade has seen considerable improvement in the air quality of most regions of the United States, primarily as a result of environmental legislation and regulation.[35] See Figure 5.6 for more details.

The health costs of low air quality are known to be high. Studies have indicated that when the concentrations of sulfur oxides over our major cities were cut in half from their 1960 levels, this added an average of one year to the life of each resident.[36] If air quality in urban areas were similar to the levels of rural regions with clean air, the death rates for asthma, bronchitis, and emphysema would drop by about 50 percent, and deaths from heart disease would drop by about 15 percent.[37] Improvements in air quality since 1970, it is believed, now save about 14,000 lives per year.[38] Each year since 1997, the U.S. Office of Management and Budget (OMB) has issued a report calculating the benefits and costs associated with environmental laws and regulations. In 2014, the OMB reported that regulations that reduced or eliminated air pollution annually produced benefits of \$162 to \$840 billion, while imposing costs of only \$38 to \$45 billion, which means that the benefits of air quality regulations and laws outweighed their costs to a significant degree.[39]

## 5.1.3: Water Pollution

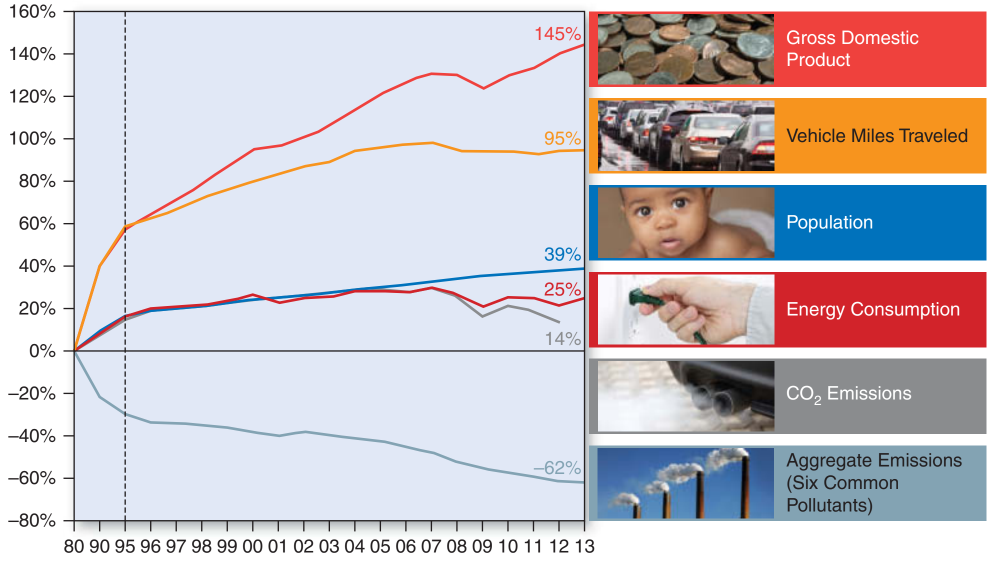
The contamination of water sources is an old problem—one that has been with us since civilization began using water to dispose of its wastes and sewage. Water pollutants today,

**Figure 5.6** Air Quality Trends

Emissions of four of the six common air pollutants have been substantially reduced, particularly airborne lead (78 percent reduction from 1990 levels), sulfur dioxide (59 percent reduction), and carbon monoxide (68 percent reduction), although reductions in ozone (14 percent), particulates (31 percent), and nitrogen oxide (35 percent) were smaller.[40]

Between 1980 and 2013, aggregate emissions of the six common air pollutants fell by 62 percent.

The reduction in aggregate emissions (bottom line) is compared with increases in $CO_2$ emissions, energy consumption, population, vehicle miles travelled, and gross domestic product during the same period.




however, are much more diverse, consisting of not only **organic wastes** but also dissolved salts, metals, and radioactive materials, as well as suspended materials such as bacteria, viruses, and sediments. These pollutants can impair or destroy aquatic life, threaten human health, and foul the water. In 2015, the EPA reported that about 40 percent of our surface water was too polluted to fish or swim in.[41]

## Ethical Application

### Oil Spills

There are numerous examples of oil spills, during the last decade alone. In 2005, Hurricane Katrina struck New Orleans and released more than 7 million gallons of oil from various oil storage sites. On July 15, 2006, Israeli bombs hit a power station near Beirut, Lebanon, causing it to leak between 3 million and 10 million gallons of oil into the sea. In 2007, a ship off of South Korea's coast hit a steel cable and spilled 2.8 million gallons of crude oil, destroying 12 miles of South Korean beaches. On July 25, 2008, a barge collided with a tanker ship and spilled most of the 419,000 gallons of oil it was carrying into the Mississippi River near New Orleans. In January 2010, the oil tanker Eagle Otome collided with a barge and spilled 462,000 gallons of oil into the bay at Port Arthur, Texas. On April 20, 2010, the explosion of a BP oil rig in the Gulf of Mexico released between 92 million and 184 million gallons of crude oil into the waters of the Gulf, making it the largest oil spill in U.S. history. In February 2012, a ruptured pipeline in Venezuela spilled as much as 13 million gallons of oil into the Guarapiche River. A derailed train pulling tanker cars full of crude oil spilled 1.5 million gallons of light crude oil into the downtown area of Lac-Mégantic in Canada on July 6, 2013, killing 47 people and destroying virtually the entire town's center in multiple explosions and fires. In December 2014, the Trans-Israel Pipeline ruptured, spilling between 640,000 and 1.2 million gallons of oil into Israel's Evrona Nature Reserve. On May 19, 2015, a ruptured oil pipeline spilled about 105,000 gallons of crude oil onto the beaches of Santa Barbara county in California.[42] The contamination produced by oil spills is directly lethal to sea life, including fish, seals, plants, and aquatic birds. Oil spills also require expensive cleanup operations for residents and impose costly losses on nearby tourist and fishing industries.

Coastal estuaries and marine sediments have been found to contain unusually high concentrations of cadmium, chromium, copper, lead, mercury, and silver.[43] Polychlorinated biphenyls (PCBs), which were used as cooling fluids in electrical transformers, as lubricants, and as flame retardants until banned in 1979, and polyfluorinated compounds (PFCs), which are still used in breathable rainproof cloth, in leak-proof fast-food paper packaging, and in nonstick coatings such as Teflon, have become widespread in

### Types of Water Pollutants and Their Effects

Water pollutants enter surface water or underground water basins either from a single point source, such as a pipe or a well carrying sewage or industrial wastes, or from a diffused or nonpoint source covering a large area, such as crop pesticides or animal wastes carried in rainwater or runoff.

**Interactive**

**Salt Brines**

Salt brines from mines and oil wells, as well as mixtures of sodium chloride and calcium chloride used to keep winter roads clear of snow, all eventually drain into water sources where they raise the saline content. The high saline levels in ponds, lakes, and rivers kill whatever fish, vegetation, or other organisms inhabit them. Highly salinized water also poses major health hazards when it finds its way into city water supplies and is drunk by persons with heart disease, hypertension, cirrhosis of the liver, or renal disease.

**Iron and Sulfate Particles**

**Organic Wastes**

**Phosphorus Compounds**

**Inorganic Water Pollutants**

the environment and have gradually accumulated in the oceans, especially in coastal areas. Minute amounts of PCBs are deadly to human beings and other life forms, and traces can engender a variety of toxic effects, including reproductive failures, birth defects, tumors, liver disorders, skin lesions, and immune suppression. PFCs cause liver damage. Moreover, some types are carcinogenic and others cause fetal damage. PCBs (which still are often improperly disposed of in the United States) and PFCs are a cause of profound concern because they are persistent and become increasingly concentrated as they move up the food chain.[44]

**SHORTAGE OF SAFE DRINKING WATER** Underground water supplies are also becoming more polluted.[45] The sources of contamination include landfills, waste piles, legal and illegal dumps, and surface reservoirs. More than 50 percent of the U.S. population depends on underground sources for drinking water. Underground water contaminants have been linked to cancers, liver and kidney diseases, and damage to the central nervous system. Unfortunately, exposure often occurs unknowingly over periods of years because contaminated groundwater is usually odorless, colorless, and tasteless.

Today, about 750 million people in the world lack access to safe drinking water. About a third of them live in sub-Saharan Africa, and most of the rest live in rural areas of poor developing countries.[46] Fresh water is essential not only to human life, plant life, and animal life but also to agriculture, industry, and economic development.[47] There is no substitute for water in most of its uses. Nevertheless, the world's *per capita* supply of fresh water (of which only a small part is safe drinking water) declines as population rises because the total annual supply of fresh water is fixed. Increases in population, farming, and economic activity have increased the demands put on our water resources, while pollution, climate change, and aquifer depletion have reduced the supply. As urban areas have grown and increased their demands for water, water has been increasingly diverted from agricultural irrigation to provide water for cities, a conflict that is predicted to expand.

How much does water pollution cost us, and what benefits might we expect from its removal? The OMB estimates that on average in each of the 10 years between 2003 and 2013, clean water regulations cost between $0.4 and $0.5 billion (in 2010 dollars) and produced benefits (in the form of pollution costs avoided) ranging somewhere between $1.0 and $4.0 billion, not counting important nonquantifiable benefits.[48]

***Quick Review 5.2***
**Major Types of Water Pollution**

- Organic wastes: human sewage, animal wastes, bacteria, oil
- Inorganic pollutants: salt brines, acids, phosphates, heavy metals, asbestos, PCBs, radioactive chemicals

## 5.1.4: Land Pollution

Land pollution includes the formation and release of toxic substances, solid wastes, and nuclear waste. Toxic substances include acids, heavy metals, solvents, pesticides, herbicides, and phenols. Solid wastes include residential garbage, industrial wastes, agricultural wastes, and mining wastes. Nuclear wastes are categorized as high-level (cesium, strontium, plutonium), transuranic (diluted high-level wastes), and low-level (contaminated reactor equipment, uranium mine tailings).

**TOXIC SUBSTANCES** Hazardous or toxic substances are those that can cause an increase in mortality rates or irreversible or incapacitating illness or those that have other seriously adverse health or environmental effects. Toxic substances that have been released on land include acidic chemicals, inorganic metals (such as mercury or arsenic), flammable solvents, pesticides, herbicides, phenols, and explosives. (Radioactive wastes are also classified as hazardous substances, but we will discuss these wastes separately.) Silvex and 2, 4, 5-T, for example, are two widely used herbicides that contain dioxin—a deadly poison (100 times more deadly than strychnine) and a carcinogen.

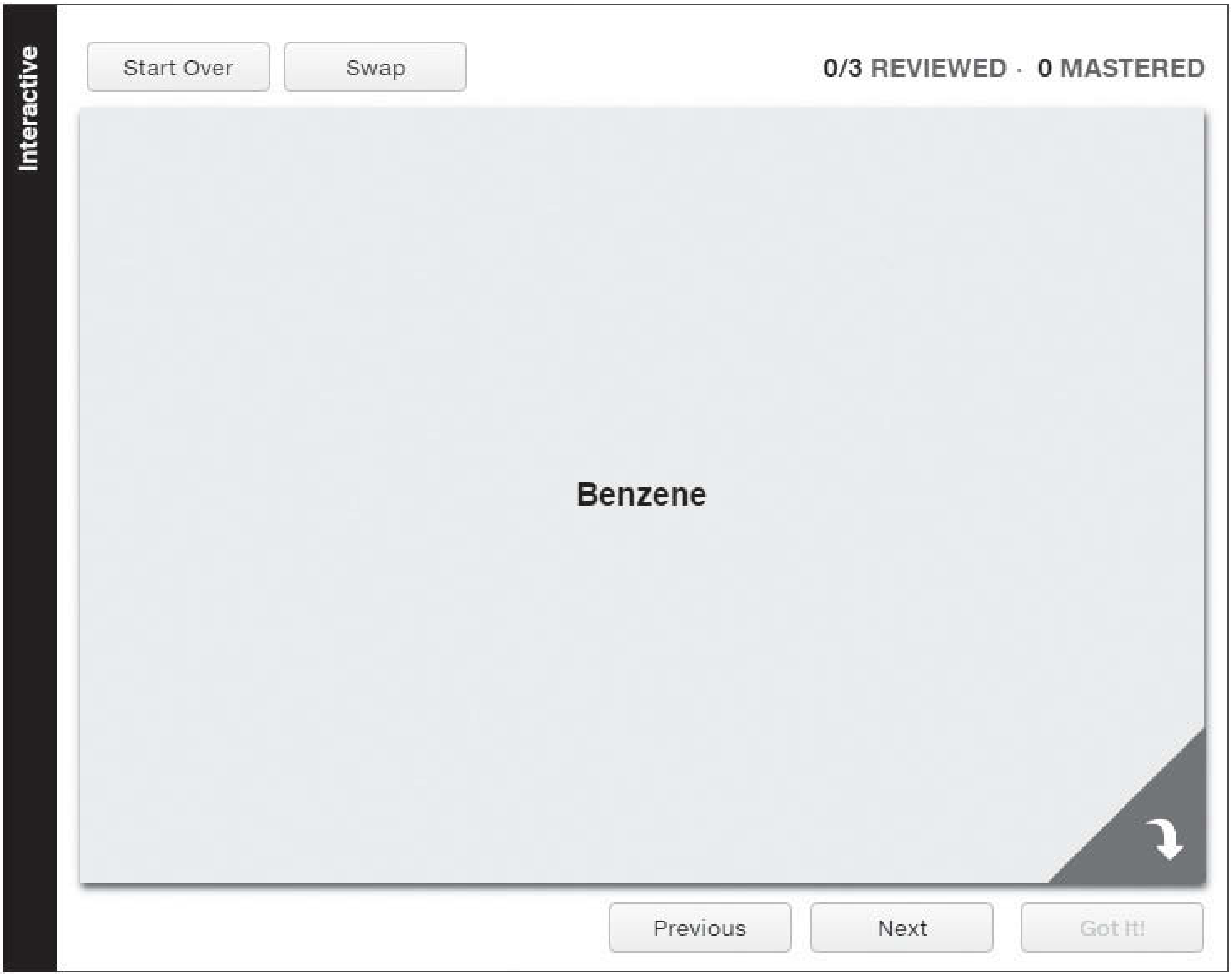
Coal ash from coal-fired power plants that collect the ash before it escapes through exhaust stacks contains several toxic metals and other cancer-causing wastes. There are about 500 coal-fired electric utilities in the United States today, and together they generate about 110 million tons of coal ash each year. Yet coal ash was unregulated until late 2010, when the EPA issued the first national regulations covering coal ash. In Caledonia, Wisconsin, residents discovered in June 2010 that their wells were contaminated with molybdenum, a toxic ingredient of coal ash, that probably leaked from a nearby landfill or a nearby coal plant; that same month, the residents of Colstrip, Montana, discovered that their well water—which they drank although it had tasted bad for years—was also contaminated by toxic coal ash wastes stored in waste ponds by a local coal plant.[49] In 2007, the EPA published a report listing 24 other neighborhoods around the nation that had been proven to have been contaminated by coal plant or oil plant toxic wastes, and an additional 43 neighborhoods that were also contaminated by coal plant toxic wastes but where the wastes had not yet "migrated to the extent that they could cause human health concerns."[50] It is estimated that scattered across the nation, there are about 1,300 coal plant waste dumps containing billions of gallons of water and coal ash slurry. Until 2010, most of these dumps were neither regulated nor monitored, and all contain significant amounts of toxic heavy metals, such as arsenic, cadmium, lead, mercury, boron, thallium, and selenium, that can migrate into groundwater and surrounding areas.[51]

**SOLID WASTES** Americans today produce more residential garbage than do the citizens of any other country in the world. Each year people living in U.S. cities produce 250 million tons of municipal solid waste—enough to fill a 226,000-mile-long convoy of 10-ton garbage trucks, about the distance from the Earth to the Moon.[52] Each person reading this text produces, on average, more than three-fourths of a ton of garbage a year—about 4.5 pounds a day. Only about a third of residential wastes are recovered through recycling—a low proportion that is due to the lack of financial backing for recycling operations, the small size of markets for recycled products, and toxic chemicals present in recyclable garbage.

**NUCLEAR WASTES** Light-water nuclear reactors use radioactive materials and produce "high-level" radioactive wastes, including known carcinogens such as strontium 90, cesium 137, barium 140, and iodine 131. Extremely high doses of radiation from these elements can kill a person; lower dosages (especially if radioactive dust particles are inhaled or ingested) can cause thyroid, lung, or bone cancer as well as genetic damage that can be transmitted to future generations. Plutonium is produced as a waste by-product in the spent fuel of light-water reactors. A 1,000-megawatt light-water reactor, for example, will generate about 265 pounds of plutonium wastes each year. Plutonium is highly toxic and carcinogenic. A particle weighing 10 millionths of a gram, if inhaled, can cause death within a few weeks. Twenty pounds, if properly

### Common Toxic Chemicals

About 70,000 different chemical compounds are now used in the United States, of which well over a thousand are probably toxic. Their number is growing each year.[53, 54, 55, 56]




distributed, could give lung cancer to everyone on Earth. Cesium 137 and strontium 90 remain hazardous for about 1,000 years, and plutonium for 250,000 to 1,000,000 years. It is uncertain whether there is a safe and permanent method for disposing of these long-lived and dangerous wastes.[57] Moreover, the plutonium produced by reactors is the basic ingredient of atomic bombs, so if it should fall into the hands of terrorists it could be used to construct an atomic weapon or to lethally contaminate large, populated areas.[58]

To date, nuclear plants in the United States, and in most other countries, have operated safely without any catastrophic release of large quantities of radioactive materials. Estimates of the probable risk of such a catastrophic accident are highly controversial, and significant doubts surround these risk estimates, especially in light of the accidents at Three Mile Island in the United States, Chernobyl in Russia, and the earthquake- and tsunami-induced accident in Fukushima, Japan, all of which defied earlier probability estimates.[59] Even without catastrophic accidents, however, small amounts of radioactive materials are routinely released into the environment during the normal operations of a nuclear plant and during the mining, processing, and transporting of nuclear fuels. The U.S. government has estimated that, by the year 2000 (about four decades after nuclear plants began to be built in the United States), about 1,000 Americans had died of cancer from these routine emissions.[60] A more recent study estimated that worldwide deaths from nuclear power plant emissions and accidental releases (such as at Chernobyl and Fukushima) between 1971 and 2009 totaled about 5,000.[61]

### Residential and Industrial Garbage

Residential garbage is 250 million tons a year. Yet the quantity of residential garbage that Americans produce is dwarfed by the quantities of solid waste produced through industrial, agricultural, and mining processes.[62, 63, 64, 65, 66, 67, 68, 69]

Interactive

**Residential Garbage**

Although the total amount of garbage we produce has been increasing each year, the facilities to handle our garbage have decreased. In 1978, about 20,000 municipal garbage dumps were in operation; by 1989, there were fewer than 8,000; in 1995, there were 3,500; and by 2009, there were only about 1,900. Many have had to be closed for safety reasons. Florida, Massachusetts, New Hampshire, and New Jersey are a few of the states that closed most of their garbage dumps during the 1990s. Moreover, fewer and fewer dumps are opened each year.

City garbage dumps are significant sources of pollution, containing toxic substances such as cadmium (from rechargeable batteries), mercury, lead (from car batteries and TV picture tubes), vanadium, copper, zinc, and PCBs (from refrigerators, stoves, engines, and appliances built before 1980 and since dumped). Only about one-fourth of all city dumps test groundwater for possible contamination, less than 16 percent have insulating liners, only 5 percent collect polluting liquid wastes before they percolate into groundwater, and less than half impose any restrictions on the kinds of liquid wastes that can be poured into them. Not surprisingly, almost one-fourth of the nonmilitary sites identified in the Superfund National Priorities List as posing the greatest chemical hazards to public health and the environment are city dumps.

**Industrial Garbage**

Although the risks of nuclear power wastes are significant, and they have caused a number of deaths, these costs must be balanced against the benefits of using nuclear power plants to provide for our energy needs. Currently, most of our energy needs are met by burning fossil fuels such as coal and natural gas. The United States generates only about 20 percent of its electricity with nuclear plants, although other countries have a much higher stake in nuclear power, including France (76 percent), Belgium (54 percent), Armenia (44 percent), Hungary (37 percent), Slovakia (56 percent), Slovenia (42 percent), Sweden (42 percent), Switzerland (39 percent), and Ukraine (47 percent). If these nuclear power plants did not exist, fossil fuel-based power plants would certainly have been built in their place. Yet fossil fuel-based power plants also produce wastes and pollution that also cause diseases and deaths. Studies have shown that if the power produced by nuclear plants between 1971 and 2009 had instead been produced by fossil fuel-based plants, the wastes and pollution produced by those plants would have killed 1.84 million people.[70] Compare this number of deaths with the approximately 5,000 deaths estimated to have been caused by the nuclear power plants that actually took the place of those fossil fuel-based plants. In other words, a fossil fuel-based plant kills about 370 times more people than a nuclear power plant. Moreover, fossil fuel-based electricity plants are the major source of the greenhouse gases that are rapidly warming the planet. In the United States, about a third of all greenhouse gases are produced by fossil fuel-based electricity plants.

Nuclear wastes produced by nuclear power plants present humanity with large risks.[71] Yet those risks appear to be far less than the risks produced by the conventional fossil fuels from which we produce most of our electricity.

***Quick Review 5.3***
**Major Types of Land Pollution**

- Toxic substances: acids, heavy metals, solvents, pesticides, herbicides, and phenols
- Solid wastes: residential garbage, industrial wastes, agricultural wastes, and mining wastes
- Nuclear wastes: high-level (cesium, strontium, plutonium), transuranic (diluted high-level wastes), and low-level (contaminated reactor equipment, uranium mine tailings)

## 5.1.5: Depletion of Species and Habitats

Human activity has rendered dozens of plant and animal species extinct. Since 1600, at least 96 specific species of mammals and 88 specific species of birds are known to have become extinct.[72] However, scientists believe that these data represent only the tip of the iceberg and that the number of species that are going extinct today is many times larger. In addition, several hundred other species, such as whales and salmon, today find themselves threatened and on the brink of extinction. Forest habitats on which the bulk of species depend are also being decimated by the timber industry. Between the years 1600 and 1900, half of the forested land area in the United States was cleared.[73] Experts estimate that the planet's rain forests are being destroyed at the rate of about 1 percent a year.[74] The loss of forest habitats combined with the effects of pollution is thought to have led to the extinction of hundreds of unidentified species. The International Union for Conservation's "Red List of Threatened Species," the most comprehensive database of species and subspecies known to be extinct or threatened with extinction, concludes that out of the 47,978 species (all identified life forms including birds, animals, plants, insects, fungi, mollusks, etc.) specifically identified and known to have existed during the last 500 years, 17,315 (36 percent) were threatened with extinction, and 840 are now extinct.[75]

Nowhere has the depletion of living organisms been as significant as in the oceans. Fish stocks around the world have collapsed because of over-fishing, resulting in a serious decline in the fish protein available to local populations. In the Northwest Atlantic, for example, the stocks of haddock, red hake, and Atlantic cod all collapsed during the 1990s. In 2015, a study by the World Wide Fund for Nature (WWF) found that fish populations in general had declined by 49 percent since 1970 and several fish species had declined by almost 75 percent.[76] Polluted runoff that has entered the oceans has also created large "dead zones" devoid of most fish and shellfish. More than 400 dead zones have been documented off the coasts of countries around the world.[77] Since about 3 billion people living in coastal communities rely on fish as their major source of protein, the rapid and continuing destruction of fish species poses a major threat to those coastal people.

## 5.1.6: Depletion of Fossil Fuels

Some early predictions of resource depletion assumed that fossil fuels would continue to be depleted at exponentially rising rates. If continued, an exponentially rising rate of depletion would end with the complete and catastrophic depletion of the resource in a relatively short time.[78] Estimated world reserves of coal would be depleted in about 100 years from the time of the estimates, estimated world reserves of oil would be exhausted in about 40 years, and estimated reserves of natural gas would last only about 25 years.[79] These time periods were calculated by taking estimates of the world's reserves of a resource, and dividing it by the amount that was being consumed each year. The "estimated reserves" of a resource consist of the estimated amount of the resource that we have the technology to extract from the earth, and that we can extract at a cost that is less than the value of the resource. In other words, "reserves" are the amount of a resource that it is technologically and economically feasible to extract.

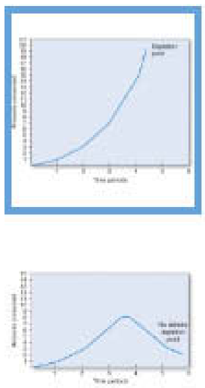
The rate at which we deplete our resources is more adequately mirrored by the Hubbert model than by the exponential model. For example, fossil fuels will not be depleted within the short time frame predicted by earlier exponential growth models. The extraction of estimated reserves of coal will probably peak in about 150 years and then continue, but at a declining rate coupled with rising prices, for another 150 years. The conventional extraction of U.S. reserves of natural gas peaked in 1973, and then began to decline as the Hubbert model had predicted. The conventional extraction of U.S. reserves of oil peaked in 1970 and subsequently declined, also as the Hubbert model predicted.

**FRACKING AND NEWER TECHNOLOGIES** After this peak and decline in the conventional extraction of oil and gas in the United States, the production of oil and gas began to rise again. This increase in the U.S. production of oil and natural gas was not predicted by the Hubbert model. What happened? The major factor that instituted a new rise in U.S. oil production was the development of a new technology, now popularly known as "fracking." Unlike the conventional extraction of oil and natural gas, fracking is accomplished by pumping a water mixture into the ground at such high pressure that the rock beneath the ground is fractured, releasing the oil and natural gas that were trapped within the rock. Conventional drilling methods cannot extract oil and gas trapped in rock. So until fracking methods were developed and used, oil and gas

### Exponential and Peaked Depletion Rate

Experts have pointed out that our consumption of a resource cannot continue rising at exponential rates. As reserves of any resource shrink, they become increasingly difficult, and therefore more costly, to extract. The rising costs of extraction in turn will slow down their depletion rates. Consequently, although the rates at which reserves of a resource are depleted may rise exponentially for a period (see Figure 5.7), the rising costs of extraction eventually cause the rates to slow, then peak and then begin to decline without complete depletion ever being attained (see Figure 5.8).[80, 81]

Interactive



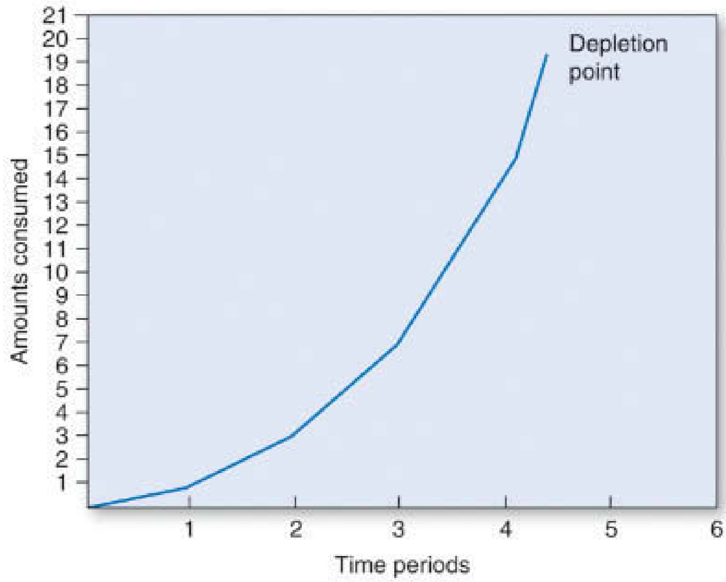



**Figure 5.7: Exponential Depletion Rate**

Figure 5.7 shows the exponential depletion rate of a resource. Taking fossil fuels as an example, until the early 1980s, fossil fuels were being depleted at an exponentially rising rate. That is, the rate at which they were being used had doubled with the passage of a regular fixed time period.

resources trapped within rock were not accessible. The use of fracking allowed the large oil and natural gas reserves trapped in rock to be extracted, thereby allowing U.S. oil and natural gas production to increase once again.

The example of oil and gas production in the United States is a dramatic illustration of a problem with trying to predict the production peak or limit of any natural resource. The problem is that we do not know whether new technologies will be developed in the future that will allow us to extract resources that we cannot recover at the present. Resources that are not technologically recoverable at present are not taken into account when estimating the total reserves of any natural resource because reserves consist of what is technologically (and economically) possible to extract. The possibility that new technologies like fracking may be discovered, then, makes it difficult to predict when the peak or the limit of a resource will be reached.

Experts argue, however, that oil and natural gas production in the United States will eventually begin to follow the Hubbert curve again. That is, production of oil and natural gas through fracking will reach a peak sometime in the future and then begin to decline. It is unknown at this time, however, when their peaks will occur.

What about the extraction of fossil fuels outside the United States? When will they began to decline? Estimates

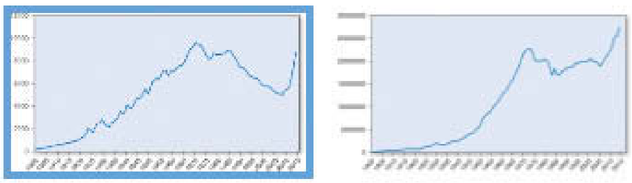
### U.S. Production of Crude Oil and Natural Gas

Natural gas production began rising steadily again in 2007 (see Figure 5.9), and oil production began rising steadily in 2009 (see Figure 5.10).

Interactive


**Figure 5.9: U.S. Production of Crude Oil**

Figure 5.9 presents the U.S. Production of Crude Oil (thousand barrels per day), 1900 to 2014.



of the depletion rates of world reserves of oil have been even more controversial than those of the United States and have varied widely.[82] Several experts had estimated that world production of oil would peak by 2010.[83] But these estimates were made before the adoption of fracking methods. Fracking has allowed worldwide production of oil to continue on an upward trajectory, a trajectory that was interrupted only briefly by the decline in demand caused by the great recession of 2008. Moreover, the estimated reserves of fossil fuels have increased tremendously because deposits that were not technologically feasible to extract were not counted as part of the world's reserves. Now estimates of reserves must be revised to take into account these deposits that it is now technologically possible to extract. Nevertheless, according to experts, this upward trajectory will eventually hit a peak and then begin a slow and inevitable decline as it once again adheres to the Hubbert curve.

## 5.1.7: Depletion of Minerals

The depletion of mineral reserves, like the depletion of fossil fuels, can also be calculated either on the basis of an exponential growth model or on the basis of a peaked growth model. If earlier exponentially rising rates of depletion continued, then aluminum would have been scheduled for exhaustion in the year 2003, iron in 2025, manganese in 2018, molybdenum in 2006, and nickel in 2025.[84]

Yet, as with fossil fuels, the rate at which minerals are depleted will not continue to grow exponentially, but should peak in a Hubbert curve and then decline as metals become rarer, and more difficult and more expensive to extract. Using this peaked model, a 2007 study of several essential minerals estimated that, depending on how much consumption rates increase from 2007 rates, the production of indium, a key component of flat-screen TVs and certain solar cells, has peaked; antimony, which is used in certain drugs and flame-retardant materials will peak in about 30 years; tantalum, a component of cell phones and camera lenses, in 20 to 116 years; uranium, which will be in high demand if the world begins building more nuclear power plants, in 19 to 59 years; tin in 17 to 40 years; silver in 9 to 29 years; gold in 36 to 45 years; zinc in 34 to 46 years; and nickel in 57 to 90 years.[85]

According to this 2007 study, then, although the extraction rates of some important minerals have peaked, none has been completely depleted and all continue to be mined, although their extraction costs have been rising.[86] Moreover, new mining and refining technologies have made it technology feasible to extract some mineral deposits that it was not technologically and/or economically feasible to extract several years ago.

***Quick Review 5.4***
**Depletion of Nonrenewable Resources**

- Several species have lost habitats and become extinct.
- Natural resources are depleted at a peaked rate, not an exponential rate.
- Fossil fuel depletion: coal will likely peak in 150 years, but the peak dates for natural gas and oil are unknown due to the expanded production of both by the use of fracking.

### Mineral Resources: Finite and Limited

Like fossil fuels, mineral resources are also finite and limited. So the depletion rates of the world's supply of minerals will also eventually peak and then gradually decline as remaining supplies become harder and more expensive to mine.[87, 88, 89, 90]

**Interactive**

**Impact of Limited Mineral Resources**

The precise impact the limitations of world supplies will have on us are exceedingly difficult to predict. Mining technologies may continue to develop, which will reduce the difficulty and costs of mineral extraction and extend the period of decline. This has been the case for most minerals up to the present. Increased recycling may further reduce the need for intensive mining of remaining mineral reserves. Substitutes may also be found for many of the minerals whose supply is limited, and technological development may make many current uses of these minerals obsolete.

**Mineral Resources Rapidly Becoming Scarce**

**Rate of Depletion of Mineral Resources**

**Physical Limits to Natural Resources**

- Mineral depletion: indium has peaked, tantalum will peak in 20 to 116 years, antimony in about 30 years, aluminum during the twenty-first century, and copper and mercury in about 2100.

# 5.2: The Ethics of Pollution Control

**OBJECTIVE: Examine the important ethical considerations of pollution control**

For centuries, business institutions were able to ignore their impact on the natural environment, an indulgence that has a couple of causes:

1. Business was able to treat air and water as free goods—that is, as goods that no one owns and that each firm can therefore use without reimbursing anyone for their use. Because such resources are not privately owned, they lack the protection that a private owner would normally provide, and businesses were able to ignore the damages they inflicted on them.
2. Businesses have seen the environment as an unlimited good. That is, the carrying capacity of air and water is relatively large, and each firm's contribution of pollution to these resources seems relatively small and insignificant.[91] When the effects of its activities are seen as so slight, a firm will tend to ignore these effects. However, when every firm reasons in this way, the combined negligible effects of each firm's activities may become enormous and potentially disastrous. The carrying capacity of the air and water is soon exceeded, and these free and unlimited goods rapidly deteriorate.

Of course, pollution problems are not rooted only in business activities. Pollution also results from the use that consumers make of products and from human waste products.[92]

## Ethical Application

### Ignoring Environmental Impact

On the point of air and water as free goods, for several years, a DuPont plant in West Virginia had been dumping 10,000 tons of chemical wastes each month into the Gulf of Mexico until it was forced to stop. The waters of the Gulf provided a free dumping site for whose damages DuPont did not have to pay. On the point of the environment as an unlimited good, the amount of chemicals DuPont was dumping into the Gulf was relatively small compared with the size of the Gulf, and the effects were seen as negligible by the company.

## 5.2.1: Consumer Responsibility

A primary source of air pollution is automobile use, and a primary source of water pollution is sewage. We are truly all polluters.[93] Because every human being pollutes, pollution problems have increased as our population has multiplied. The world's population grew from 1 billion in 1800 to 3 billion in 1960 to 7.3 billion in 2015 and is projected to grow to 9.7 billion by 2050.[94] This population explosion has put severe strains on the air and water resources into which we dump our share of pollutants. Moreover, these strains have been aggravated by our tendency to concentrate our populations in urban centers. All over the world, urban areas are growing rapidly, and the high-population densities that urbanization has created multiplies the pollution burdens placed on air and water resources.[95]

The problems of pollution, then, have a variety of origins, and their treatment requires a similarly variegated set of solutions. Our focus in what follows, however, concentrates on a single range of problems: the ethical issues raised by pollution from commercial and industrial enterprises.

## On the Edge

### The Auto Industry and Its Effects in China

In 2000, China's car market began to expand dramatically due to the increasing wealth of the country, the encouragement of the government, and a growing middle class that wanted the comfort, convenience, and pride of car ownership. Foreign car companies eagerly flocked to help China expand its car industry, including Volkswagen, General Motors (GM), Honda, Toyota, Ford, Citroen, and BMW, who together invested more than $20 billion to kick-start China's auto industry. By 2010, China had become the largest car market in the world with over 18 million cars sold that year. With a population of 1.2 billion people and double-digit growth rates, China estimated that by 2035 as many as 300 million cars would be traveling on its highways. In 2011, Volkswagen announced it had sold 2 million cars in China the previous year, and in 2015 GM announced it had sold 3.4 million the previous year.

Critics suggested, however, that the overzealous auto companies unwittingly might have inflicted serious harm on the global environment. To begin with, the pollution from so many new cars promised to have severe environmental impacts. Even "clean" cars will generate carbon dioxide as they burn fuel, thus worsening the greenhouse effect. Cars also produce smog and other health hazards (tuberculosis cases will double; emphysema and lung cancers will rise), and China's form of gasoline contains lead, a toxic metal. Expanding China's car production will increase oil consumption, placing heavy pressures on the world's dwindling oil resources. China's rising oil consumption was partly responsible for continuing oil prices of over $85 a barrel in 2014. If car ownership in China continues to rise, by 2020 China's oil consumption could be two-thirds of the United States' (the United States consumes one-fourth of the world's oil), a level the world's oil supplies probably cannot support. Some experts claim world oil production would be insufficient to meet the rising demands of China, the United States, and the rest of the industrialized world, and promising future economic disruptions and political or military conflicts. If China were to substitute electric vehicles for gas-fueled cars, as it plans to, it will have to expand its coal-powered electric plants, which in turn will increase its carbon dioxide emissions.

### Making and Buying Cars in China

China acknowledges that by 2020, the number of cars on its roads will triple.

Interactive

A worker on an assembly line in Shandong Province, China, builds the GM Chevrolet Sail.

## WRITING PROMPT

**Contributing to Another Country's Industrialization—and Pollution**

1. Was it wrong for the car companies to help China expand its auto industry? Why or why not?

The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## 5.2.2: Ecological Ethics

Concern for the environment has a long history. During the thirteenth century, for example, Arabic thinkers discussed air and water pollution and how these were linked to human health.[96] While in England, King Edward I outlawed the burning of sea coal because its smoke polluted the air of London. Early concern for the environment was for the most part *anthropocentric* (human-centered); that is, concern for the environment was based on how it affected the interests of human beings. The natural environment was largely seen as a resource that should serve the interests of human beings and which has only an instrumental value; that is, it is valuable to the extent that it serves human interests. Examples include:

- In the Old Testament book of *Genesis*, for example, God declares that humans are to "have dominion over the fish of the sea, and over the birds of the air, and over every living thing that moves upon the earth."
- Ancient Greek philosopher Aristotle wrote that "nature has made all things specifically for the sake of man."
- Thomas Aquinas, a thirteenth century philosopher-theologian, wrote that nonhumans are "ordered to man's use."[97]

The view that nature has value to the extent that it serves human interests continued into the modern period (with a few exceptions). Philosopher Immanuel Kant, for example, famously wrote that the reason why it is wrong for a person to be cruel to animals is because "cruelty to animals is contrary to man's duty to *himself*, since it deadens in him the feeling of sympathy for their sufferings and thus weakens a natural tendency that is very useful to morality in relation to other humans."[98]

The idea here is that a person's cruelty toward animals is not wrong because of the pain it inflicts on the animal itself, but because of the effect it has on the person's moral relationships with other humans.

**ANTHROPOCENTRIC VIEWS TODAY** As we will see shortly, the view that the natural environment is valuable only because it serves human interests continues. Many people today, in fact, work to protect the environment precisely because they hold this view. To them, damage to the environment is morally wrong because it ultimately harms human beings. Those who hold an anthropocentric view of the environment can still believe that air, water, and land pollution, the extinction of species, climate change, the release of radioactive wastes, and the destruction of the ozone layer are all harmful to us and for that reason we must work to stop them. However, environmental critics of anthropocentric views argue that holding an anthropocentric view is itself part of the problem. Because we see nature as something that is there to serve us, we pollute and consume it as if it has no value in itself.

Critics of anthropocentric views claim that if we do not change our anthropocentric views, we will continue to exploit, pollute, and consume nature until it is too late. We will take care of nature only if we accept the view that nature is valuable in itself and that by virtue of its intrinsic value we are obligated to respect and preserve it.

**ECOLOGICAL ETHICS** Ecological ethics are based on the idea that at least some nonhuman parts of nature have an intrinsic value that is not related in any way to their usefulness or value to humans. Several supporters of this approach have formulated their views in a platform consisting of the following statements:

1. The well-being and flourishing of human and nonhuman life on earth have value in themselves. . . . These values are independent of the usefulness of the nonhuman world for human purposes.
2. Richness and diversity of life forms contribute to the realization of these values and are also values in themselves.
3. Humans have no right to reduce this richness and diversity except to satisfy vital needs.
4. The flourishing of human life and cultures is compatible with a substantial decrease of the human population. The flourishing of nonhuman life requires such a decrease.
5. Present human interference with the nonhuman world is excessive, and the situation is rapidly worsening.
6. Policies must therefore be changed. The changes in policies affect basic economic, technological, and ideological structures. The resulting state of affairs will be deeply different from the present.
7. The ideological change is mainly that of appreciating life quality . . . rather than adhering to an increasingly higher standard of living.
8. Those who subscribe to the foregoing points have an obligation directly or indirectly to participate in the attempt to implement the necessary changes.[99]

**THE LAST MAN ARGUMENT AND THE VALUE OF NONHUMANS** An ecological ethic is thus an ethic that claims that because at least some nonhuman beings are intrinsically valuable, we humans have a duty not to harm them without a sufficiently serious reason. Philosopher Richard Routley proposed a "mental experiment" to show that nature is intrinsically valuable and should not be harmed without serious reason. Suppose some catastrophic event has killed all human beings but one.[100] Suppose this "last man" had the power to do something that would ensure that every other living thing on Earth, and all Earth's landscapes, would be destroyed after he himself died. From an anthropocentric view, it would not be wrong for him to carry out such a destructive act since no humans would be affected. Yet, Routley argued, we recognize that it would indeed be wrong for the "last man" to destroy everything on the Earth's surface. This means that we must feel that nonhuman life has intrinsic value that is independent of its value to humans. The claims of an ecological ethic then must be correct: we are forced to admit that at least some nonhuman life is intrinsically valuable and that we

### Ecological Systems and Ecological Ethics

Some opponents of anthropocentrism claim that the problem of pollution (and environmental issues in general) can best be framed in terms of our duty to recognize and preserve the **ecological systems** we live in.[101, 102, 103, 104, 105]

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**Ecological Systems**

An ecological system is an interrelated and interdependent set of organisms and environments, such as a lake in which the fish depend on small aquatic organisms, which in turn live off decaying plant and fish waste products. Because the various parts of an ecological system are interdependent, the activities of one of its parts will affect all the other parts and the well-being of each part depends on the well-being of the other parts.

Business firms (and all other social institutions) are parts of a larger ecological system, "spaceship earth." Business firms depend on the natural environment for their energy, material resources, and waste disposal, and that environment in turn is affected by the commercial activities of business firms. For example, the activities of eighteenth-century European manufacturers of beaver hats led to the wholesale destruction of beavers in the United States, which in turn led to the drying up of the innumerable swamp lands that had been created by beaver dams. Businesses must recognize the interrelationships and interdependencies of the ecological systems within which they operate.

**Ecological Ethics**

have a moral duty to refrain from harming it without a sufficiently weighty reason. The claims of ecological ethics clearly have significant implications for those businesses whose activities affect the natural environment and its nonhuman organisms, as "Ethical Application" shows.

## Ethical Application

### Ecological Ethics and Activism

In the early 1990s, environmentalists successfully petitioned the U.S. Fish and Wildlife Service to bar the timber industry from logging potentially lucrative old-growth forests of northern California to save the habitat of an endangered species, the dark-brown northern spotted owl that lived in the lush "old growth" 200-year-old forests of the Pacific Northwest.[106] The decision of the U.S. Fish and Wildlife Service (and the U.S. "Endangered Species Act" on which it was based) was consistent with ecological ethics, although it was estimated to have cost the timber industry millions of dollars, to have lost as many as 36,000 lumber jobs, and to have raised the costs of consumer prices for fine wood products such as furniture and musical instruments. Members of the Sea Shepherd Conservation Society have sabotaged whale-processing plants, sunk several ships, and otherwise imposed costs on the whaling industry to protect whales.[107] Members of Earth First! have driven nails into randomly selected trees of forest areas scheduled to be logged so that power logging saws are destroyed when they bite into the spiked trees in order to protect forests. All these activities are based on the idea that nature and its parts have an intrinsic value that we have a moral duty to protect and that this value is at least sometimes more weighty than human interests.

**VERSIONS OF ECOLOGICAL ETHICS** There are several varieties of ecological ethics, some more radical and far-reaching than others. Perhaps the most popular version claims that, in addition to human beings, other animals have intrinsic value and are deserving of our respect and protection. Some utilitarians, such as Peter Singer, for example, have claimed that pain is an evil, whether it is inflicted on humans or on members of other animal species. In fact, Singer argues, the pain experienced by an animal is as great an evil as a *comparable* pain experienced by a human being. He grants that a human may be more sensitive to pain than an animal, and a human may suffer more from anticipating the pain than an animal would, so an animal's pain may have to be more intense to be "comparable to" a human's pain. Nevertheless, at some level of intensity, the pain of the animal would become comparable to the pain of the human being, and at that level the animal's pain would be as great an evil as the human's pain. It follows, Singer concludes, that if is morally wrong to inflict the pain on a human, it is equally wrong to inflict the comparable pain on an animal. It is a form of *speciesism* (akin to racism or sexism, i.e., a prejudice against members of another group) to think that the moral duty to avoid inflicting pain on members of other species is not equal to our duty to avoid inflicting comparable pain on members of our own species.[108]

### Ecological Ethics: Different Arguments and Versions

Certain nonutilitarians have reached conclusions similar to Peter Singer's by appealing to rights instead of utilitarianism. They claim that the life of every animal "itself has value" apart from the interests of human beings and because of the intrinsic value of its life, each animal has certain moral rights. In particular animals have the right to be treated with respect. Humans have a duty generally to respect this right, although in some special cases a human's right might override an animal's right.[109, 110, 111, 112, 113, 114, 115, 116, 117]

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**Utilitarian and Rights Arguments**

**Ecological Ethics: Broader Versions**

Broader versions of ecological ethics would extend our duties beyond the animal world to include plants. Thus, some ecological ethicians have claimed that it is arbitrary and hedonistic to confine our duties to creatures that can feel pain. Instead, they urge, we should acknowledge that all living things including plants have "an interest in remaining alive" and that consequently they deserve moral consideration for their own sakes. Other environmentalists such as Aldo Leopold have claimed that not only living things but also a natural species or a natural structure—such as a lake, a wild river, a mountain, and even an entire "biotic community"—has a right to have its "integrity, stability, and beauty" preserved. If correct, these views would have important implications for businesses engaged in strip-mining or logging operations.

**Albert Schweitzer's Version**

**Paul Taylor's Version**

Attempts to extend moral rights to nonhumans or claim that an attitude of respect for all nature is morally demanded are still controversial, and some authors have labeled them “incredible.”[118] It is difficult, for example, to see why the fact that something *is* alive implies that it *ought to be* alive and that we, therefore, have a duty to keep it alive or to express respect or even reverence for it. It is also difficult to see why the fact that a river or a mountain exists implies that it *ought to* exist and that we have a duty to keep it in existence or revere it. Facts do not imply values in this easy way.[119] It is also controversial whether we can claim that animals have rights or intrinsic value.[120] However, we do not have to rely on these views to develop an environmental ethic. As we mentioned earlier, there are other more traditional, although anthropocentric, approaches to environmental issues.[121] One is based on a theory of human rights, and the other is based on utilitarian considerations.

## 5.2.3: Environmental Rights and Absolute Bans

In an influential article, William T. Blackstone argued that the possession of a livable environment is not merely a desirable state of affairs, but something to which each human being has a right.[122]

### William T. Blackstone and Environmental Rights

A livable environment is not merely something that we would all like to have. It is something that others have a duty to allow us to have. They have this duty, Blackstone argued, because we each have a right to a livable environment, and our right imposes on others the correlative duty of not interfering in our exercise of that right. Moreover, this right should be incorporated into our legal system. Why do human beings have this right? [123, 124]

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According to Blackstone, a person has a moral right to a thing when possession of that thing is “essential in permitting him to live a human life” (i.e., in permitting him to fulfill his capacities as a rational and free being). At this time in our history, it has become clear that a livable environment is essential to the fulfillment of our human capacities. Consequently, human beings have a moral right to a decent environment, and it should become a legal right. Moreover, Blackstone added, this moral and legal right should override people’s legal property rights. Our great and increasing ability to manipulate the environment has revealed that, unless we limit the legal freedom to engage in practices that destroy the environment, we shall lose the very possibility of human life and the possibility of exercising other rights, such as the right to liberty and equality.

Several states have introduced amendments to their constitutions that grant to their citizens an environmental right, much like Blackstone advocated. Article One of the Constitution of Pennsylvania, for example, was amended several years ago to read:

> The people have a right to clean air, pure water, and to the preservation of the natural scenic, historic, and aesthetic values of the environment. Pennsylvania’s natural resources . . . are the common property of all the people, including generations yet to come. As trustee of these resources, the commonwealth shall preserve and maintain them for the benefit of all people.

1 of 4 Previous Next

**IS THERE A RIGHT TO A CLEAN ENVIRONMENT?** If we return to Blackstone's claim that we have a right to a clean environment, we can see that the basis of this right is the more basic right to "live a human life"; that is, a right to fulfill our capacities as free and rational persons. This reasoning suggests that the right to a clean environment is a right to an environment that is clean enough to allow all of us to live a full human life; that is, an environment in which pollution does not prevent us from living healthy and fulfilled lives.

***Quick Review 5.5***
**Environmental Rights**

- Blackstone argued that humans have a right to fulfill their capacities as free and rational beings, and a livable environment is essential to such fulfillment.
- Blackstone also argued that humans have a right to a livable environment, which is violated by practices that destroy the environment.
- Critics claim that Blackstone's concept of environmental rights can lead to absolute bans on pollution, even when the costs far outweigh the benefits.

## 5.2.4: Markets and Partial Controls

One way to answer the questions that Blackstone's theory of environmental rights raises is to see environmental problems as market defects. If an industry pollutes the environment, the market prices of its commodities will no longer reflect the full costs of producing the commodities; the result is a misallocation of resources, a rise in waste, and an inefficient distribution of commodities.

### At What Point Is the Environment "Safe" Enough?

The idea that the environment must be cleaned only up to the point at which it allows us to live healthy and fulfilled human lives has sometimes been called the "safety standard". It implies that once the environment is safe enough for us to live healthy and fulfilled lives, more cleansing is not morally required.[125, 126, 127, 128, 129]

Interactive

**Safety Measurement**

Governments have struggled with the problem of how safe is safe enough, and have attempted to implement many laws that seem to require absolutely no pollution. The U.S. government has often decided that when exposure to pollution during one year poses a risk of death of 1 in 1 million or less, it is safe enough; and when, during a year, exposure poses a risk of death of 3 in 10,000 or more, it is unsafe and must be cleaned up. Risks that lie in-between are handled on a case-by-case basis. This means that when pollution kills no more than 1 person out of a million who were exposed to it during a year, it is safe enough; when it kills 3 or more persons out of 10,000 who were exposed to it during a year, it is unsafe and must be addressed. However, this way of dealing with the problem of how safe is safe enough has not been acceptable to everyone. Many people claim that if 1 person out of a million dies every year from exposure to pollution, then the pollution is still too high: that one person also had a right to a healthy environment, and that right was violated. Is this claim justified? It seems unrealistic to demand the complete elimination of absolutely all risks to life and health because fulfilling that demand would impose unacceptable costs and burdens on all of us.

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Consequently, society as a whole is harmed as its overall economic welfare declines.[130] Thus, individuals should avoid pollution because they should avoid harming society's welfare. We will next explain this argument in greater detail and examine the more nuanced approach to pollution that this market analysis is said to provide.

**PRIVATE COSTS AND SOCIAL COSTS** Economists often distinguish between what it costs a private manufacturer to make a product and what the manufacture of that product costs society as a whole.

Suppose, for example, that an electric firm consumes a certain amount of fuel, labor, and equipment to produce 1 kilowatt of electricity. The cost of these resources is its **private cost**: the price it must pay out of its own pocket to manufacture 1 kilowatt of electricity.

However, producing the kilowatt of electricity may also involve other external costs for which the firm does not pay.[131] When the firm burns fuel, for example, it may generate smoke and soot that settles on surrounding neighbors, who have to bear the costs of cleaning up the grime and paying for any medical problems the smoke creates. From the viewpoint of society as a whole, then, the costs of producing the kilowatt of electricity include not only the internal costs of fuel, labor, and equipment for which the manufacturer pays but also the external costs of cleanup and medical care that the neighbors pay. This sum total of costs (the private internal costs plus the external costs the neighbors must pay) are the **social costs** of producing the kilowatt of electricity: the total price society must pay to manufacture 1 kilowatt of electricity.

Of course, private costs and social costs do not always diverge as in this example; sometimes the two coincide. If a producer pays for all external costs involved in manufacturing a product, for example, or if manufacturing a product imposes no external costs, then the producer's private costs and the total social costs are the same.

However, when a firm pollutes its environment in any way, the firm's private costs are always less than the total social costs involved. Whether the pollution is localized and immediate, as in the neighborhood effects described in this example, or whether the pollution is global and long range, as in the hot-house effects predicted to follow from introducing too much carbon dioxide into the atmosphere, pollution always imposes external costs—that is, costs for which the party who produces the pollution does not have to pay. Pollution is fundamentally a problem of this divergence between private and social costs.

**POLLUTION INVALIDATES THE MARKET SYSTEM** When a market is no longer allocating resources and distributing commodities so as to maximize utility, three ethical deficiencies can be noted:

1. The allocation of resources in markets that do not take all costs into account is not optimal because, from the point of view of society as a whole, more of the commodity is being produced than society would demand if society had an accurate measure available of what it is actually paying to produce the commodity. Because the commodity is being overproduced, more of society's resources are being consumed to produce the commodity than is optimal. The resources being consumed by overproduction of the commodity are resources that could be used to produce other commodities for which there would be greater demand if prices accurately reflected costs. Resources are thereby being misallocated.
2. When external costs are not taken into account by producers, producers ignore these costs and make no attempt to minimize them like they minimize their other costs. Because the firm does not have to pay for external costs, it uses up and wastes the resources being consumed by these external costs (such as clean air). There may be technologically feasible ways of producing the same commodities without polluting or by polluting less, but the producer will have no incentive to find them.
3. When the production of a commodity imposes external costs on third parties, goods are no longer efficiently distributed to consumers. External costs introduce effective price differentials into markets: everyone does not pay equal prices for the same commodities. The neighbors who live near our imaginary electric plant, for example, pay not only the prices the plant charges everyone else for electricity but also the costs the smoke from the burning fuel imposes on them in the form of extra cleaning bills, medical bills, painting bills, and so forth. Because they must pay for these extra external costs, they have fewer funds to pay for their share of market commodities. Consequently, their share of goods is not proportioned to their desires and needs as compared with the shares of those who do not have to pay the extra external costs.

Pollution imposes external costs, which means that the private costs of production are less than the social costs. As a consequence, markets with pollution do not impose an optimal discipline on producers, and the result is a drop in social utility. Pollution of the environment, then, is a violation of the utilitarian principles that underlie a market system.

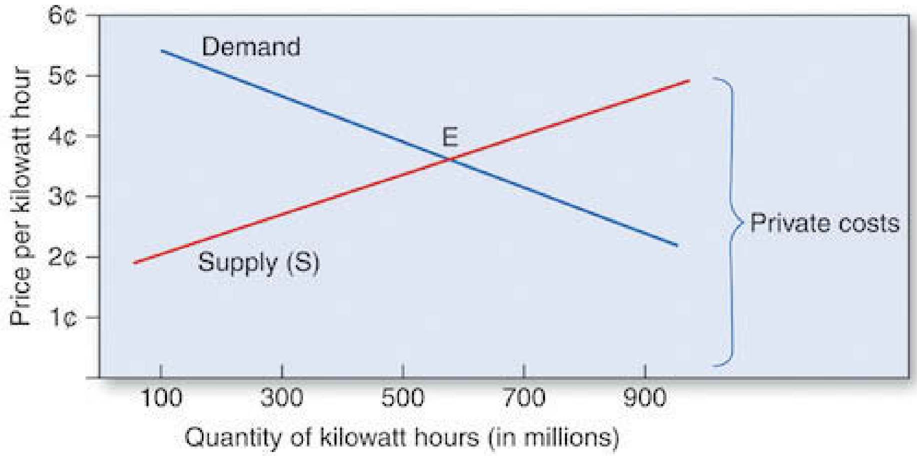
### *Quick Review 5.6* Markets and Pollution

- The total costs of making a product include a seller's internal private costs and the external costs of pollution paid by society.
- A supply curve based on all costs of making a product lies higher than one based only on sellers' internal private costs, and the higher supply curve crosses the demand curve at a lower quantity and a higher price than the lower supply curve.

### Why Should the Divergence between Private and Social Costs Be a Problem?

The divergence is a problem because when the private costs of manufacturing a product diverge from the social costs involved in its manufacture, markets no longer price commodities accurately. Consequently, they no longer allocate resources efficiently. As a result, society's welfare declines. To understand why markets become inefficient when private and social costs diverge, let us suppose that the electrical power industry is perfectly competitive (it is not, but let us suppose it is). Figure 5.11 depicts a market without external costs, and Figure 5.12 depicts a market with all costs.

**Interactive**




The figure above shows a market without external costs. Suppose that market supply curve S reflects the private costs producers must pay to manufacture each kilowatt of electricity. The market price will then be at the equilibrium point E, where the supply curve based on these private costs crosses the demand curve. In this hypothetical situation, the curves intersect at the market price of 3.5 cents and at an output of 600 million kilowatt hours.

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- When sellers' costs include only private costs, too much of the product is produced and the price is too low (compared with when all costs are included), which lowers utility, and violates rights and justice.

**POLLUTION VIOLATES JUSTICE AND FAIRNESS** Pollution also violates the kind of justice or fairness that characterizes a competitive free market. In a well-functioning competitive free market, the value of what buyers and sellers on average receive from their market exchanges equals the value of what they contribute. However, when a market generates pollution, there are external costs that some people have to pay in addition to what they pay for the goods they receive from the market. These costs are unfair: they are costs the producer imposes on people (e.g., the people who live near an electric plant that rains coal soot on them, forcing them to pay higher doctor bills and cleaning bills and to accept declining property values) and for which these people unfairly get nothing in return. (Pollution is also related to other forms of justice, as we will see later.)

It is also clear that pollution violates the rights that characterize a competitive free market. All market exchanges are voluntary in a competitive free market, and so the market respects participants' negative right to choose the exchanges they will make. Moreover, people are free to enter or leave the market, and no producer so dominates the market that it can force others to accept its terms. However, when a producer generates pollution, that producer imposes costs on people that they did not voluntarily choose, thereby violating their right to choose. Moreover, the victims of pollution were never given the choice to enter or leave the "market" in which they find themselves burdened with costs for which they get nothing in return. As well, because the producer dominates the exchange, the producer in effect forces its victims to accept its terms: that is, victims pay the producer's costs and get nothing in return.

Pollution, then, violates not only utility but also justice and rights.

***Quick Review 5.7***

**Ethical Approaches to Environmental Protection**

- Ecological approach: nonhumans have intrinsic value.
- Environmental rights approach: humans have a right to a livable environment.
- Market approach: external costs violate utility, rights, and justice so they should be internalized.

# 5.3: Remedies and Duties of the Firm

**OBJECTIVE: Assess the approaches to internalizing the external costs of pollution**

The remedy for external costs, according to the preceding market analysis, is to ensure that the **costs of pollution are internalized**—that is, that they are absorbed by the producer and taken into account when determining the price of its goods.[132] In this way, goods will be accurately priced, market forces will provide the incentives that will encourage producers to minimize external costs, and some consumers will no longer end up paying more than others for the same commodities. Justice will once more reassert itself because the people who were being victimized by pollution costs no longer have to pay those costs, and people's rights will no longer be violated because they are no longer forced into exchanges they did not voluntarily choose.

## Internalizing the External Costs of Pollution

There are various ways to internalize the external costs of pollution.

**Interactive**

**Impose Costs on the Polluting Agent**

One way to internalize the external costs of pollution is for the polluting agent to pay to all of those being harmed, voluntarily or by law, an amount equal to the costs the pollution imposes on them.

When the polluting firm pays those on whom its manufacturing processes impose costs, as Union Oil did, it is led to figure these costs into its own subsequent price determinations. Market mechanisms then lead it to come up with ways of cutting down pollution to cut down its costs. After the Santa Barbara oil spill, for example, Union Oil invested considerable amounts of money in developing methods to minimize pollution damage from its own oil spills. (Yet, as the BP oil spill in the Gulf of Mexico during the summer of 2010 showed, not all oil companies have made similar investments in the technology needed to deal with oil spills.)

A problem with this way of internalizing the costs of pollution, however, is that when several polluters are involved, it is not always clear just who is being damaged by whom. How much of the environmental damage caused by several polluters should be counted as damages to my property and how much should be counted as damages to your property, when the damages are inflicted on things such as air or public bodies of water, and for how much of the damage should each polluter be held responsible? Moreover, the administrative and legal costs of assessing damages for each distinct polluter and granting separate compensation to each distinct claimant (i.e., the transaction costs) can become substantial.

**Install Pollution-Control Devices**

## Ethical Application

### Union Oil and Internalized Costs

When Union Oil's drilling in the Santa Barbara channel on the California coast led to an oil spill, the total costs that the spill imposed on local residents and state and federal agencies were estimated at about $16,400,000 (including costs of cleanup, containment, administration, damage to tourism and fishing, recreational and property damages, and loss of marine life). Union Oil paid about $10,400,000 of these costs voluntarily by paying for all cleanup and containment of the oil, and it paid about $6,300,000 in damages to the affected parties as the result of litigation.[133] Thus, the costs of the oil spill were internalized, in part voluntarily and in part through legal enforcement.

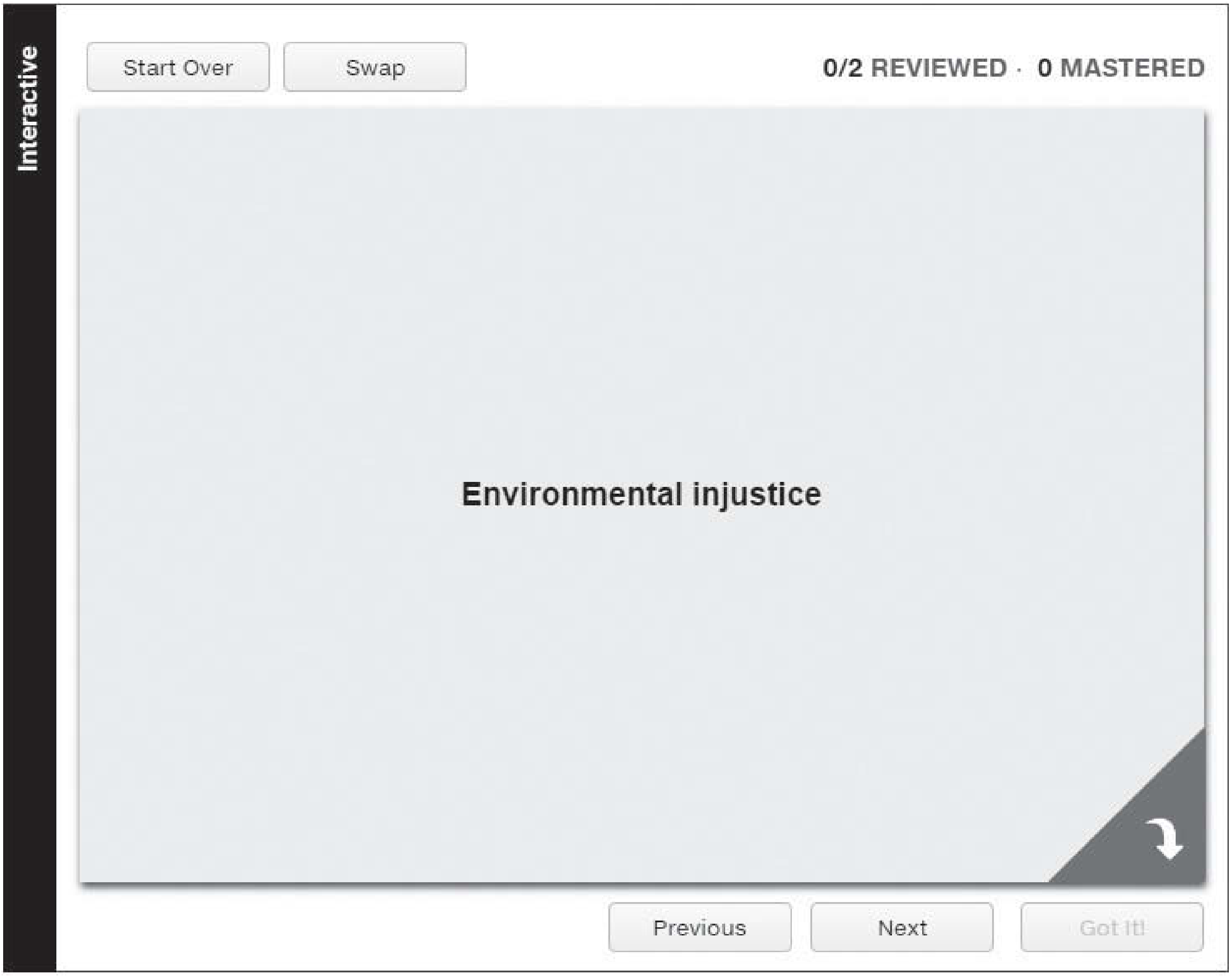
## 5.3.1: Remedies and Justice

Dealing with pollution by internalizing costs seems to be consistent with the requirements of distributive justice insofar as distributive justice favors equality. Observers have noted that pollution can increase inequality.[134] If a firm pollutes, its stockholders benefit because their firm does not have to absorb the external costs of pollution; this leaves them with greater profits. Customers who purchase the firm's products also benefit because the firm does not charge them for all the social costs required to make the product. Therefore, the beneficiaries of pollution tend to be those who are wealthy enough to buy a firm's stock and its products. The burdens of pollution, on the other hand, tend to fall on the poor who cannot afford to buy the firm's stock and who are residents of low-rent polluted neighborhoods. By benefiting the wealthy and burdening poor people, therefore, pollution seems to increase inequality.

Internalizing the costs of pollution, as utilitarianism requires, would rectify matters by removing the burdens of

#### Environmental Injustice and Environmental Racism

People who cannot afford to invest in a corporation or buy its products are among those for whom pollution is most injurious. These people may be vulnerable to environmental injustice and environmental racism.



external costs from the backs of minorities and the poor and placing them in the hands of the more wealthy: the firm's stockholders and its customers. By and large, therefore, the utilitarian claim that the external costs of pollution should be internalized is consistent with the requirements of distributive justice.

We must add an important qualification, however: if a firm makes basic goods (food products, clothing, gasoline, automobiles) for which the poor must allocate a larger portion of their budgets than the affluent, then internalizing costs may place a proportionately greater burden on the poor than on the affluent because the prices of these basic goods will rise. The poor may also suffer if the costs of pollution control rise so high that unemployment results (although as noted earlier, current studies indicate that the unemployment effects of pollution-control programs are transitory and minimal).[135] Some rudimentary evidence indicates that current pollution-control measures place greater burdens on the poor than on the wealthy.[136] This evidence suggests the need to integrate distributional criteria into our pollution-control programs.

Internalizing external costs also seems to be consistent with the requirements of retributive and compensatory justice.[137] Retributive justice requires that those who are responsible for and benefit from an injury should bear the burdens of rectifying the injury, whereas compensatory justice requires that those who have been injured should be compensated by those who injure them. Taken together, these requirements imply that (1) the costs of pollution control should be paid by those who cause pollution and who have benefited from pollution activities, whereas (2) the benefits of pollution control should flow to those who have had to bear the external costs of pollution. Internalizing external costs seems to meet these two requirements: (1) the costs of pollution control are borne by stockholders and customers, both of whom benefit from the polluting activities of the firm, and (2) the benefits of pollution control flow to those neighbors who once had to put up with the firm's pollution.

## 5.3.2: Costs and Benefits of Remedies

The technology for pollution control has developed effective, but sometimes costly, methods for reducing pollution. Up to 60 percent of water pollutants can be removed through primary screening and sedimentation processes, up to 90 percent can be removed through more expensive secondary biological and chemical processes, and over 95 percent can be removed through even more expensive tertiary chemical treatment.[138] Air pollution abatement techniques include the use of fuels and combustion procedures that burn more cleanly; mechanical filters that screen or isolate dust particles in the air; scrubbing processes that pass polluted air through liquids that remove pollutants; and, most expensive of all, chemical treatment that transforms gases into more easily removed compounds.

It is possible, however, for a firm to invest too much in pollution-control devices, an issue that we briefly noted when discussing "absolute bans" on pollution. Suppose, for example, that the pollution from a certain firm causes $100 worth of environmental damage, and suppose that the only device that can eliminate this pollution would cost the firm at least $1,000. Then it would seem—at least from a utilitarian point of view—that the firm should not install the device. If it does, the economic utility of society will decline: the costs of eliminating the pollution will be greater than the benefits society will reap, thereby resulting in a shrinkage of total utility. It would seem, therefore, that utilitarianism implies that a firm should invest in pollution control only up to that point where the costs of pollution control are less than the costs its pollution inflicts on society. Utilitarianism, therefore, seems to imply that any pollution the firm generates beyond that point should not be further controlled.

**DIFFICULTY IN THE UTILITARIAN APPROACH TO POLLUTION** It is at this point that another fundamental difficulty in the utilitarian approach to pollution emerges. The cost-benefit analysis to pollution problems assumes that the costs and benefits of reducing pollution can be accurately measured.[139] In some cases (limited and local in character), cost-benefit measurements are available. The costs and benefits of cleaning up the oil spilled by Union Oil at Santa Barbara several years ago, for example, were more or less measurable. However, the costs and benefits of pollution removal are difficult to measure when they involve damages to human health and loss of life: What is the price of life?[140]

Measurement is also difficult when the effects of pollution are uncertain and, consequently, difficult to predict. What will be the effects of increasing the carbon dioxide content of our atmosphere by burning more coal? In fact, perhaps the major problem involved in obtaining the measurements needed to apply cost-benefit analysis to pollution problems is the problem of estimating and evaluating risk (i.e., the probability of future costly consequences).[141] Many new technologies carry with them unknown degrees of risk to present and future generations. Moreover, even if the risk associated with a new technology were known, it is unclear how much weight it should be given in a social cost-benefit analysis.

Imagine, for example, that society currently accepts with some indifference a 0.01 risk of death associated with driving. Does it then follow that society also should be indifferent to accepting a 0.01 risk of death from the introduction of a certain new technology? Obviously not, because risk is cumulative: the new technology will *double* society's risk of death to 0.02. Although society may be indifferent to carrying a 0.01 risk of death, it may find a 0.02 risk unacceptable. Knowing the risk of a certain costly future event does not, then, necessarily tell us the value that society will place on that risk once it is added to the other risks society already runs. To add to the difficulties, individuals differ substantially in their aversion to risk: some individuals like to gamble, whereas others find it distasteful.

### How Much Should a Firm Invest in Pollution Control According to Utilitarianism?

Consider that the costs of controlling pollution and the benefits derived from pollution control are inversely related. As one rises, the other falls. Figure 5.13 provides an example.[142, 143, 144, 145]

Interactive

**A Cost-Benefit Analysis for Pollution Control**

Think for a moment that if a body of water is highly polluted, it will probably be quite easy and, consequently, quite cheap to filter out a certain limited amount of pollutants. To filter out a few more pollutants, however, will require additional filters that are finer and more expensive. Costs will keep climbing for each additional level of purity desired, and getting out the last few molecules of impurities would require astronomically expensive additional equipment. However, getting out those last traces of impurities will probably not matter much to people and will be of little benefit.

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**ALTERNATIVE APPROACHES** In view of all the problems raised by market or cost-benefit approaches to pollution, it may be that alternative approaches are more adequate. In particular, in light of all the uncertainties that cost-benefit analysis involves, it may be that the absolute bans on pollution that are still incorporated in many federal laws, and the rights theory on which these absolute bans rest, are a more adequate approach to pollution issues than utilitarian cost-benefit analysis, at least when costs and benefits are uncertain.

***Quick Review 5.8***
**Optimal Level of Pollution Removal in Utilitarian Approach**

- The costs of removing pollutants rise as benefits of removal fall.
- The optimal level of removal is the point where its costs equal its benefits.
- However, when costs and benefits are not measurable, the utilitarian approach fails.
- When costs and benefits are not measurable, some use the precautionary principle, others the maximin rule.

## 5.3.3: Social Ecology, Ecofeminism, and the Demands of Caring

The difficulties inherent in cost-benefit and rights-based approaches to the ethical issues raised by environmental degradation have led many to look for alternative approaches. Some have argued, in fact, that cost-benefit and rights-based theories embody a kind of calculative and rationalistic way of thinking that is responsible for environmental crises. Cost-benefit thinking assumes that nature is to be measured and used efficiently, whereas rights-based theories see humans and other entities in individualistic

### Measurement Problems and Other Difficulties of Applying Utilitarianism to Pollution

The almost insurmountable problems involved in getting accurate pollution measurements are illustrated by the few federal estimates of the benefits produced by pollution-control activities.[146, 147]

Interactive

**Difficulty in Evaluating the Benefits of Expenditures**

The present financial costs of pollution control are fairly easy to obtain by examining reports on expenditures for pollution equipment. However, the benefits that these expenditures produce are difficult to measure accurately because these benefits are often unquantifiable. For example, each year the OMB compiles estimates of the annual benefits and costs of major federal regulations (entitled *Report to Congress on the Costs and Benefits of Federal Regulations*). The OMB estimated that between 2000 and 2010, regulations limiting air pollution produced annual benefits of $77,300 to $535,130 million and imposed costs of $19,500 to $24,600 million, while regulations limiting water pollution produced annual benefits of $1,300 to $3,900 million and imposed costs of $1,100 to $1,200 million. Clearly, the OMB analysis showed that our air pollution laws generate significantly more benefits than costs, and that our water pollution laws probably generate more benefits than costs. Yet, the estimates of the OMB are based on uncertain methodologies, and they omit many of the important effects of pollution. For example, the omit the future costs imposed by long-range global effects of pollution, such as the effects of carbon dioxide buildup and **ozone depletion**, as well as the aesthetic benefits from the elimination of pollution. In addition, many regulations save lives, or extend life, or reduce the risk of death, and in all of these cases, the OMB is forced to make controversial assumptions about the value of human life.

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terms and ignore their relationships with the rest of nature. These ways of thinking, it has been argued, are tightly linked to the kind of society in which we live.

Although social ecology and ecofeminist approaches to the environment are thought provoking, it is unclear what their specific implications may turn out to be. These approaches are still too recent to have been fully articulated. The shortcomings of utilitarian cost-benefit and rights-based approaches to the environment, however, may prompt a much fuller development of these approaches in the future.

***Quick Review 5.9***
**Alternative Approaches to Pollution Problems**

- Social ecology says to get rid of social systems of hierarchy and domination.
- Ecofeminism says to change the male pattern of dominating nature and women.
- Some feminists say that we should extend the ethic of care toward nature.

## 5.4: The Ethics of Conserving Resources

**OBJECTIVE:** **Evaluate the ethics related to the conservation of resources for future generations**

***Conservation*** **refers to the saving or rationing of natural resources for later uses.**

### The Precautionary Principle and Maximin Rule of Probability Theory

Some have argued that when the costs and benefits of cleaning up our pollution are uncertain, we should simply require that companies eliminate all the pollution whatever the costs. Some argue that a similarly stringent approach is particularly necessary when the costs of a practice or technology are potentially catastrophic and irreversible (e.g., climate change). When potentially catastrophic and irreversible costs are involved, they claim, we should adopt the "precautionary principle."

Interactive

**Precautionary Principle**

The *precautionary principle* says that if a practice or technology carries an unknown risk of catastrophic and irreversible consequences, but we are uncertain how large that risk is (maybe uncertain even whether there is any risk at all), then the practice or technology should be rejected until we are certain that the risk is nonexistent or insignificant. The precautionary principle has been adopted as a legal principle by the European Union (which includes almost all European nations), and has been endorsed in several environmental treaties.

A weak version of the principle says that it does not apply to a practice or technology unless scientific evidence shows some likelihood that the practice or technology will lead to catastrophic harm. A strong version says the principle applies to any proposed practice or technology unless those who propose it provide scientific evidence that the practice or technology carries no risk of catastrophic harm. The weak version places the burden of proof (that there is some risk) on those who want to reject a possibly risky technology, while the strong version places the burden of proof (that there is no risk) on those who want to adopt possibly risky technology.

Others suggest that when risks cannot be assessed, justice requires we identify those who are most vulnerable and who would have to bear the heaviest costs if things should go wrong, and then choose the option that will protect them from having to bear these costs.

For example, future generations and those who are currently children are vulnerable to the choices we now make about greenhouse gas emissions, and they will have to pay the most for global warming, so we should choose now only those options that we know will protect them from having to bear the costs of global warming.

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Conservation looks primarily to the future: to the need to limit consumption now to have resources available for tomorrow.

In a sense, reducing pollution is a form of conservation. Pollution "consumes" pure air and water, and reducing pollution "conserves" them for the future. However, there are basic differences between the problems of pollution and the problems of resource depletion that makes the term *conservation* more applicable to the latter problems than to the former. With some notable exceptions (such as nuclear waste and, perhaps, greenhouse gases), most forms of pollution affect present generations, and reducing them will benefit present generations. The depletion of most scarce resources, however, lies far in the future, and the effects of their depletion will be felt primarily by posterity and not by present generations. Consequently, our concern over the depletion of resources is to a large extent a concern for future generations and for the benefits that will be available to them. For this reason, conservation is more applicable to the problems of resource depletion than to those of pollution. Moreover (again with notable exceptions), pollution is a problem concerned primarily with "renewable" resources, insofar as air and water can be "renewed" by ceasing to dump pollutants into them and allowing them time to recover. Tomorrow's supply, therefore, will be created anew over and over if we take the proper precautions. Resource depletion, however, is concerned with finite, nonrenewable resources. The only store of a finite, nonrenewable resource

### Three Current Environmental Concepts

Contemporary theorists have developed three alternative approaches to addressing environmental degradation: social ecology, ecofeminism, and an ethic of caring.[148, 149, 150, 151, 152, 153]

Interactive

**Social Ecology: Hierarchy and Domination**

Many thinkers have argued that the environmental crises we face are rooted in the social systems of hierarchy and domination that characterize our society. This view, now referred to as **social ecology**, holds that until those patterns of hierarchy and domination are changed, we will be unable to deal with environmental crises. In a hierarchical social system, one group holds power over another and members of the superior group are able to dominate those of the inferior group and get them to serve their ends. Examples of such systems of hierarchy include social practices such as racism, sexism, and caste systems, as well as social institutions such as property rights, capitalism, bureaucracies, and the mechanisms of government. Such systems of hierarchy and domination go hand in hand with the widespread environmental destruction taking place all around us and with economic ways of managing the environment. Murray Bookchin, the most well-known proponent of this view, wrote:

> We must look into the cultural forms of domination that exist in the family, between generations, sexes, racial and ethnic groups, in all institutions of political, economic, and social management, and, very significantly, in the way we experience reality as a whole, including nature and nonhuman life forms.

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that will be around tomorrow is that which is left over from today. Conservation, therefore, is the only way of ensuring a supply for tomorrow's generations. Resource depletion forces two main kinds of questions on us: Why should we conserve resources for future generations? How much should we conserve?

## 5.4.1: The Rights of Future Generations

It might appear that we have an obligation to conserve resources for future generations because they have an equal right to the limited resources of this planet. If future generations have an equal right to the world's resources, then by depleting these resources, we are taking what is actually theirs and violating their right to these resources.

A number of writers, however, have claimed that although we should have concern for future generations, it is a mistake to think that the reason why we should have concern for them is because future generations have rights.[154] Consequently, it is a mistake to think that the reason we should refrain from consuming natural resources is because we are taking what future generations have a "right" to.

If the arguments against attributing rights to future generations are correct, then to the extent that we are uncertain what future generations will exist or what they will be like, they cannot be said to have rights. However, it does not follow that we have no obligations to future generations because we may have obligations that are based not on rights, but on other kinds of moral considerations.

### Arguments Related to the Rights of Future Generations

Three main arguments have been advanced to show that it is wrong to justify our concern for future generations by attributing rights to those generations.[155, 156, 157]

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**Future Generations Do Not Exist, So They Do Not Possess Rights**

Future generations cannot coherently be said to have rights because they do not now exist and may never exist. I may be able to think about future people, but I cannot hit them, punish them, injure them, or treat them wrongly. Future people presently exist only in the imagination, and imaginary entities cannot be acted on in any way whatsoever except in the imagination. Similarly, we cannot say that future people possess things now when they do not yet exist to possess or have them. Because there is a possibility that future generations may never exist, they cannot "possess" rights.

**Rights for Future Generations May Lead to Risk for Present Generations**

**Rights Based on the Unknown Do Not Make Sense**

***Quick Review 5.10***
**Arguments against Attributing Rights to Future Generations**

- Future generations do not now exist and may never exist.
- If future generations have rights, then the present must be sacrificed for the future.
- Because we do not know what interests future generations will have, we cannot say what rights they have.

## 5.4.2: Justice for Future Generations

John Rawls argued that, although it is unjust to impose disproportionately heavy burdens on present generations for the sake of future generations, it is also unjust for present generations to leave nothing for future generations. To determine a just way of distributing resources between generations, he suggested, the members of each generation should put themselves in the "original position" and, without knowing what generation they belong to, they should do the following:

> [A]sk what is reasonable for members of adjacent generations to expect of one another at each level of (historical) advance. They should try to piece together a just savings schedule by balancing how much at each stage (of history) they would be willing to save for their immediate descendants against what they would feel entitled to claim of their immediate predecessors. Thus, imagining themselves to be parents, say, they are to ascertain how much they would set aside for their children by noting

what they would believe themselves entitled to claim of their own parents.[158]

In general, Rawls claims that this method of ascertaining what earlier generations in justice owe to later generations will lead to the conclusion that what justice demands of us is merely that we hand to the next generation a situation no worse than we received from the generation before us:

> Each generation must not only preserve the gains of culture and civilization, and maintain intact those just institutions that have been established, but it must also put aside in each period of time a suitable amount of real capital accumulation. . . . (It should be kept in mind here that capital is not only factories, and machines, and so on, but also the knowledge and culture, as well as the techniques and skills, that make possible just institutions and the fair value of liberty.) This . . . is in return for what is received from previous generations that enables the later ones to enjoy better life in a more just society.[159]

Justice, then, requires that we hand over to our immediate successors a world that is not in worse condition than the one we received from our ancestors.[160]

The demands of caring that arise from an ethic of care would also suggest conservation policies that are similar to those advocated by Rawls's views on justice. Although most people would agree that they have a fairly direct relationship of care and concern with the generation that immediately succeeds their own, such a direct relationship does not exist with more distant and so more abstract generations. The generation that immediately succeeds our own, for example, consists of our own children. The demands of caring, we have seen, imply that one should attempt to see matters from the perspective of those with whom we are thus directly related and that we attempt to care for their specific needs. Such caring would imply that we should at least leave the immediately succeeding generation a world that is not worse than the one we received.

Rawls's conclusion is also supported by some utilitarian reasoning. For example, Robin Attfield, a utilitarian, argued that utilitarianism favors what he called the *Lockean principle* that "each should leave enough and as good for others."[161] Attfield interpreted this principle to mean that each generation must leave for future generations a world whose output capacity is no less than that generation received from previous generations.[162] That is, each generation must leave the world no less productive than it found it. Attfield suggested that leaving the world with the same output capacity does not necessarily mean leaving the world with the same resources. Instead, maintaining the same level of output can be achieved either through conservation, recycling, or technological innovation.

## On the Edge

### Exporting Poison

According to a 2001 study by the Foundation for Advancements in Science and Education in the *International Journal of Occupational and Environmental Health*, U.S. companies export 45 tons of pesticides per hour, including highly toxic chemicals such as alachlor, chlordane, heptachlor, and metribuzin.[163] The United States banned the use of chlordane and heptachlor as an insecticide on crops or around residences 10 to 20 years ago. Velsicol Chemical Corporation, however, reported in 1997 that it was still manufacturing chlordane and heptachlor for export. It exported these chemicals to Africa for use on roads, to Australia and Far Eastern countries to spray in residences, and to South America to use on crops. Between 1997 and 2000, U.S. companies exported about 65 million pounds of pesticides that are banned or severely restricted in the United States—including captafol, chlordane, isazofos, monocrotophos, and mirex—and about 30 tons a day of pesticides the World Health Organization (WHO) classifies as "extremely hazardous." Every hour, U.S. companies export about 16 tons of pesticides known or suspected to cause cancer. Sixty percent of these pesticides are shipped to developing nations for use in agriculture. Over 75 percent of working children in developing nations work in agriculture, including 80 million in Africa, 152 million in Asia, and 17 million in Latin America. They are exposed daily to U.S. pesticides in the fields, in their drinking water, and on their clothes. Farmers in developing nations pour pesticides labeled "poison" into small containers without labels, which many workers in developing nations cannot read anyway.

#### WRITING PROMPT

**Ethics of Dangerous Exports**

1. Does an American company such as Velsicol have any obligation to refrain from selling pesticides that are banned in the United States to developing nations where they are not banned? Why or why not?
2. Does a U.S. company such as Velsicol have an obligation to refrain from exporting chemicals that are only suspected of causing cancer? Why or why not?
3. Whose responsibility is it to ensure citizens of developing nations are not harmed by exports of pesticides, and why?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

**OTHER UTILITARIAN ARGUMENTS** Other utilitarians have reached slightly different but still similar conclusions by relying on other basic utilitarian principles. Utilitarians have argued that each generation has a duty to maximize the future beneficial consequences of its actions and to minimize their future injurious consequences.[164] However, utilitarians have claimed that these future consequences should be "discounted" (given less weight) in proportion to their uncertainty and to their distance in the future.[165] Together, these utilitarian principles imply that we at least have an obligation to avoid those practices whose harmful consequences for the generation that immediately follows us are certain to outweigh the beneficial consequences our own generation derives from them. Our responsibility for more distant future generations, however, is diminished especially insofar as we are unable to foresee what effects our present actions will have on them because we do not know what needs or technology they will have.

When considering problems of resource depletion, some observers have suggested that we should rely on market forces to determine what we should do with the resources we have. Unfortunately, we cannot rely on market mechanisms (e.g., rising prices) to ensure that scarce resources are conserved for future generations. The market registers only the effective demands of present participants and the actual supplies currently being made available in the market. The needs and demands of future generations, as well as the potential scarcities that lie far in the future, are so heavily "discounted" by markets that they hardly affect prices at all.[166] William Shepherd and Clair Wilcox provide several other reasons why the private choices of businesses in markets will fail to take into account the future scarcity of resources, including the following:

1. Businesses try to consume resources quickly before competitors do.
2. Businesses have short time horizons.
3. The future is difficult for businesses to predict.
4. Businesses tend to ignore externalities.[167]

The only means of conserving for the future, then, appear to be voluntary (or politically enforced) policies of conservation.

In practical terms, Rawls's view implies that, although we should not sacrifice the advances we have made, we should adopt voluntary or legal measures to conserve those resources and environmental benefits that we can reasonably assume our immediate posterity will need if they are to live lives comparable, at least, to our own. In particular, this would mean that we should preserve wildlife and endangered species, that we should take steps to ensure that the rate of consumption of fossil fuels and minerals does not continue to rise, that we should cut down our consumption and production of those goods that depend on nonrenewable resources, that we should recycle nonrenewable resources, and that we should search for substitutes for materials that we are too rapidly depleting.

***Quick Review 5.11***
**Conservation Based on Justice**

- Rawls: leave the world no worse than we found it.
- Care ethic: leave our children a world no worse than we received.
- Attfield: leave the world as productive as we found it.

**SUSTAINABILITY** The conclusion that Rawls, Attfield, and others have arrived at is that we are obligated to do what we can to ensure that we leave the next generation a world that is no worse than the one we received from the generation previous to ours. This conclusion is very similar to what has been characterized as the obligation of sustainability. Unfortunately, there are hundreds of definitions of sustainability.[168]

> **Generally, sustainability refers to the ability to sustain—that is, to continue or to maintain—something into the future. *Sustainability*, then, means the capacity something (a thing, a quality, an activity, a system, etc.) has to continue to function into the future.**

The term *sustainability* was popularized by the UN World Commission on Environment and Development in its 1987 report (the Brundtland Report): "Humanity has the ability to make development sustainable—to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs."[169] The Brundtland Report specified the kind of functioning that we want to continue into the future when we talk about sustainability, that is, the function of meeting present and future needs. In light of this report, sustainability is now widely understood to refer to the capacity something has to continue to meet the needs of present generations without compromising the ability of future generations to also meet their needs. Here we are concerned with the environment and in this context, we can say that *environmental sustainability* refers to the capacity of the natural environment to continue to meet the needs of present generations without compromising the ability of future generations to meet their needs from that environment.

The concept of sustainability is now commonly interpreted as encompassing more than just environmental concerns. Sustainability is often said to depend on "three pillars":

- our economic activities
- our social activities
- our environmental activities

These three domains are seen as interrelated and dependent on one another, so that sustainability in any one domain is possible only if the other domains are sustainable. For example, the way that we organize and carry out our economic activities affects the environment, yet what happens to the environment in turn affects our economic activities. We can, for example, pursue economic growth through manufacturing processes that rapidly deplete our natural resources and pollute the natural world, while the depletion of our environmental resources and continued degradation of the environment, in turn, can limit or prevent us from pursuing economic growth. Our social activities similarly affect and are affected by the environment. The lifestyles we adopt, the number of children we have, and the kinds of things our society teaches us to want can all produce levels of consumption that ravage the environment, and, in turn, a ravaged environment can lead to impoverished and unhealthy lives, families, and societies. Economic sustainability, then, requires structuring our economy so that we produce and distribute goods on a scale and in a way that does not undercut environmental sustainability, and social sustainability requires creating societies that allow us to develop cultures, communities, and ways of life that respect and nurture environmental sustainability so that the environment continues to provide that on which our lives depend.

**WHAT DOES SUSTAINABILITY REQUIRE?** It is important to see that environmental sustainability depends on social and economic sustainability. It is also important to grasp how our social arrangements—our lifestyles and consumption patterns—as well as our economic practices—the way we manufacture goods and use our resources—all affect the environment. However, in this chapter, our focus has been and will continue to be environmental sustainability.[170]

## The Obligation of Environmental Sustainability

Interactive

Environmentalist Herman Daly argued that environmental sustainability requires three specific things:

1. Renewable resources should not be depleted at a rate that is greater than their rate of replacement.
2. The emission rate of pollution should not exceed the capacity of the environment to cleanse and assimilate that pollution.
3. Nonrenewable resources should be depleted at a rate no greater than the creation of renewable alternatives.

1 of 4

Previous Next

Although there is some controversy about how sustainability can be achieved, it is clear that the idea of sustainability is consistent with the ethical judgment of Rawls and Attfield: that we should leave our children a world that is no worse than the one our parents left us. This means, specifically, that we must not consume renewable resources faster than they can renew themselves, and that we must not produce more pollution than the environment can absorb. How we interpret Daly's third point—that we should not deplete nonrenewable resources faster than our technology can develop adequate substitutes—depends on whether you are a technological optimist or a technological pessimist.

***Quick Review 5.12***
**Sustainability**

- It is the view that we must deal with the environment, society, and economy so that they have the capacity to continue to meet the needs of present generations without compromising the ability of future generations to meet their own needs.
- Environmental sustainability, economic sustainability, and social sustainability are interdependent.
- Environmental sustainability implies not depleting renewable resources faster than their replacement; not creating more pollution than environment can absorb; not depleting nonrenewable resources faster than we find replacements.
- Technology pessimists say science will not find substitutes for all renewable resources, so we must conserve and reduce consumption to achieve sustainability.
- Technology optimists say science will find such substitutes, so sustainability requires neither conservation nor reducing consumption.

## 5.4.3: Economic Growth and Environmental Ethics

To many observers, even conservation measures will fall far short of what is needed to ensure sustainability. Several environmentalists have argued that if we are to preserve enough of our limited nonrenewable and nonsubstitutable resources so that future generations can maintain their quality of life at a level similar to ours, we shall have to change our economies substantially, particularly by scaling down our pursuit of economic growth. E. F. Schumacher, for example, claimed that the industrialized nations will have to convert from growth-oriented, capital-intensive technologies to much more labor-intensive technologies in which humans do work machines now do.[171] Others argue that economic systems will have to abandon their goal of steadily increasing production and put in its place the goal of decreasing production until it has been scaled down to "a steady state"—that is, a point at which "the total population and the total stock of physical wealth are maintained constant at some desired levels by a 'minimal' rate of maintenance throughout (that is, by birth and death rates that are equal at the lowest feasible level, and by physical production and consumption rates that are equal at the lowest feasible level)."[172] The conclusion that economic growth must be abandoned if society is to be able to deal with the problems of diminishing resources, however, has been challenged.[173] On the other hand, it is at least arguable that adherence to continual economic growth will end up degrading the quality of life of future generations and possibly the later life of the current generation.[174]

**RISKS OF ECONOMIC GROWTH** The arguments for this last claim are simple, stark, and controversial. If the world's economies continue to pursue the goal of economic growth, the demand for nonrenewable resources will continue to rise. Because the stock of nonrenewable resources is finite and some resources, at least, will have no substitutes, at some point supplies will simply run out, many pessimists claim. At this point, if the world's nations are still based on growth economies, we can expect a collapse of their major economic institutions (i.e., of manufacturing and financial institutions, communication networks, the service industries), which in turn will bring down their political and social institutions (i.e., centralized governments, education and cultural programs, scientific and technological development, health care).[175] Living standards will then decline sharply in the wake of widespread starvation and political dislocations. Various scenarios for this sequence of events have been constructed, all of them more or less speculative and necessarily based on uncertain assumptions.[176]

The most famous and oldest doomsday scenarios appeared in the studies of the Club of Rome, which three decades ago projected on computers the catastrophic decline in living conditions that would be the result of continuing the economic growth patterns of the past in the face of declining resources and rising pollution. Later studies came to similar pessimistic conclusions about the future.[177, 178, 179]

The assumptions on which the doomsday scenarios of the Club of Rome and other groups were based, however, have often been criticized. The computer programs and underlying equations on which the predictions were based made controversial and highly uncertain assumptions about future population growth rates, the absence of future increases in output per unit of input, our inability to find substitutes for nonrenewable resources, and the ineffectiveness of recycling. These assumptions can all be challenged. Although future generations will certainly have fewer of the nonrenewable resources on which we depend, we cannot be sure exactly what impact this will have on them. Perhaps the impact will not be as catastrophic, nor will it occur as early as the forecasts of the Club of Rome indicated (although the number of researchers predicting a catastrophic future is rising, due particularly to a growing belief that we will not be able to control our emissions of greenhouse gases and the consequent rise in global temperatures). On the other hand, we cannot assume that the impact will be entirely benign, or that there will be no major environmental disruptions in our lifetimes. Some observers are again coming to the conclusion that the Club of Rome may have been substantially correct, even if its timetables were quite obviously mistaken. The increasing pace of species extinctions, the global rise in temperature attributable to rising levels of greenhouse gases, the continuing decimation of forests, and the still increasing rates of population growth all point to a difficult future for us. Given the extreme uncertainties in our situation, at the very least a commitment to conservation seems to be in order. Whether a wholesale transformation of our economy is also necessary if civilization is to survive is a difficult and disturbing question that we may soon have to face.

**ENERGY RELATIONSHIP BETWEEN DEVELOPED AND DEVELOPING NATIONS** Just as troubling are the moral questions raised by the distribution of dwindling energy supplies and other resources among the world's peoples that policies of economic growth in developed nations have created. The United States, European nations, and Japan are among the world's richest developed nations and the highest consumers of energy. The 6 percent of the world's population that lives within the United States, for example, consumes 25 percent of the world's annual energy supplies, whereas the 50 percent of the world's people who inhabit less-developed nations must get along with about 8 percent of its energy supplies. Each person in the United States, in fact, consumes 15 times more energy than a native South American, 24 times more than a native Asian, and 31 times more than a native African.

The high energy consumption rates of Americans, Europeans, and the Japanese are not paralleled by similarly high rates of energy production. In fact, their energy consumption is subsidized by other countries, in particular by the Caribbean, the Middle East, and Africa. That is, there is a net flow of energy out of these less-consuming populations and into the high-consumption population of the United States and other developing nations. Moreover, the people of the developed world use much of the energy supplies available to them for inessentials (unneeded products, unnecessary travel, household comforts, and conveniences), whereas the more frugal nations tend to use their supplies to meet basic needs (food, clothing, housing).

In view of the limited nature of all nonrenewable energy resources, these comparisons cannot help but raise the question of whether the high-consumption nations are morally justified in continuing the economic growth policies that lead them to appropriate for their own use the nonrenewable resources of other, more frugal nations that are too weak economically to use these resources or too weak militarily to protect them. Any attempt to answer this question obviously requires a detailed inquiry into the nature of the world's social, economic, and political systems—an inquiry that is beyond the scope of this text. The question, however, is one that events may one day force us to face.[180, 181]

***Quick Review 5.13***
**Economic Growth**

- E. F. Schumacher claims that we must abandon the goal of economic growth if we are to allow future generations to live as we do.
- Some argue that we must achieve a "steady state," where births equal deaths and production equals consumption and these remain constant at their lowest feasible level.
- Club of Rome computer models suggested continued economic growth will deplete resources and increase pollution until industrial output, food production, and services decline, causing catastrophic population loss sometime during the twenty-first century.
- Troubling moral questions are raised by the economic growth policies that have led to high rates of energy and resource consumption in developed nations while developing nations are left to consume at low rates.

## Web Resources

Readers who want to conduct online research on environmental issues should begin with the Envirolink web page, which has links to numerous resources (*http://www.envirolink.org*). The EPA also provides numerous links and its own ample database (*http://www.epa.gov*). The National Ocean Service of NOAA (*http://oceanservice.noaa.gov*) and the UN Environment Programme (*http://www.unep.org*) provide a variety of resources. Several environmental organizations and journals are accessible through the Essential Organization web page (*http://www.essential.org*). Other links are provided by the Greenmoney fund (*http://www.greenmoney.com*), the Worldwatch Institute (*http://www.worldwatch.org*), and Solcomhouse (*http://www.solcomhouse.com*).

## SHARED WRITING

**Ecological Ethics and Rights**

1. Compare and contrast the views of (a) an ecological ethic, (b) Blackstone's ethic of environmental rights, and (c) a utilitarian ethic of pollution control. Which view seems to you to be the more adequate? Explain your answer.
2. Do you agree with the claims that (a) future generations have no rights, and (2) the future generations to which we have obligations actually include only the generation that will immediately succeed us? Explain your answer. If you do not agree with these claims, state your own views and provide arguments to support them.

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit | 0 characters | 140 minimum

## SHARED WRITING

**Moral Behavior and Moral Development**

1. In your judgment, should the major decisions on pollution and resource depletion (especially energy policy) be made by government experts? By scientific experts? By everyone? Provide moral arguments in support of your judgment.
2. In their book *Energy Future*, R. Stobaugh and D. Yergin claimed that in the debate over nuclear power, "the resolution of differing opinions over how to deal with uncertainty, over how much risk is acceptable, or how safe is safe enough—all require judgments in which values play as large a role as scientific facts" (p. 100). Evaluate this claim based on ethical arguments you have learned.

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit | 0 characters | 140 minimum

# Case Study 5.1: The Ok Tedi Copper Mine

Paul Anderson, chief executive officer (CEO) of Broken Hill Proprietary Company Limited (BHP) was unsure what to do. In November 1998, he had left Duke Energy Corporation in the United States and moved to Australia with his wife, Kathy, to take over as CEO of BHP, a global mining company. Only a year and a half later, he was faced with having to decide how to manage what was being called one of the world's greatest ongoing environmental disasters, a pollution catastrophe that was then being created by BHP's Ok Tedi copper mine in the western part of Papua New Guinea. BHP owned 52 percent of the mine, the government of Papua New Guinea owned 30 percent, and Inmet Mining Corporation, a Canadian company, owned 18 percent.[1]

For almost two decades, the mine had been discharging 80,000 tons of mine tailings and 120,000 tons of waste rock a day into the Ok Tedi River, which flows into the Fly River, which in turn meanders through the western part of Papua New Guinea before flowing through a large delta into the sea. The ongoing buildup of wastes was destroying the ecology of the tropical rain forests and wetlands through which the rivers flowed; and it had already devastated 120 riverside villages, whose 50,000 inhabitants had depended on the rivers for subsistence fishing and farming. The villagers and the government of Papua New Guinea were now economically dependent on the mine. Because of their dependence on the mine, they did not want the mine to shut down even though it continued to dump 200,000 tons of waste daily into the Ok Tedi River and continued wreaking havoc on the environment. In September 1999, BHP had begun discussing its options with the government of Papua New Guinea, but by January 2000, the company had not yet decided what it would do about the growing tragedy. Anderson was anxious to resolve the issue by the end of the year.

## BHP and Papua New Guinea

BHP (renamed BHP Billiton since its 2001 merger with Billiton PLC) was founded in Australia in 1885 as a natural resources company engaged in the discovery, development, production, and marketing of iron ore, steel, coal, copper, oil and gas, diamonds, silver, gold, lead, zinc, and other natural resources. By the twentieth century, the company had become a global leader in its three main operating businesses: minerals, petroleum, and steel. Headquartered in Melbourne, Australia, the company had about 30,000 employees worldwide.

In 1976, Papua New Guinea chose BHP to develop a mine to exploit the large copper deposits discovered in 1963 on the western side of the country in the interior highlands. Papua New Guinea occupies the eastern half of the island of New Guinea (the other half belongs to Indonesia), just 150 miles from the northernmost tip of Australia. The deposits were located in the Star Mountains region in the center of the island along the border with Indonesia. The mine would be located on Mount Fubilan, located about 1,800 meters above sea level at the headwaters of the Ok Tedi River, whose waters flow south, down into the Fly River, through lowlands, and on over an immense delta to finally empty into the Gulf of Papua on the Coral Sea.

The previous year, in 1975, Papua New Guinea had won its independence from Australia. Its new and inexperienced government was eager to prove itself in the face of high expectations from its people and pressures from the World Bank and the International Monetary Fund. The government wanted to use the income from mining to develop infrastructure and services for its people.

Papua New Guinea is a rugged tropical island covered with rain forests inhabited by several population groups. Isolated from one another by the high rugged mountains and dense forests, the groups had developed fascinating and distinctive tribal cultures and different languages. The tribes living on the southern part of the island, for example, were once notorious for cannibalism and headhunting, whereas the Huli of the interior, who came to be known by the rest of the world in 1954, were peaceful people who wore spectacular wigs embellished with feathers, human hair, flowers, and fur. Many tribespeople today continue to live traditional lives in hundreds of small villages scattered in virtually inaccessible areas throughout the island. Along the Ok Tedi and Fly rivers, drainage area lived an estimated 73,500 villagers whose subsistence lifestyle was based on traditional gardening, hunting, and river fishing. There were few schools, no health care, and little infrastructure such as paved highways, public buildings, and electricity. Child mortality was high and life expectancy short. Ecologists called the island a "botanical treasure" because its pristine rain forests, mountains, rivers, and surrounding coral reefs are home to a multitude of rare plants, animals, birds, and insects. Fish abounded in its rivers, which are used as waterways by canoeing residents who grow food gardens along the banks.

In 1976, the government of Papua New Guinea passed the Ok Tedi Agreement Mining Act, which defined the obligations and rights related to the development of the Ok Tedi Mine. In 1980, the government officially granted permission for the formation of the group that became Ok Tedi Mining Limited (OTML), a joint-venture company established to develop the Ok Tedi Mine. The mine would use conventional open-pit mining techniques to extract annually about 30 million tons of copper ore and 55 million tons of waste rock. The 1976 Mining Act required that conventional environmental controls would be used by OTML to minimize environmental damage, including a large storage facility behind a dam that would be used to hold about 80 percent of the tailings and waste produced by the mine. (Tailings are fine sands left over after the ore containing a mineral is crushed and the mineral removed.) Construction of the tailings storage facility began in 1983, about a year before the mine was scheduled to open. However, in 1984, a large landslide destroyed the foundations of the storage dam. OTML proposed to the government that it be allowed to proceed temporarily without the storage facility since otherwise the mine would not be able to open as scheduled. The government of Papua New Guinea agreed and passed the Interim Tailings License Act, which allowed the mine to begin operation without a waste storage facility.

## Detrimental and Beneficial Effects over Time

In 1984, the mine started operating and began discharging its waste rock and tailings into the Ok Tedi River. The ore not only contained copper but also had significant quantities of gold and silver. BHP now commissioned a study of the area where the

### The Effects of Mining Operations on Rain Forests, Rivers, and the Economy

All water, rock, and tailings produced by the Ok Tedi Mine's operations flowed directly into the Ok Tedi River and downstream into the Fly River.

Interactive

**The Effect on Rain Forests**

The effects on the rain forests surrounding the Ok Tedi and Fly rivers were evident by the late 1980s, when the sediment levels of the rivers more than quadrupled from their previous natural level of 100 parts per million to 450 to 500 parts per million. In many places, the sediment and rock raised the level of the riverbed by 5 to 6 meters, increasing the frequency of flooding and overflows. Over the years, repeated rains and floods carried the sediment onto the floor of the forests surrounding the rivers. The sediment on the forest floors was waterlogged, reducing the oxygen level in the soil, starving the roots of trees and vegetation, and gradually killing them (an effect called dieback). The area of forest dieback grew from 18 square kilometers in 1992 to 480 square kilometers in 2000 and was predicted to eventually increase to between 1,278 square kilometers and 2,725 square kilometers.

Since the mining operations extracted only 80 percent of the copper, the rest was flowing into the river, where dissolved copper levels now rose, sometimes exceeding 0.02 milligrams per liter. Fish in the rivers declined by 90 percent, a possible result of the increased copper levels, or of sedimentation, or of a loss of food supplies.

**The Effect on Rivers**

**The Effect on the Economy**

storage facility was to be built and discovered that a storage dam built in the vicinity would probably collapse again. The area was prone to landslides, frequent earthquakes of magnitude 7.0 on the Richter scale, and huge quantities of rainfall throughout the year. The company reported this to the government, which agreed in 1986 to pass the "Eighth Supplemental Agreement," which licensed the company to defer construction of a permanent waste storage facility; this license was renewed in 1988 and was never revoked.

## Environmental Study

In 1989, a number of the landowners living along the polluted Ok Tedi and Fly rivers began petitioning the government to take some action to prevent the discharge of the tailings into the river and to provide them with some compensation for their losses.

In 1992, over 30,000 of these landowners joined together and sued BHP, the major nongovernment owner of the mine. After a great deal of legal wrangling, the case was settled out of court on June 12, 1996, when BHP agreed to give the landowners a total of $500 million: $90 million would be paid in cash to the 30,000 people who were living along the Ok Tedi and Fly rivers; $35 million would be paid to the villagers living along the lower Ok Tedi River, the area that had been most devastated by the mine. Further, a 10 percent ownership share in the mine, valued at about $375 million, would be held by the government of Papua New Guinea in trust for the people of the Western Province, the province where the mine and the rivers were located. In addition, BHP agreed to implement a tailings containment plan if practical, after commissioning a two-year study to assess the practicality of a containment facility and to recommend a plan for the mine.

The study examining the engineering, environmental, social, and risk aspects of managing the mine and its wastes was launched in 1996. As part of the study, a dredging operation was begun in 1998 along the lower section of the Ok Tedi River to see if dredging could mitigate the effects of the sediment accumulations.

On June 4, 1999, several months past the deadline, OTML announced that it had received a draft of the study of the environmental and social aspects of the mine operations. The report was passed on to Paul Anderson at BHP's headquarters. The study had found that the environmental impact of the mine, as well as the area affected by the pollution, was significantly greater than had been indicated by earlier studies the mine had commissioned. In addition, the study found that even if the mine were to close immediately, the sediments already deposited in the river would continue to kill the surrounding forests for perhaps 40 more years. Over the next 10 to 15 years, dieback would expand from the Ok Tedi River well into the forests of the downstream Fly River. The study had examined four possible options:

1. Continue operating the mine, and continue the current dredging in the lower Ok Tedi River
2. Continue operating the mine, continue dredging, and construct a new storage facility for future mine tailings
3. Continue operating the mine and do nothing else
4. Close down the mine immediately

**Table 5.2** Basic and Potential Additional Costs in Millions of 1999 U.S. Dollars

The environmental study of the Ok Tedi Mine also estimated the costs the mine would bear under each of the options by first calculating the basic cost of the option, then adding to it the potential additional costs that the option risked. The following table summarizes these costs in millions of 1999 U.S. dollars.

| Option | Basic Cost | Potential Added Costs | Total Likely Costs |
|---|---|---|---|
| Mine and dredge | $294 | $20–$70 | $300–$400 |
| Mine only | $177 | $30–$140 | $200–$300 |
| Mine and dredge and store | $426 | $20–$70 | $400–$500 |
| Early closure | $479 | $30–$90 | $500–$600 |

None of these four options offered a good solution to the environmental impacts of the mine.

The study found that the ongoing dredging would lower the sand levels in the Ok Tedi River, which would decrease flooding. However, sediment would continue to accumulate downstream from the dredging, and dredging would not significantly halt the continuing degradation of the forests. In addition, dredging absorbed funds that could be invested in health, education, or worker training.

Construction of a new storage facility would involve significant expenses (see Table 5.2) and would also create social problems because the amount of land required would destroy the whole area of one of the tribal clans. In addition, a storage facility might rupture, creating even more damage, and the stored tailings would generate acids that themselves would become an environmental threat.

To continue operating the mine while doing nothing would allow the environmental damage to continue unabated. If the mine continued operating until its originally scheduled date of 2010, an extra 200 to 300 million tons of tailings and rock would be created, and they would be added to the sediments already in the rivers. This additional discharge would significantly lengthen the already long period before the rivers would recover.

Closing down the mine immediately would limit the environmental damage that continued operations would create and would shorten the time the river would need to recover. However, the immediate closing of the mine would be an economic and social blow to national, provincial, and local communities. The study predicted that if the mine closed immediately, the many workers who had migrated into the mine area would suffer shortages in food supply resulting from overhunting and increases in store food prices. The high population around the mine would probably not decline until driven away by rising hunger and malnutrition. The national government would see its exports decline by almost 20 percent, its gross national product would decline by 10 percent, and its annual tax revenues would drop by more than 100 million dollars. The provincial government of the Western Province would lose half of its revenues, which came from the mine, and this loss would degrade its education and health services. In short, the economic, health, and social benefits that the mine was producing would end, and because the area had become dependent on the mine and had not prepared itself for life without the mine, the risk of social and economic decline was high.

## Weighing the Options

When Paul Anderson and BHP were presented with these options, Anderson was uncertain how to weigh them. By now the situation at Ok Tedi Mine had become international news. Anderson convened a committee of top-level managers from BHP and initiated a series of discussions with them. The committee discussed the four options proposed in the study and suggested others, such as simply walking away from the mine, giving the government of Papua New Guinea the 52 percent share of the mine that BHP still owned, gradually phasing down operation of the mine over several years, and so on. As the discussions progressed through the summer of 2000, however, the BHP managers came to feel that if the company was to limit the environmental disaster that its operations were creating, the best option was to immediately close the mine. Only this option, Anderson believed, was consistent with the environmental stewardship that he wanted BHP to demonstrate during his tenure as CEO. This option was also the option that various international groups were recommending, including the World Bank and virtually every environmental group familiar with the issues.

In August 1999, Anderson communicated to the government of Papua New Guinea BHP's view that the best option was to close the mine. The government, however, was not favorable to his view. The view of the government of Papua New Guinea was that the mine had to continue to operate because of the human and economic costs that closing the mine would inflict on the people. Villagers downriver from the mine supported the government's view. As one villager put it: "If the mine shuts, I will revert to wearing penis gourds [the traditional form of male dress.]"[2] The government also favored continued dredging, since it would mitigate flooding for people living along the rivers. However, because constructing a storage facility carried additional risks and would absorb a major portion of the profits the mine would produce, the government did not support building a storage facility for tailings. In this, too, the villagers supported their government. Said one tribesman: "If it [the water] is safe for people, then they should continue to dump tailings into the river. They will never fix this river—it is already dead. They should give us money instead."[3]

## The Decision

In November 2000, BHP reported that although it understood why the government wanted the mine to remain open, BHP's own continued involvement with the mine "would not be appropriate," and so the company had decided to "exit" its stake in the mine "in a way that ensures a smooth transition, minimizes the environmental impact, maximizes the social benefits," and ensures that BHP "does not incur liabilities for the future operations of the mine."[4, 5] On February 8, 2001, BHP announced that it had reached an agreement with the government of Papua New Guinea and with the other shareholders of the Ok Tedi Mine. BHP had agreed to transfer its entire share of the mine (52 percent) to a trust (the Papua New Guinea Sustainable Development Program) that would use the money generated by BHP's former share of the mine to fund social projects for the government of Papua New Guinea. The mine would continue to operate at least until 2010 (with dredging but without a containment facility for tailings). It was expected that the next several years of the mine would be its most productive and lucrative years. BHP wrote down the transfer of its share of mine revenues as a one-time loss. In return, the government of Papua New Guinea passed legislation releasing BHP from any and all liability stemming from its past actions at the mine.

In 2011 the government of Papua New Guinea announced the mine would continue operating until 2013 and possibly until 2022, which would allow it to produce an additional 700,000 tons of copper and 2.3 million ounces of gold. The mine continued to discharge about 90 million tons of waste rock and tailings into the Ok Tedi River each year, raising the riverbed by several more meters and causing the dieback area to expand. It was expected that dieback would eventually cover about 3,000 square meters and would take about two centuries years to recover. A statement on the Ok Tedi Mine website indicated that despite the mine's impact on the "river system and their subsistence livelihoods," the people of the Ok Tedi and Fly rivers "strongly endorsed its continued operation" and their losses were "compensated under a number of compensation arrangements."

## Case Notes

1. Sources used throughout this case include: International Institute for Environment and Development, "Ok Tedi Riverine Disposal Case" in *Mining for the Future*, ed. Dirk van Zyl, et al., a report commissioned by the Mining, Minerals and Sustainable Development Project of the International Institute for Environment and Development, accessed June 2, 2004, http://www.iied.org/mmsd/mmsd_pdfs/068a_mftf-h.pdf; Polly Ghazi, "Ok Tedi Mine: Unearthing Controversy," in *World Resources 2002–2004: Decisions for the Earth: Balance, Voice and Power*, ed. World Resources Institute (Washington, DC: World Resources Institute, 2003), http://www.wri.org/sites/default/files/pdf/wr2002_fullreport.pdf; World Bank, *Ok Tedi Mining Ltd. Mine Waste Management Project Risk Assessment and Supporting Documents*, 1999, accessed June 2, 2004, http://www.mpi.org.au/oktedi/world_bank_full_report.html; and the Ok Tedi Mining website, http://www.oktedi.com, accessed April 15, 2011.
2. Kevin Pamba, "Ok Tedi: What to Do about the Damage Done," *Asia Times*, September 17, 1999, http://www.atimes.com/oceania/AI17Ah01.html.
3. Stuart Kirsch, "An Incomplete Victory at Ok Tedi," accessed June 15, 2004, https://www.carnegiecouncil.org/publications/archive/dialogue/2_02/articles/614.html/:pf_printable.
4. Broken Hill Proprietary Company Limited, "Case Study: Ok Tedi," *BHP Environment and Community Report 2000*, November 2000, accessed June 19, 2004, http://www.envcommreport.bhp.com/Closure/okTedi.html.
5. November 1999: BHP consults with the government of PNG.

# Case Study 5.2: Gas or Grouse?

During the summer of 2008, people living near the Pinedale Mesa (sometimes called the Pinedale Anticline) in Wyoming were anxiously waiting for the federal Bureau of Land Management (BLM) to issue a decision regarding whether Questar Corporation and other energy companies would be allowed to drill thousands of ugly natural gas wells all over the serene wilderness that lay atop the mesa. The Pinedale Mesa is a 40-mile-long, 300-square-mile plateau extending north and south along the eastern side of Wyoming's Green River Basin, an area that is famous as the gateway to the hunting, fishing, and hiking treasures of the Bridger-Teton wilderness. The city of Pinedale, which sits below the mesa, a short distance from its northern end, was already surrounded by hundreds of recently drilled wells that ceaselessly pumped natural gas from the vast pockets that are buried underneath the region and which are estimated to contain 25 trillion cubic feet of gas worth billions of dollars.

Questar, an energy company with assets valued at about $4 billion, is the main developer of the gas wells around Pinedale and had already drilled several wells up on the mesa that overlooked the city. Occasionally elk, mule deer, pronghorn antelope, and other wildlife, including the imperiled greater sage grouse, descend from their habitats atop the mesa and gingerly pick their way around and between the wells Questar drilled around Pinedale. Not surprisingly, environmentalists were at war with Questar and the other energy companies, whose plans to expand their operations on the mesa, they claimed, would have serious negative effects on the wildlife on the mesa as well as on the beauty of the area.

The BLM was responsible for deciding what was done with the acreage on the mesa. Of 198,034 acres on the mesa, the federal government owns 158,000, Wyoming owns 9,800, and 29,800 are privately owned. In 2000, the BLM had authorized limited drilling on the mesa, but had imposed several restrictions that protected wildlife from the full impact of the drilling. In 2008, Questar and the other companies who wanted to drill on the mesa asked the BLM to remove its limits on drilling by allowing more than 4,300 additional wells, as well as to lift one of the restrictions that cushioned the drilling's impact on wildlife but had proven very costly to the companies.

## Case Background

Headquartered in Salt Lake City, Questar drilled its first successful test well on the Pinedale Mesa in 1998.

Energy experts around the country welcomed the new supply of natural gas, which, because of its simple molecular structure ($CH_4$), burns much more cleanly than any other fossil fuels. Moreover, because natural gas is extracted in the United States, its use reduces U.S. reliance on foreign energy supplies. Businesses in and around Pinedale also welcomed the drilling activity, which brought numerous benefits, including jobs, increased tax revenues, and a booming local economy. Wyoming's state government likewise supported the activity, since 60 percent of the state budget is based on royalties the state receives from coal, gas, and oil operations.

Questar's wells on the mesa averaged 13,000 feet deep and cost $2.8 to $3.6 million each, depending on the amount of fracturing that had to be done.[6] Drilling a well typically required clearing and leveling a 2- to 4-acre "pad" to support the drilling rig and other equipment. One or two wells could be drilled at each pad. Access roads had to be run to the pad, and the well had to be connected to a network of pipes that drew the gas from the wells and carried it to where it could be stored and distributed. Each well produced waste liquids that had to be stored in tanks at the pad and periodically hauled away on tanker trucks.

The BLM, however, had imposed a significant restriction on Questar's operations on the mesa.

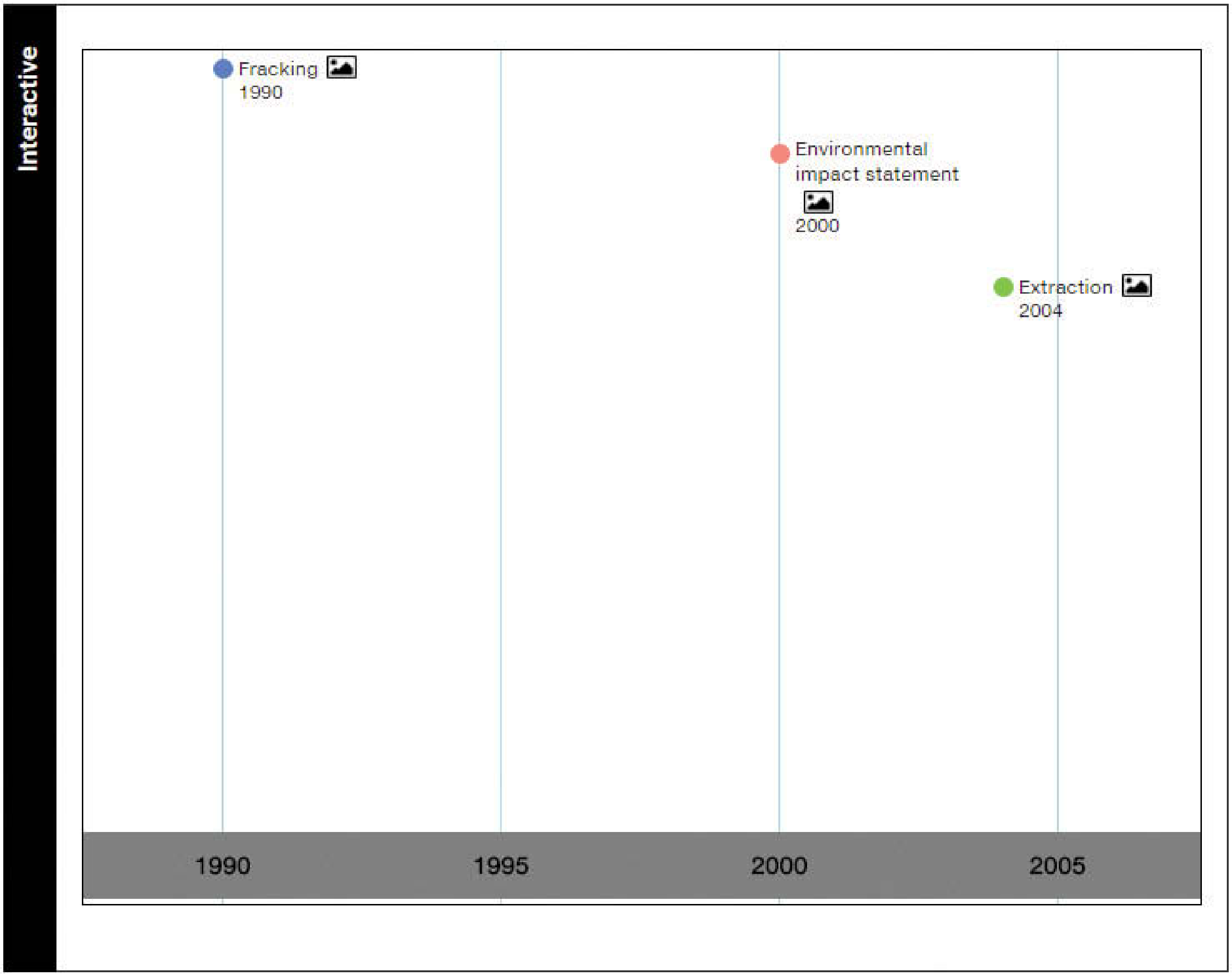
Large areas of the mesa provide habitat for mule deer, pronghorn sheep, sage grouse, and other species, and the BLM imposed drilling rules that were designed to protect these species. Chief among these species was the sage grouse.

The sage grouse is a colorful bird that today survives only in scattered pockets in 11 states. The grouse, which lives at elevations of 4,000 to 9,000 feet and is dependent on increasingly rare old-growth sagebrush for food and to screen itself from predators, is extremely sensitive to human activity. Houses, telephone poles, or fences can draw hawks and ravens, which prey on the ground-nesting grouse. It is estimated that 200 years ago the birds—known for their distinctive spring "strutting" mating dance—numbered about 15 million and were common across the western United States. By the 1970s, their numbers had fallen to about 400,000. A study completed in June 2004 by the Western Association of Fish and Wildlife Agencies concluded that there were only between 140,000 and 250,000 of the birds left and that "we are not optimistic about the future." The dramatic decline in their number was blamed primarily on the destruction of 50 percent of their sagebrush nesting and mating grounds (called *leks*). The destruction of sage grouse leks was in turn blamed on farming, new home construction, fires, and the expanding acreage being given over to gas drilling and other mining activities. Biologists believe that if its sagebrush habitats are not protected, the bird will be so reduced in number by 2050 that it will never recover. According to Pat Deibert, a U.S. Fish and Wildlife Service biologist, "they need large stands of unbroken sagebrush" and anything that breaks up those stands such as roads, pipelines, or houses, affects them.[7] Moreover, the sage grouse was considered an "umbrella species" because protecting them and their feeding and breeding ranges also protected other species of wildlife. Studies had shown, for example, that much of the area used by mule deer overlapped the areas populated by sage grouse. So measures to protect sage grouse would also tend to protect mule deer.[8]

In order to protect the sage grouse, whose last robust population had nested for thousands of years on the ideal sagebrush fields up on the mesa, the BLM required that Questar's roads, wells, and other structures be located a quarter mile or more from grouse breeding grounds, and at least 2 miles from nesting leks during breeding season. Some studies, however, concluded that these protections were not sufficient to arrest the decline in the grouse population. As wells proliferated in the area, they were increasingly taking up land on which the grouse foraged and nested and were disturbing the sensitive birds. Conservationists

### The Process of Gas Extraction

Extracting the gas under the mesa was not feasible before 1998 because the gas was trapped in tightly packed sandstone that prevented it from flowing to the wells, and no one knew how to get it out.




said that the BLM should increase the quarter-mile buffer areas around the grouse breeding grounds to at least 2-mile buffers.

## Questar's Proposal

In 2002, Questar had submitted a proposal to the BLM. Questar proposed to invest in a new kind of drilling rig that allowed up to 16 wells to be dug from a single pad, instead of the traditional one or two. The new technology (called *directional drilling*) aimed the drill underground at a slanted angle away from the pad, so that by placing wells around the perimeter of the pad, all at an underground slant leading away from the pad—like the outstretched tentacles on an octopus—multiple distant locations could be tapped by several wells branching out from a single pad. This kind of drilling minimized the surface land occupied by the wells: while traditional drilling required 16 separate 2- to 4-acre pads to support 16 wells, the new directional drilling technology allowed a single pad to hold 16 wells. The technology also reduced the number of required roadways and distribution pipes, since a single access road and pipe could now service the same number of wells that traditionally required 16 different roads and 16 different pipes. Questar also proposed that instead of carrying liquid wastes away from operating wells on noisy tanker trucks, the company would build a second pipe system that would pump liquid wastes away automatically. These innovations, Questar pointed out, would substantially reduce any harmful impact that drilling and pumping had on the wildlife inhabiting the mesa. Using the new technology for the additional 400 wells the company wanted to drill would require 61 pads instead of 150, and the pads would occupy 533 acres instead of 1,474.

The new directional drilling technology added about $500,000 to the cost of each well and required investing in several new drilling rigs. The added cost for the 400 additional wells Questar planned would total $185 million. Questar noted, however, that "the company anticipates that it can justify the extra cost if it can drill and complete all the wells on a pad in one continuous operation" that continued through the winter.[9] If the company was allowed to drill continuously through the winter,

### Arguments around Sage Grouse and Questar's Drilling Operations

Questar and other companies formed a coalition—the Partnership for the West—to lobby the Bush administration to keep the grouse off the endangered species list.[10, 11, 12, 13]

Interactive

Led by Jim Sims, a former communications director for President George W. Bush's Energy Task Force, the coalition established a website where they called on members to lobby "key administration players in Washington" and to "unleash grass-roots opposition to a listing, thus providing some cover to the political leadership at Department of Interior and Throughout the administration." The coalition also suggested "funding scientific studies" that would be designed to show that the sage grouse was not endangered. According to Sims, the attempt to categorize the grouse as an endangered species was spearheaded by "environmental extremists who have converged on the American West in an effort to stop virtually all economic growth and development. They want to restrict business and industry at every turn. They want to put our Western lands off-limits to all of us." Dru Bower, vice president of the Petroleum Association of Wyoming, said, "[endangered species] listings are not good for the oil and gas industry, so anything we can do to prevent a species from being listed is good for the industry. . . . If the sage grouse is listed, it would have a dramatic effect on oil and gas development in the state of Wyoming."

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it would be able to finish drilling all its wells in 9 years instead of 18, thereby almost doubling the company's revenues from the project over those 9 years. This acceleration in its revenues, coupled with other savings resulting from putting 16 wells on each pad, would enable it to justify the added costs of directional drilling. In short, the company would invest in the new technology that reduced the impact on wildlife, but only if it was allowed to drill on the mesa during the winter months.

In addition, Questar had requested that it be allowed to increase the number of wells it was allowed to drill on the mesa. By now, several other energy companies were trying to get permission to drill on the mesa, including Ultra Resources, Shell, BP, Stone Energy, Newfield Exploration, Yates Petroleum, and Anschutz. Together, the companies asked the BLM that they be allowed to drill an additional 4,399 natural gas wells on the mesa. All of them also requested that they be allowed to drill through the winter.

## Government's Response

Although environmentalists welcomed Questar's willingness to invest in directional drilling, they strongly opposed allowing it or the other companies to operate on the mesa during the winter when mule deer and antelope were there foraging for food and struggling to survive. The Upper Green River Valley Coalition, a coalition of environmental groups, issued a statement that read: "The company should be lauded for using directional drilling, but technological improvements should not come at the sacrifice of important safeguards for Wyomings's wildlife heritage."

## The Outcome for Gas

Questar and the other companies were pleased with the outcome. They had, essentially, gotten what they had asked for, even if there were limits to where they could drill their wells. The companies quickly moved into the core areas of the grouse habitat where they were allowed to drill, and began building and drilling. Questar implemented the directional drilling method it had suggested in 2002 and successfully tested during the following years. The directional drilling method enabled it to drill wells from a relatively small number of pads that could each support up to 52 wells. This method, the company stated, minimized disturbances on the mesa.

### From Approval to a Final Decision

The following steps were involved in the BLM's final decision on whether to grant directional drilling rights in Pinedale.[14, 15]

Interactive

**Approval Granted to Questar to Test Directional Drilling**

In order to allow Questar to test the feasibility of directional drilling and to study its effects on wintering deer herds, the BLM decided to let Questar drill wells at a single pad through the winter of 2002/2003 and again through the winter of 2003/2004. The BLM would launch a five-year study of the impact of the drilling, which would continue until 2007 (later extended beyond 2010). Questar was glad it was at least being given the chance to show that drilling through the winter was compatible with the wildlife living on the mesa.

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Then in a surprise move, Questar announced in 2010 that it would no longer be involved in the Pinedale project because it was spinning off a new company, QEP Resources, which would own and operate the Pinedale project. In the summer of 2010, therefore, QEP Resources began to operate as a separate stand-alone company drilling the Pinedale gas field as the successor of Questar.

Another surprise came on October 28, 2010, when Western EcoSystems Technology, the group monitoring wildlife on the Pinedale Mesa, announced that in 2009 mule deer on the mesa had declined by 60 percent compared with their numbers in 2001, and by 28 percent compared with their number in 2005.[16] The Western EcoSystems Technology study also found that in 2009, less than 70 percent of adult female mule deer survived the winter on the mesa, compared with a normal survival rate of 85 percent. A representative of Shell, one of the companies drilling on the mesa, reacted by saying more research was needed: "Let's see what the results are before we start reacting too much to what could be naturally caused variation."[17] But a local BLM official responded that since the decline in deer numbers had passed the threshold of 15 percent, "aggressive and positive action" on mitigation measures was required. Reacting to the declining number of mule deer, BLM officials instituted the first step of "mitigation measures" outlined in the 2008 agreement: improving the habitat in the "flank area" surrounding the core wildlife habitat, mainly by planting more vegetation and fertilizing the area to encourage more plant growth. Using funds given by the oil companies, the BLM also purchased conservation easements—land that could be used only for grazing cattle—around the areas where drilling was continuing. The BLM, however, stopped short of imposing any limits on drilling operations. According to a government spokesperson, "Modifications of [drilling] operations are the final step. It is implemented after we do the final things and we find it doesn't produce an adequate result."[18] Kevin Williams, the district manager for QEP Resources' Pinedale project, acknowledged that the drilling was affecting wildlife on the mesa: "There's no way we can say we have not had an impact at all."[19]

## Lobbying for Gas

In May 2004, the U.S. Fish and Wildlife Service had announced that it was studying whether the sage grouse should be categorized as an endangered species, which would bring it under the protection of the Endangered Species Act. The actions of the Fish and Wildlife Service were the result of petitions it had received from several environmental organizations in 2002, demanding that the sage grouse be placed on the endangered species list. Questar and other gas, oil, and mining companies adamantly opposed having the grouse listed as an endangered species because once listed, the grouse would make large areas of federal land off-limits to drilling, mining, and development and would impose restrictions on wells that were already operating. Since almost 80 percent of Wyoming is considered sage grouse habitat, including much of the Pinedale Mesa, Questar's drilling plans would be severely compromised.

## The Outcome for Grouse

In March 2010, the Department of the Interior issued its revised finding on whether the sage grouse should be put on the endangered species list. The Department announced that it had found that the sage grouse "warrants federal protection" throughout its range. However, the Department added, other species that were also candidates for the endangered species list had "higher priority," and that precluded placing the grouse on the list at that point in time. The decision of the Department angered environmental groups who sued the Department. In 2011, the Department agreed to issue a definitive decision on whether to place the grouse on the list by September 30, 2015.

But before the Department could make its decision, a Republican-dominated Congress intervened in 2014 and passed a spending bill that contained a rider that blocked the Interior Department from spending any money on proceedings to protect the sage grouse or change its legal status. Congress's new rule, which tied the hands of the Interior Department, was the result of intensive lobbying by QEP Resources and the other energy companies and industry groups such as Partnership for the West. The new congressional rule, however, did not apply to other government agencies, and in August 2015 the U.S. Department of Agriculture announced that "[t]he federal government plans to spend more than $200 million over the next three years on programs to protect greater sage grouse in Western states."[20] About half of the money would be spent to buy conservation easements, and the other half would be spent on improving existing sage grouse habitats. States and conservation groups had pledged to add several million more dollars to protect the grouse's habitat. It was projected that between 2010 and 2018, more than $750 million would have been spent on the sage grouse.

The Department of the Interior was still bound by its 2011 agreement to issue a definitive decision on whether the grouse should be placed on the endangered species list. The 2014 congressional rule, however, blocked it from spending any money on proceedings that would give the sage grouse more legal protections. In October 2015, therefore, it announced that it had found that listing the greater sage grouse as an endangered species was "not warranted at this time." At the same time, the BLM unveiled a plan to protect sage grouse habitat on 67 million acres of public lands across 11 western states, including 12 million acres of core habitat where oil and gas drilling would be severely restricted.[21] The energy companies immediately sued the government, arguing that the new restrictions on mining and drilling were too onerous and would stifle needed development. The decision not to list the grouse as endangered was a major disappointment to environmental groups, and on February 25, 2016, they sued to force the government to do more to protect the bird from extinction.

## WRITING PROMPT

**Ethics of Protecting a Species**

1. What are the systemic, corporate, and individual issues raised in this case?
2. How should wildlife species such as grouse or deer be valued, and how should that value be balanced against the economic interests of a society or of a company like Questar? What principles or rules would you propose we use to balance the value of wildlife species against economic interests?
3. In light of the fact that natural gas reduces the United States' undesirable dependence on foreign oil and the fact that natural gas produces less greenhouse gases than coal, oil, and other fuels, should Questar have continued its drilling operations? Should QEP Resources now stop its operations? Does the environmental impact of Questar's and QEP Resources's drilling operations imply that they were and are morally obligated to stop drilling wells on the Pinedale Mesa? Explain.
4. What, if anything, should QEP Resources and the other companies drilling on the Pinedale Mesa be doing differently?
5. From an ethical point of view, was alternative 4 the best option among those from which the BLM chose? Is another alternative better from an ethical point of view? Explain your answer.
6. Should the loss of species produced by the drilling operations of Questar and its successor be considered a problem of pollution or a problem of conservation? Can the loss of species be evaluated as an "external cost"? Explain.
7. Was it ethical for the energy companies to lobby government as they did?

The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Case Notes

6. Peggy Williams, "The Pinedale Anticline," *Oil and Gas Investor*, December 2001, pp. 2–5.
7. Tom Kenworthy, "Battle Brewing over Sage Grouse Protection," *USA Today*, July 13, 2004, p. 2a; Todd Wilkinson, "Sage Grouse of Western Plains Seen as Next 'Spotted Owl,'" *Christian Science Monitor*, June 25, 2004, p. 1.
8. H. E. Copeland, et al., "Conserving Migratory Mule Deer through the Umbrella of Sage-Grouse," *Ecosphere* 5, no. 9 (September 2014): 1–16.
9. Questar, "The Pinedale Anticline: A Story of Responsible Development of a Major Natural Gas Resource."
10. Scott Sonner, *Industry Coalition's Internal Sage Grouse Memo Causes Flap*, *Las Vegas Sun*, May 6, 2004, http://www.lasvegassun.com/sunbin/stories/nevada/2004/may/06/050610261.html.
11. Julie Cart, "Bird's Fate Tied to Future of Drilling," *Los Angeles Times*, June 10, 2004, p. 11.
12. Ibid.
13. Rebecca Huntington, "Cowboy Enterprise: Wildlife Find Less Room in Energy Boom," *Associated Press State and Local Wire*, December 2, 2003.
14. The information in this and all the following paragraphs is drawn from Bureau of Land Management Wyoming State Office, *Final Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project*, Sublette County, Wyoming, June 2008, and U.S. Department of the Interior, Bureau of Land Management, Cheyenne, Wyoming, *Record of Decision, Final Supplemental Environmental Impact Statement for the*

*Pinedale Anticline Oil and Gas Exploration and Development Project*, Sublette County, Wyoming, September 2008, both documents accessed January 19, 2011, at the following site: http://www.blm.gov/wy/st/en/info/NEPA/documents/pfo/anticline/seis.html.

15. Bureau of Land Management Wyoming State Office, *Final Supplemental Environmental Impact Statement*, p. ix.
16. Cat Urbigkit, "Pinedale Mesa Deer Population Drops," *Casper Star Tribune*, October 28, 2010, http://trib.com/news/state-and-regional/pinedale-mesa-deer-population-drops/article_fa6d49fa-a7b6-5335-82bf-8cc7d217ea69.html.
17. Ibid.
18. Christine Peterson, "Southwest Wyoming Mule Deer Numbers Keep Dropping; Solutions Vary," *Casper Star Tribune*, April 2, 2012, http://trib.com/news/state-and-regional/southwest-wyoming-mule-deer-numbers-keep-dropping-solutions-vary/article_cfbf93da-e906-5d3e-bc70-a83973686933.html.
19. Ibid.
20. Matthew Brown and Gosia Wozniacka, "Ag secretary promises more sage grouse spending across West," *Butler County Times-Gazette*, August 27, 2015, http://www.butlercountytimesgazette.com/article/ZZ/20150827/news/308279981.
21. Matthew Brown and Matt Volz, "With No Protections for Western Bird, Focus Is on Land-Use," *Associated Press*, September 23, 2015, http://www.salon.com/2015/09/23/with_no_protections_for_western_bird_focus_is_on_land_use/

# Summary

1. Environmental problems can be classified as problems of pollution and resource depletion. Both are major ethical issues.
2. Pollution can be found in the air and water, and on land. Air pollution can consist of greenhouse gases that cause global warming, chlorofluorocarbons that deplete the ozone layer that protects us from ultraviolet radiation, sulfur oxides that cause acid rain, a variety of airborne toxics, and the six "common air pollutants" generated by cars and industry. Water pollution includes organic wastes and a variety of inorganic pollutants such as salt brines, acids, heavy metals, asbestos, and polychlorinated biphenyls (PCBs). Land pollution can consist of toxic chemicals and solid wastes such as household garbage and industrial wastes.
3. A number of nonrenewable resources are being, or are in danger of being, depleted. For example, many animal and plant species are becoming extinct due to climate change and habitat loss; fossil fuels are being depleted and are likely to follow the Hubbert curve and peak sometime within this century; and the reserves of minerals such as copper, aluminum, indium, tantalum, and antimony, which are essential to several industrial processes, are being depleted.
4. There are several ethical approaches to the environmental problems related to pollution. Some appeal to ecological ethics, which include any view that claims that environmental destruction is wrong because the environment has value, regardless of its benefits to human beings. The "last man" argument supports such ecological ethics by arguing that since we recognize that it would be wrong for the last human survivor to completely destroy the environment, we must recognize that the environment has value even when it could no longer benefit us. A second approach appeals to the human benefits of an unpolluted environment. William T. Blackstone, for example, argued that pollution is wrong because humans have a basic human right to a livable environment. A third approach treats pollution as an "external cost" that distorts markets because it leads to overproduced and underpriced goods, and so should be "internalized" by the makers of those goods. Yet other approaches see environmental degradation as rooted in social systems of hierarchy and domination (social ecology) or in the male domination of nature and women (ecofeminism), and so these root sources must be overcome.
5. Conservation is generally proposed as the solution to resource depletion. Several ethicists have argued that conservation is an ethical obligation. John Rawls, for example, claimed that in the "original position" behind the "veil of ignorance," people would adopt the principle that each generation has an obligation to leave the world no worse than we received it from the previous generation; proponents of care ethics argue that we should leave our children a world no worse than we found it; Robin Attfield suggested that we have an obligation to leave the world as productive as we found it.
6. The principle of sustainability is another response to environmental degradation and resource depletion. The principle of sustainability holds that we should deal with the environment, society, and the economy in such a way that they can meet our own needs without compromising their ability to meet the needs of future generations. Some have suggested that economic growth is incompatible with sustainability and with the other approaches to environmental issues we have discussed. However, if we continue seeking the economic growth patterns of the past and dealing with the environment as we have, others have argued, the result will be a global catastrophe.

# Chapter 6
# The Ethics of Consumer Production and Marketing


A Coca-Cola delivery truck in the streets of Hainan, China.

## Learning Objectives

**6.1** Identify risks that may occur with the use of consumer products

**6.2** Evaluate the arguments for and against consumer protection within markets

**6.3** Explain how a firm's moral duties to consumers may be held in a contractual relationship

**6.4** Describe the manufacturer's responsibilities to consumers as presented by the due-care view

**6.5** Examine the broader role of manufacturer responsibility as expressed by the social costs view

**6.6** Assess the ethical concerns associated with information and persuasion in advertising

**6.7** Outline ethical and unethical business practices as they relate to the consumer's right to privacy

Americans are exposed daily to astonishingly high levels of risk from the use of consumer products. In a single year, about 15.6 million people suffer injuries related to consumer products (not counting motor vehicles) and about 4,000 of them are killed.[1] It is estimated that the total cost of product-related nonfatal injuries in a single year is about $900 billion.[2] However, product injuries make up only one category of costs imposed on unwary consumers. Consumers must also bear the costs of deceptive selling practices, shoddy product construction, products that immediately break down, and warranties that are not honored. Advertising and marketing practices must be examined ethically as well. This chapter examines the many ethical questions raised by product quality and advertising, including those related to product safety, the relationship between a business and its customers (including a business's responsibility to customers), and concerns about advertising and consumer privacy.

## 6.1: Everyday Consumer Risks

**OBJECTIVE:** **Identify risks that may occur with the use of consumer products**

We begin with a focus on what is perhaps the most urgent issue: consumer product injuries and the responsibilities of manufacturers.

Motor vehicles annually kill about 30,000 Americans, including pedestrians (traffic crashes are the leading cause of death for Americans between 2 and 34 years of age), incapacitate 260,000, and injure 2.2 million others,[3] while firearms kill 32,000 and injure an additional 65,000.[4] The cigarettes that Phillip Morris, American Brands, R.J. Reynolds, B. A. T., Imperial Tobacco, Loews, and Liggett companies sell kill about 450,000 of their U.S. customers each year, almost as many Americans as AIDS killed during its first three decades.[5] Worldwide, cigarettes kill almost 6 million customers a year, more than twice what AIDS kills.[6] In the United States, prescription painkillers cause about 14,000 deaths each year and hospitalize 300,000 people.[7] About 200,000 children are injured annually by playground equipment, and 147 die of their injuries.[8] All-terrain vehicles (ATVs) kill between 600 and 800 people a year and injure about 100,000.[9]

Although inarguably not on the same level as injury and death, deceptive business practices, such as a company not honoring a warranty, wears out consumers' patience as well as their wallets. For example, several years ago, the engine of Martha and George Rose's GM station wagon began hissing, and white smoke poured out of the tailpipe as Martha drove it 6 miles to work. When their mechanic inspected it, he found a crack in the engine block, so the car needed an expensive new engine. The Roses were not worried, since the engine was still under GM's "5-year or 50,000-mile" warranty. However, when a GM mechanic inspected their car, he concluded that the radiator thermostat had stuck shut so no coolant had reached the engine. Because the thermostat was only under a "12-month or 12,000-miles" warranty that had by then expired, and because the faulty thermostat had caused the engine to overheat and the engine block to crack, GM concluded it had no responsibility under its "5-year or 50,000-mile" warranty.[10]

*Cramming*, a tactic used by some of the large cell phone companies, illustrates another kind of difficulty consumers face. Cramming is the practice of adding charges to a customer's cell phone bill for services from a third party that the customer never approved or never received.

According to the U.S. Federal Trade Commission, cramming

> occurs when consumers are signed up and billed for third-party services, such as ringtones and recurring text messages containing trivia or horoscopes, without the consumers' knowledge or consent. Companies that place crammed charges sometimes obtain consumers' phone numbers without any contact with consumers. . . . These unauthorized charges often appear buried in phone bills and have generic descriptors such as "usage charges." As a result, many consumers do not notice the charges or do not understand that they are unrelated to their phone service.[11]

### Ethical Application

#### Inflating Mobile Phone Bills

In May 2015, the Federal Communications Commission (FCC) announced that it was fining Verizon and Sprint a combined $158 million for cramming onto customers' phone bills unauthorized charges at the request of companies who sent customers ringtones or monthly text messages, such as horoscopes, love tips, or celebrity gossip. In 2014, AT&T and T-Mobile were fined $217 million for doing the same. Verizon received 30 percent of each unauthorized charge that it billed, while Sprint, T-Mobile, and AT&T received 35 percent in return for hiding the charges within "usage charges," a line item that also included charges for the mobile phone companies' own legitimate text services. Individual charges averaged about $9.99 a month and ultimately cost consumers hundreds of millions of dollars. It is estimated that about 20 million mobile phone customers were victims of these charges each year. The companies continued to charge their customers even after being notified by many customers that the charges were unauthorized.

In another kind of mobile phone scam, AT&T was accused of "fraud and deceit" in a 2010 class-action lawsuit that claimed the company "intentionally, knowingly and artificially inflates the data usage" of its cell phone customers by "an amount that is three to five times the actual data usage . . . then bills the customer based upon the inflated data usage . . . not the actual data used . . . by that customer."[12] According to the lawsuit, when Guardian Corporation, an AT&T customer, became suspicious of its cell phone bills, it hired an expert to go through AT&T's internal engineering reports and discovered that Guardian's "actual data usage and data transfer . . . were, as a matter of corporate policy, being misrepresented by AT&T's system." By inflating a customer's usage, the suit said, AT&T was also able to charge higher "overage" fees for usage beyond the amount the customer's plan contract allowed, even when the customer stayed within the usage allowed by the plan. Ordinary consumers could not check the accuracy of their bills because they did not have access to either AT&T's internal engineering reports or an expert who could understand those reports. The company settled the case in 2013 for $152 million. AT&T has had to settle other charges of deceptive consumer practices in New York, Florida, Washington, Texas, Louisiana, West Virginia, North Carolina, and several other states as well as charges of nationwide deceptive practices.

## Recalls of Defective and Dangerous Products

The number of product deaths and injuries would be much greater if the U.S. government did not regularly require companies to recall defective or harmful products. Here is a small sample from among the millions of defective products that have to be recalled each year.[13, 14, 15, 16, 17]

Interactive

**Takata Auto Airbags (2016)**

On April 13, 2016, U.S. regulators announced that some 85 million airbags installed in cars still had potentially defective inflators that could explode and spray shrapnel through the car's passenger compartment. Takata had already recalled 29 million of the airbags that were installed in cars made by 14 different car companies between 2002 and 2015. At least 10 people had already been killed and several more injured.

**General Motors Automobiles (2014)**

**Gree Dehumidifiers (2014)**

**Blair Women's Chenille Robes (2010)**

**Nestlé Toll House Cookie Dough (2009)**

# 6.2: Markets and Consumer Protection

**OBJECTIVE: Evaluate the arguments for and against consumer protection within markets**

Consumers are also bombarded daily by an endless series of advertisements urging them to buy numerous products. Although sometimes defended as sources of information, advertisements are also criticized on the grounds that they rarely do more than give the barest indications of the basic function a product is meant to serve and sometimes misrepresent and exaggerate its qualities. Economists argue that advertising expenditures are a waste of resources and sociologists bemoan the cultural effects of advertising.[18]

Consumer advocates point out that each year there are more than 350,000 injuries requiring hospital treatment inflicted on youngsters and adults using nursery equipment and toys; another 350,000 people are mangled using home workshop equipment; about 4,400,000 people are injured using sports and recreational equipment; over 3,000,000 people need emergency treatment for injuries involving home furnishings; and over 4,000,000 people require treatment for injuries involving home construction materials.[19] Nonfatal injuries from motor vehicle accidents in 2013 averaged 44,000 each week, and deaths averaged over 60 people per day.[20] A 2015 study concluded that the financial losses from motor vehicle accidents total more than $242 billion a year.[21]

### Arguments for the Free Market Approach to Consumer Protection

Arguments in favor of allowing free markets to provide consumer protection claim that market forces will lead manufacturers to provide safe products if that is what consumers demand, without forcing manufacturers to provide safety that consumers may not think is worth the cost.

Interactive

**More Demand for Safety Encourages More Safety**

The market approach to consumer protection argues that consumer safety can be provided efficiently through the free market because sellers must respond to consumer demands if they are to make a profit. If consumers want products to be safer, they will indicate this preference in markets by willingly paying more for safer products and showing a preference for manufacturers of safe products while turning down the goods of those who make unsafe products. Manufacturers will respond to this demand by building more safety into their products, or they risk losing customers to competitors who cater to the safety preferences of consumers. Thus, if consumers want safety, the market will provide it and sellers will price it according to how much it costs to provide it (indicated by their supply curve) and how much consumers think its worth (indicated by their demand curve). As a result, the market will provide safety at a fair price, in a way that respects customers' free choices, and with an efficient use of society's resources.

**Less Demand for Safety Means Government Should Not Interfere**

## 6.2.1: The Market Approach to Protecting Consumers

It is sometimes argued that consumers will be protected from injury by the operations of the free market and that neither governments nor business people should intervene in markets to require product safety.[22]

***Quick Review 6.1***

**Consumer Protection and the Market**

- Safety is considered a commodity that should not be mandated by government.
- Safety should instead be provided through the market.
- In a market, sellers will provide safety if consumers demand it.
- In a market, the price of safety and the amount sellers provide will be determined by the costs of providing it and the value consumers place on it.
- Government intervention in consumer markets makes them unfair, inefficient, and coercive.

## 6.2.2: Criticisms of the Market Approach to Protecting Consumers

Critics of the market approach to consumer protection respond that the market approach assumes that consumer markets are perfectly competitive, but in fact they rarely are. We can claim that markets are fair, respectful of negative rights, and efficiently maximize utility only when they have the seven features that make them perfectly competitive

### Why Markets May Not Provide the Safety Consumers Want

Consumers are not always adequately informed about the goods they are buying nor are they always rational, and most markets lack the defining features of perfectly competitive markets.[23, 24, 25, 26, 27]

**Interactive**

**Uninformed Consumers**

Consumers are often uninformed about the products they buy simply because many products are so complex that only an expert can be knowledgeable about them; also, the manufacturer, who is most knowledgeable about the product, may not voluntarily share this knowledge with consumers. It may be too expensive and impractical for consumers to conduct the research needed to learn enough about a particular product to make an informed purchase decision.

**Irrational Purchase Decisions**

**Lack of Competition**

(see Chapter 4). When markets are not perfectly competitive because they lack one or more of these defining features, it's hard to say whether they are fair, are respectful of rights, or maximize utility. In particular, we can say that consumer markets will respond efficiently and fairly to consumer preferences only if buyers have adequate information about what they are buying, are **rational utility maximizers**, and have the other features of a perfectly competitive market.

***Quick Review 6.2***

**Problems with the Market Approach to Consumer Protection**

It assumes that markets are perfectly competitive, but they are not for the following reasons:

- Consumers do not have adequate information when products are complex and information is costly and hard to find.
- Consumers are often not rational about product risk or probabilities and are often inconsistent.
- Many consumer markets are monopolies or oligopolies.

### 6.2.3: Beyond Market Forces

On balance, it does not appear that market forces by themselves can deal with all consumer concerns for safety, freedom from risk, and value. Market failures, characterized by inadequate consumer information, irrationality in the choices of consumers, and concentrated markets undercut arguments that try to show that markets alone can provide adequate consumer protection. Instead, consumers must be protected through the legal structures of government and through the voluntary initiatives of responsible businesspeople. We turn then to examining several views about the responsibilities of businesses toward consumers—views that have formed the basis of many of our consumer laws and of increased calls for greater acceptance of responsibility for consumer protection on the part of business.

It is clear, of course, that part of the responsibility for consumer injuries must rest on consumers. Individuals are often careless in their use of products. "Do-it-yourselfers" use power saws without guards attached or use flammable liquids near open flames. People often use tools and instruments that they do not have the skill, knowledge, or experience to handle. But consumer responsibility is only part of the story. Injuries also arise from flaws in product design, in the materials out of which products are made, and in the processes used to construct products. Insofar as manufacturing defects are the source of product-related injuries, consumer advocates claim, minimizing injuries is the responsibility of manufacturers because they are in the best position to know the hazards a product carries and to eliminate the hazards at the point of manufacture.

Where, then, does the consumer's duty to protect his or her own interests end, and where does the manufacturer's duty to protect consumers' interests begin? Three different theoretical views on the ethical duties of manufacturers have been developed, each of which strikes a different balance between consumers' duty to protect themselves and the manufacturer's duty to protect consumers:

- contractual view
- due-care view
- social costs view

The contractual view places the greater responsibility on the consumer, whereas the due-care view and social costs view place the greater responsibility on the manufacturer. We examine each of these views in turn.

## 6.3: The Contractual View of the Manufacturer's Duties to Consumers

**OBJECTIVE: Explain how a firm's moral duties to consumers may be held in a contractual relationship**

According to the *contractual view of the business firm's duties to its customers*, the relationship between a business firm and its customers is essentially a contractual relationship, and the firm's moral duties to customers are those created by this contractual relationship.[28] When a consumer buys a product or a service, this view holds, the consumer voluntarily enters into a "sales contract" with the business firm. The firm freely and knowingly agrees to give the consumer a product or service with certain characteristics, and the consumer in turn freely and knowingly agrees to pay a certain sum of money to the firm for the product or service. By virtue of having voluntarily entered this agreement, the firm then has a duty to provide a product or service with those characteristics, and the consumer has a correlative right to get a product or service with those characteristics.

The contractual view of the business firm's duties to its customers rests on the idea that a contract is a free agreement that imposes on parties the basic duty of complying with the terms of the agreement. Recall from Chapter 5 the two justifications Immanuel Kant provided for the view: a person has a duty to do what the person contracts to do because failure to adhere to the terms of a contract is a practice that (1) cannot be universalized, and (2) treats the other person as a means and not as an end.[29] John Rawls's theory also provided a justification for the view, but one that is based on the idea that our freedom is expanded by the recognition of contractual rights and duties: an enforced system of social rules that requires people to do what they contract to do will provide them with the assurance that contracts will be kept. Only if they have such assurance will people feel able to trust each other's word and, on that basis, to secure the benefits of the institution of contracts.[30]

Traditional moralists have argued that the act of entering into a contract is subject to several secondary moral constraints, which are as follows:

1. Both of the parties to the contract must have full knowledge of the nature of the agreement they are entering.
2. Neither party to a contract must intentionally misrepresent the facts of the contractual situation to the other party.
3. Neither party to a contract must be forced to enter the contract under duress or undue influence.

These secondary constraints can be justified by the same sorts of arguments that Kant and Rawls used to justify the basic duty to perform one's contracts. Kant, for example, easily showed that misrepresentation in the making of a contract cannot be universalized. Rawls argued that if misrepresentation were not prohibited, fear of deception would make members of a society feel less free to enter contracts. Moreover, these secondary constraints can also be justified on the grounds that a contract cannot exist unless these constraints are fulfilled. A contract is essentially a free agreement struck between two parties. Because an agreement cannot exist unless both parties know what they are agreeing to, contracts require full knowledge and the absence of misrepresentation. Because freedom implies the absence of coercion, contracts must be made without duress or undue influence.

Hence, the contractual view of business firms' duties to consumers claims that a business has four main moral duties:

1. The basic duty of complying with the terms of the sales contract and the secondary duties of
2. Disclosing the nature of the product or service
3. Avoiding misrepresentation
4. Avoiding the use of duress and undue influence

By acting in accordance with these duties, a business respects the right of consumers to be treated as free and equal persons—that is, in accordance with their right to be treated only as they have freely consented to be treated.

## 6.3.1: The Duty to Comply

The most basic moral duty that a business firm owes its customers, according to the contractual view, is the duty to provide consumers with a product or service that lives up to those claims that the firm expressly made about the product or service, which led the customers to enter the contract freely and which formed the customers' understanding concerning what they were agreeing to buy.

Winthrop Laboratories, for example, marketed a painkiller that it advertised as nonaddictive. Subsequently, a patient using the painkiller became addicted to it and shortly died from an overdose. A court found Winthrop Laboratories liable for the patient's death because, although it had expressly stated that the drug was nonaddictive, Winthrop Laboratories had failed to live up to its duty to comply with this express contractual claim.[31] As this example suggests, our legal system has incorporated the moral view that firms have a duty to live up to the express claims they make about their products. The Uniform Commercial Code (a model set of laws regulating commercial transactions that have been completely or partially adopted by all 50 states), for example, states in section 2-314:

> Any affirmation of fact or promise made by the seller to the buyer that related to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

In addition to the duties that result from the express claims a seller makes about products and services, the contractual view also holds that the seller has a duty to carry through on any implied claims knowingly made about its products and services. For example, the seller has the moral duty to provide a product that can be used safely for the ordinary and expected purposes for which the customer, relying on the seller's judgment, has been led to believe it can be used. Sellers are morally bound to provide whatever service they know the buyers understood the sellers were promising to provide, and at the point of sale, sellers should correct any customer misunderstandings of which they are aware.[32] This idea of an implied agreement has also been incorporated into the law. Section 2-315 of the Uniform Commercial Code, for example, reads as follows:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose.

The express or implied claims that a seller might make about the qualities possessed by a product cover a variety of areas and are affected by a number of factors.

## 6.3.2: The Duty of Disclosure

An agreement cannot be binding unless both parties to the agreement know what they are doing and freely choose to do it. This point implies that the seller who intends to enter a contract with a customer has a duty to

### The Duty to Comply with Express or Implied Product Claims

Frederick Sturdivant claimed that sellers have a duty to comply with claims they make about four key product features: reliability, service life, maintainability, and safety."[33, 34]

Interactive

**Reliability**

Claims of *reliability* refer to the probability that a product will function as the consumer is led to expect that it will function. If a product incorporates a number of interdependent components, then the probability that it will function properly is equal to the result of multiplying together each component's probability of proper functioning. As the number of components in a product multiplies, therefore, the manufacturer has a corresponding duty to ensure that each component functions in such a manner that the total product is as reliable as it is implicitly or expressly claimed to be. This is especially the case when malfunction poses health or safety hazards. The U.S. Consumer Product Safety Commission lists hundreds of examples of product hazards on its website (https://www.cpsc.gov).

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disclose exactly what the customer is buying and what the terms of the sale are. At a minimum, the seller has a duty to inform the buyer of any characteristics of the product/service that could affect the customer's decision to purchase it. For example, if a product a customer is buying possesses a defect that poses a risk to the user's health or safety, the customer should be so informed. Some have argued that sellers should also disclose a product's components or ingredients, performance characteristics, costs of operation, product ratings, and any other applicable standards.[35]

Behind the claim that entry into a sales contract requires full disclosure is the idea that an agreement is free only to the extent that one knows what alternatives are available: freedom depends on knowledge. The more the buyer knows about the various other products and services available on the market and the more comparisons the buyer is able to make among them, the more one can say that the buyer's agreement is voluntary.[36]

The view that sellers should provide a great deal of information for buyers has been criticized on the grounds that information is costly and, therefore, should itself be treated as a product for which the consumer should either pay or do without. In short, consumers should freely contract to purchase information as they freely contract to purchase goods, and producers should not have to provide it for them.[37] The problem with this criticism is that the information on which a person bases a decision to enter a contract is a rather different kind of entity from the product exchanged through the contract. Because a contract must be entered into freely and free choice depends on knowledge, contractual transactions must be based on an open exchange of information. If consumers had to bargain for such information, the resulting contract would hardly be free.

## 6.3.3: The Duty Not to Misrepresent

Misrepresentation, even more than the failure to disclose information, renders freedom of choice impossible. That is, misrepresentation is coercive: the person who is intentionally misled acts as the deceiver wants the person to act and not as the person would freely have chosen to act if the person had known the truth. Because free choice is an essential ingredient of a binding contract, intentionally misrepresenting the nature of a commodity is ethically wrong.

Sellers misrepresent a commodity when they represent it in a way deliberately intended to deceive the buyer into thinking something about the product that the seller knows is false. The deception may be created by a verbal lie, as when a used model is described as new, or it may be created by a gesture, as when an unmarked used model is displayed together with several new models. The deliberate intent to misrepresent by false implication is as wrong as the explicit lie.

The varieties of misrepresentation seem to be limited only by the ingenuity of the greed that creates them.[38]

- A computer software or hardware manufacturer may market a product it knows contains "bugs" without informing buyers of that fact.
- A manufacturer may give a product a name that the manufacturer knows consumers will confuse with the brand name of a higher-quality competing product.
- The manufacturer may write *wool* or *silk* on material made wholly or partly of cotton.
- The manufacturer may mark a fictitious "regular price" on an article that is always sold at a much lower "sale" price.
- A business may advertise an unusually low price for an object that the business actually intends to sell at a much higher price once the consumer is lured into the store.
- A store may advertise an object at an unusually low price, intending to "bait and switch" the unwary buyer over to a more expensive product.
- A producer may solicit paid "testimonials" from professionals who have never really used the product.

Sellers can be astonishingly creative. We return to some of these issues when we discuss advertising, later in the chapter.

## 6.3.4: The Duty Not to Coerce

People often act irrationally when under the influence of fear or emotional stress. When a seller takes advantage of a buyer's fear or emotional stress to extract consent to an agreement that the buyer would not make if the buyer were thinking rationally, the seller is using duress or undue influence to coerce. An unscrupulous funeral director, for example, may skillfully induce guilt-ridden and grief-stricken survivors to invest in funeral services they cannot afford. Because entry into a contract requires freely given consent, the seller has a duty to refrain from exploiting emotional states that may induce buyers to act irrationally against their own best interests. For similar reasons, the seller also has the duty not to take advantage of gullibility, immaturity, ignorance, or any other factors that reduce or eliminate the buyer's ability to make free rational choices.

***Quick Review 6.3***
**Moral Duties to Consumers under the Contractual View**

- The duty to comply with express and implied claims of reliability, service life, maintainability, and safety
- The duty of disclosure
- The duty not to misrepresent
- The duty not to coerce

## On the Edge

### Mr. Trump's University

Donald Trump incorporated Trump University in 2004 in New York City as an online company offering web-based classes and CD-ROMs that, according to advertisements, would teach students Trump's "secrets" to making money through real estate investments.[39] On May 27, 2005, the New York State Department of Education notified Trump's company that "use of the word 'university' by your corporation is misleading and violates New York Education Law." The company continued to call itself a university, however, until a few weeks before it went out of business.

In May 2007 the company began offering live "seminars" that, like the online classes, were supposed to teach Trump's "method" of real estate investment. Some ads promised students would "learn from the master—Donald Trump." One advertisement for a live seminar read:

> Come to this FREE introductory class and you'll learn from Donald Trump's handpicked instructors a systematic method for investing in real estate that anyone can use effectively. . . . [by using] the kind of proven expertise contained in Donald Trump's powerful techniques and strategies.

Later, however, when asked under oath about his "handpicked instructors," Mr. Trump stated that he "didn't personally select these instructors," nor did he know, he said, what the instructors told the students at the events. He himself, he said, did not supply the content of the courses; they were developed by an outside adult-education company. Although he was intimately involved in the marketing of the seminars, he said, he was "completely absent" from the operations of the university. Many of his instructors had little or no experience in real estate.

Although the first "introductory seminar" was free, people who attended were urged to sign up for a $1,495 three-day workshop entitled "Profit From Real Estate." Attendees who purchased the three-day workshop were exhorted at the workshop to sign up for one of three "Trump Elite Packages." These included the "Trump Gold Elite" package for $34,995, the "Trump Silver Elite" package for $19,495, or the "Trump Bronze Elite" package for $9,995. The Trump Gold package included four "retreats," during which participants would be given "advanced training" in real estate investing, and three days with a "Trump Mentor" who would "fly into your market and in three action-packed days walk you through every step of a real estate transaction." The Silver package included four retreats but no time with a mentor, while the Bronze package included two retreats and no mentor. Afterward students claimed, however, that they did not receive the kind of mentorship they were promised and that the mentorships petered out after a few meetings.

Corinne Sommer, who worked for a time at Trump University's headquarters as manager of the live events and coordinator of seminars and training, testified under oath that:

> In my experience, the focus of Trump University was on making sales rather than on providing quality educational services. Trump University would lure consumers into the initial free course based upon the name and reputation of Donald Trump, and then once they were there, Trump University personnel would try to up-sell consumers to the next course using high-pressure sales tactics. Far from providing a "complete real estate education," as advertised, Trump University personnel only provided enough information to get students to sign up for the next seminar or program. . . . During the time that I was employed at Trump University, many of the speakers, instructors, and mentors lacked real estate experience. Many of them did not even own houses, and had no experience buying or selling real estate. For example, I recall that David Stamper had no real estate experience; he was a jewelry salesman. However, after working for Trump University for approximately a year on the sales team, he began speaking as an instructor at seminars. Trump University instructors and mentors were not hand-picked by Donald Trump. I believe that in many instances Donald Trump had neither met the instructors or mentors, nor did he know who they were. . . . These people did not necessarily have real estate experience, but were skilled at high-pressure sales. . . . I do not believe that Trump University taught Donald Trump's investing "secrets." Donald Trump came from a wealthy family and had resources at his disposal to purchase real estate—that is the secret—one that the average consumer could not replicate.

While it operated—the company stopped accepting students in 2010—Trump University enrolled some 7,000 people who collectively paid his company more than $40 million. Thousands of those students, and the New York attorney general, launched lawsuits against Trump University that just started coming to trial in 2016. Former students claimed that the promises made in advertising were not fulfilled, and that the instructors/sales people pressured them—a large portion of them senior citizens—into using their retirement savings, or into taking on credit card debt they could not afford, and buy more Trump University courses. Mr. Trump argued that 98 percent of students reported in surveys that the seminars and mentorships were valuable. However, students filled out the surveys with instructors/mentors standing in front of them and while they still needed their mentors to finish teaching them "every step of a real-estate transaction." Moreover, 32 percent of students were so dissatisfied with the $1,495 three-day seminar they immediately demanded their money back, while 16 percent were so dissatisfied with the $34,995 program they too immediately wanted their money back. So the claim that 98 percent were satisfied does not appear valid.

### WRITING PROMPT

**The Contractual View and Trump University**

1. Which of the allegations made against Trump University do you believe are the most serious? Why?
2. Evaluate the ethics of the allegations you believe are most serious; use the standards of the contractual view of the seller's duties to the buyer.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## 6.3.5: Problems with the Contractual View

The main objection to the contractual view focuses on the unreality of the assumptions on which the view is based. First, critics argue, the view unrealistically assumes that sellers make direct agreements with buyers. That is not quite what happens in modern economies. Normally, a series of wholesalers and retailers stands between the producer and the ultimate buyer, the consumer. A manufacturer, for example, may sell a product to the wholesaler, who sells it to the retailer, who finally sells it to the consumer. The manufacturer therefore never enters into any direct contract with the consumer. How then can one say that manufacturers have any contractual duties to the consumer? This lack of any direct contract between the manufacturer and the ultimate consumer was long accepted as a sufficient reason to absolve the manufacturer of any duties toward the ultimate consumer. Suppose, for example, that a manufacturer made a machine the manufacturer knew carried a dangerous defect, and sold it to a retailer, from whom a consumer purchased it. Also suppose that the consumer was seriously injured by the machine. Then the consumer could not hold the manufacturer responsible for the injury because the manufacturer made no contractual promises or guarantees of safety to the consumer. Nor could the consumer hold the retailer responsible because the retailer had no knowledge of the dangerous defect!

Advocates of the contractual view of manufacturers' duties have tried to respond to this criticism by arguing that manufacturers enter into *indirect* agreements with consumers. Manufacturers promote their products through their own advertising campaigns. These advertisements supply the promises that lead people to purchase products from retailers, who merely function as "conduits" for the manufacturer's product. Consequently, through its advertisements, a manufacturer forges an indirect contractual relationship not only with the immediate retailers who purchase the manufacturer's product but also with the ultimate consumers of the product.

## Ethical Application

### Broadened Indirect Contractual Relationships

The most famous application of the doctrine of broadened indirect contractual relationships appears in the now classic court opinion of *Henningsen v. Bloomfield Motors*.[40] Mrs. Henningsen was driving a new Chrysler automobile when it suddenly gave off a loud cracking noise. The steering wheel spun out of her hands and the car lurched to the right and crashed into a brick wall. Mrs. Henningsen sued the manufacturer, Chrysler Corporation. The court opinion read as follows:

> Under modern conditions the ordinary layman, on responding to the importuning of colorful advertising, has neither the opportunity nor the capacity to inspect or to determine the fitness of an automobile for use; he must rely on the manufacturer who has control of its construction, and to some degree on the dealer who, to the limited extent called for by the manufacturer's instructions, inspects and services it before delivery. In such a marketing milieu his remedies and those of persons who properly claim through him should not depend "upon the intricacies of the law of sales. The obligation of the manufacturer should not be based alone on privity of contract [that is, on a direct contractual relationship]. It should rest, as was once said, upon "'the demands of social justice'" *Mazetti v. Armous & Co*. (1913). "If privity of contract is required," then, under the circumstances of modern merchandising, "privity of contract exists in the consciousness and understanding of all right-thinking persons. . . ." Accordingly, we hold that under modern marketing conditions, when a manufacturer puts a new automobile in the stream of trade and promotes its purchase by the public, an implied warranty that it is reasonably suitable for use as such accompanies it into the hands of the ultimate purchaser.

Thus, the car manufacturer, Chrysler, was found liable for Mrs. Henningsen's injuries on the grounds that its advertising had created a contractual relationship with Mrs. Henningsen, and this contract created an "implied warranty" for the car, which the manufacturer had a duty to fulfill.

A second objection to the contractual view focuses on the fact that a contract is a two-edged sword. If a consumer can freely agree to buy a product with certain qualities, the consumer can also freely agree to buy a product without those qualities. That is, freedom of contract allows a manufacturer to be released from contractual obligations by explicitly disclaiming that the product is reliable, serviceable, safe, and so on. Many manufacturers put such disclaimers on their products. The Uniform Commercial Code, in fact, stipulates the following in section 2-316:

**a.** Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults," or other language that in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no warranty.
**b.** When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired, or has refused to examine the goods, there is no implied warranty with regard to defects that on examination ought in the circumstances to have been revealed to him.

The contractual view, then, implies that if the consumer has ample opportunity to examine the product and the seller's disclaimers of responsibility, and voluntarily consents to buy the product anyway, the consumer assumes the responsibility for the defects disclaimed by the manufacturer, as well as for any defects the customer may carelessly have overlooked. Disclaimers can effectively nullify all contractual duties of the manufacturer.

A third objection to the contractual view criticizes the assumption that buyer and seller meet each other as equals in the sales agreement. The contractual view assumes that buyers and sellers are equally skilled at evaluating the quality of a product and that buyers are able to adequately protect their interests against the seller. This assumption is built into the requirement that contracts must be freely and knowingly entered into: both parties must know what they are doing and neither must be coerced into doing it. This equality between buyer and seller that the contractual view assumes derives from the laissez-faire ideology that accompanied the historical development of contractual theory.[41] Classical laissez-faire ideology held that the economy's markets are competitive and that in competitive markets, the consumer's bargaining power is equal to that of the seller's. Competition forces the seller to offer the consumer terms that are as good as or better than those the consumer could get from other competing sellers, so the consumer has the power to threaten to take business to other sellers. Because of this equality between buyer and seller, it was considered fair to allow each to try to outbargain the other and unfair to place restrictions on either. In practice, this laissez-faire ideology gave birth to the doctrine of *caveat emptor*: let the buyer beware.

Yet in the real world, sellers and buyers do not exhibit the equality that these doctrines assume. A consumer who must purchase hundreds of different kinds of commodities cannot hope to be as knowledgeable as a manufacturer who specializes in producing a single product and who has greater bargaining power. Consumers generally have neither the expertise nor the time to acquire and process the information on which they must base their purchase decisions. Consequently, consumers usually must rely on the word and the judgment of the seller in making their purchase decisions and are particularly vulnerable to being harmed by the seller. Equality, far from being the rule (as the contractual view assumes), is usually the exception.

# 6.4: The Due-Care View of the Manufacturer's Duties to Consumers

**OBJECTIVE: Describe the manufacturer's responsibilities to consumers as presented by the due-care view**

The **due-care view of the manufacturer's duties to consumers** is based on the idea that consumers and sellers do not meet as equals and that the consumer's interests are

### Support for the Due-Care View of Business Responsibility

What does the due care view require and what arguments have been developed in support of the view that producers must take due care not to harm consumers.[42, 43, 44, 45]

Interactive

**Manufacturer Has a Positive Duty to Ensure Due Care**

The due-care view holds that consumers must depend on the greater expertise of the manufacturer. Thus, the manufacturer has a duty not only to deliver a product that lives up to the express and implied claims made about it but also to exercise due care to prevent others from being injured by the product even if the manufacturer explicitly disclaims such responsibility and the buyer agrees to the disclaimer. The manufacturer violates this duty and is negligent when there is a failure to exercise the care that a reasonable person could have foreseen would be necessary to prevent others from being harmed by use of the product. Due care must enter into the design of the product; the choice of reliable materials for constructing the product; the manufacturing processes involved in putting the product together; the quality control used to test and monitor production; and the warnings, labels, and instructions attached to the product. In each of these areas, according to the due-care view, the manufacturer, in virtue of a greater expertise and knowledge, has a positive duty to take whatever steps are necessary to ensure that when the product leaves the plant it is as safe as possible, and the customer has a right to such assurance. Failure to take such steps is a breach of the moral duty to exercise due care and a violation of the injured person's right to expect such care—a right that rests on the consumer's need to rely on the manufacturer's expertise.

**Vulnerability of the Customer Calls for Due Care**

**Principle of Non-Harm Is Behind Due Care**

**Solid Ethical Perspectives Underlie Due Care**

particularly vulnerable to being harmed by the manufacturer who has a knowledge and an expertise that the consumer lacks. Because manufacturers are in a more advantaged position, they have a duty to take special care to ensure that consumers' interests are not harmed by the products that they offer. The doctrine of caveat emptor is replaced with a weak version of the doctrine of *caveat vendor*: let the seller beware. A New York court decision neatly described the advantaged position of the manufacturer and the consequent vulnerability of the consumer:

> Today as never before the product in the hands of the consumer is often a most sophisticated and even mysterious article. Not only does it usually emerge as a sealed unit with an alluring exterior rather than as a visible assembly of component parts, but its functional validity and usefulness often depend on the application of electronic, chemical, or hydraulic principles far beyond the ken of the average consumer. Advances in the technologies of materials, of processes, of operational means have put it almost entirely out of the reach of the consumer to comprehend why or how the article operates, and thus even farther out of his reach to detect when there may be a defect or a danger present in its design or manufacture. In today's world it is often only the manufacturer who can fairly be said to know and to understand when an article is suitably designed and safely made for its intended purpose. Once floated on the market, many articles in a very real practical sense defy detection of defect, except possibly in the hands of an expert after laborious, and perhaps even destructive, disassembly. By way of direct illustration, how many automobile purchasers or users have any idea how a power steering mechanism operates or is intended to operate, with its "circulating work and piston assembly and its cross shaft splined to the Pitman arm"? We are accordingly persuaded that from the standpoint of justice as regards the operating aspect of today's products, responsibility should be laid on the manufacturer, subject to the limitations we set forth.[46]

## 6.4.1: Components of Due Care

According to the due-care view, manufacturers or producers exercise sufficient care only when they take adequate steps to prevent whatever injurious effects they can foresee that the use of their product may have on consumers after having conducted inquiries into the way the product will be used and after having attempted to anticipate possible misuses of the product. A manufacturer is not morally negligent, however, when others are harmed by a product and the harm was not one that the manufacturer could have possibly foreseen or prevented. Nor is a producer morally negligent after having taken all reasonable steps to protect the consumer and ensure that the consumer is informed of any irremovable risks that might still attend the use of the product. For example, a car manufacturer cannot be said to be negligent from a moral point of view when people carelessly misuse the cars the manufacturer produces. A car manufacturer would be morally negligent only if it had allowed unreasonable dangers to remain in the design of the car; that is, dangers that consumers cannot be expected to know about or cannot guard against on their own.

### On the Edge

### Tobacco Companies and Product Safety

On June 28, 2010, a mammoth case that had begun more than 10 years earlier finally came to a definitive end.[47] The case, *United States of America v. Philip Morris et al.*, pitted the U.S. Department of Justice (DOJ) against Philip Morris and eight other cigarette companies, and had the DOJ asking that the companies be forced to "disgorge" and give to the government the hundreds of billions of dollars they had earned since 1953. The DOJ argued that since 1953 the companies had conspired to deceive the public about the risks of smoking and its addictive nature, and so had operated as outlaw companies as defined by the Racketeer Influenced and Corrupt Organizations Act (RICO) which requires convicted companies to "disgorge" the profits they had earned. The DOJ showed that the companies met in New York in 1953 and formed a group called the Tobacco Industry Research Committee (TIRC) that began a conspiracy "to deny that smoking caused disease and to maintain that whether smoking caused disease was an 'open question,' despite having actual knowledge that smoking did cause disease." In the 1950s, despite published research showing that smoking causes cancer, the group spent millions of dollars advertising that "there is no proof that cigarette smoking is one of the causes" of lung cancer. For example, one ad virtually shouted: "MORE DOCTORS SMOKE CAMELS THAN ANY OTHER CIGARETTE! Family physicians, surgeons, diagnosticians, nose and throat specialists, doctors in every branch of medicine . . . a total of 113,597 doctors . . . were asked the question: "What cigarette do you smoke?" And more of them named Camel as their smoke than any other cigarette! Three independent research groups found this to be a fact."

From the 1960s to the 1990s, the companies spent hundreds of millions more advertising that "a cause and effect relationship between smoking and disease has not been established." According to the DOJ's evidence, the tobacco companies advertised that nicotine is not addictive even though they knew it was and even as they adjusted the amount of nicotine in cigarettes and "controlled the nicotine delivery of cigarettes so that they could addict new users." The DOJ also provided evidence showing the companies "researched how to target their marketing at children and actively marketed cigarettes to children." Finally, the DOJ claimed that the companies had a duty to test their product, to design a safe product, and to warn users of its dangers, yet the companies instead did no research and tried to suppress research on smoking risks, even as they marketed a product that killed 400,000 to

500,000 Americans a year. Until forced to do so in 1969, they did not warn smokers of the health risks and addictive nature of smoking and they targeted children who could not adequately assess the true risks of smoking. In 2006, in a 1,652-page opinion, Judge Gladys Kessler of the U.S. District Court for the District of Columbia ruled that the DOJ had fully proved its case against the tobacco companies. However, she also ruled against the DOJ's demand that the companies should be forced to turn over all the profits they had made by conspiring to deceive and harm the public since 1953. Instead, she ruled, the companies would only be "prevented and restrained" from "committing future RICO violations." Almost immediately after Judge Kessler's decision, both the DOJ and the tobacco companies appealed her decision to the U.S. Supreme Court. Four years later, on June 28, 2010, the U.S. Supreme Court ruled that Judge Kessler's decision should not be overturned and so rejected the appeals, bringing the decade-long case to an end.

WRITING PROMPT

**Apply Due Care to the Tobacco Industry**

1. If the DOJ claims are true, as Judge Gladys Kessler determined, what does the due-care view of the manufacturer's duties imply with respect to the ethical obligations of the tobacco companies? To what extent did the tobacco companies meet these obligations?
2. Should the tobacco companies have been forced to turn over the profits they made from their "conspiracy"? Why or why not?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

### The Manufacturer's Due-Care Responsibilities

What specific responsibilities does the duty to exercise due care impose on the manufacturer? In general, the manufacturer's responsibilities would extend to the three areas described below.[48]

Interactive

**Due Care in Design** | **Due Care in Production** | **Due Care in Marketing**

The manufacturer should ascertain whether the design of an article conceals any dangers, whether it incorporates all feasible safety devices, and whether it uses materials that are adequate for the purposes the product is intended to serve. The manufacturer is responsible for being thoroughly acquainted with the design of the item and to conduct research and tests extensive enough to uncover any risks that may be involved in employing the article under various conditions of use. This research requires analyzing consumers and their behavior, testing the product under different conditions of consumer use, and selecting materials strong enough to stand up to all probable usages. The effects of aging and wear should also be analyzed and taken into account in designing a product.

In determining the safeguards that should be designed into a product, the manufacturer must also take into consideration the capacities of the persons who will use the product. If a manufacturer anticipates that a product will be used by persons who are immature, mentally deficient, or too inexperienced to be aware of the dangers attendant on the use of the product, the manufacturer owes them a greater degree of care than if the anticipated users were of ordinary intelligence and prudence. For example, children cannot be expected to realize the dangers involved in using electrical equipment. Consequently, if a manufacturer anticipates that an electrical item will probably be used by children, steps must be taken to ensure that a person with a child's understanding will not be injured by the product.

### 6.4.2: Difficulties with Due Care

The basic difficulty raised by the due-care view is that no clear method exists for determining when one has exercised enough due care. That is, there is no hard-and-fast rule for determining how far a firm must go to ensure the safety of its product. Some authors have proposed this general utilitarian rule: the greater the probability of harm and the larger the population that might be harmed, the more the firm is obligated to do. However, this rule fails to resolve some important issues. Every product involves at least some small risk of injury. If the manufacturer should try to eliminate even low-level risks, the manufacturer would be required to invest so much in each product that the product would be priced out of the reach of most consumers. Moreover, even attempting to balance higher risks against added costs involves measurement problems; for example, how does one quantify risks to health and life?

A second difficulty raised by the due-care view is that it assumes that the manufacturer can discover the risks that attend the use of a product before the consumer buys and uses it. In fact, in a technologically innovative society, new products whose defects cannot emerge until years or decades have passed will continually be introduced into the market. Only years after thousands of people used and were exposed to asbestos, for example, did a clear correlation emerge between the incidence of cancer and exposure to asbestos. Although manufacturers may have greater expertise than consumers, their expertise does not make them omniscient. Who, then, is to bear the costs of injuries sustained from products whose defects neither the manufacturer nor the consumer could have uncovered beforehand?

The due-care view appears to some to be paternalistic: it assumes that the manufacturer should be the one who makes the important decisions for the consumer, at least with respect to the levels of risks that are proper for consumers to bear. One may wonder whether such decisions should not be left up to the free choice of consumers, who can decide for themselves whether they want to pay for additional risk reduction.

***Quick Review 6.4***
**Problems with the Due-Care View**

- No method exists to determine how much due care a manufacturer should exercise and how much it should spend doing so.
- It does not indicate who should pay for product injuries that cannot be foreseen.
- It puts the manufacturer in a paternalistic position of deciding how much risk is best for consumers.

## 6.5: The Social Costs View of the Manufacturer's Duties to Consumers

**OBJECTIVE: Examine the broader role of manufacturer responsibility as expressed by the social costs view**

A third view of the duties of the manufacturer extends the manufacturer's duties beyond those imposed by contractual relationships and beyond those imposed by the duty to exercise due care in preventing injury or harm. The *social costs view of the manufacturer's duties to consumers* holds that a manufacturer should pay the costs of any injuries sustained through any defects in the product, even when the manufacturer exercised all due care in the design and manufacture of the product and has taken all reasonable precautions to warn users of every foreseen danger. According to the social costs view, a manufacturer has a duty to assume the risks of even those injuries that arise out of defects in the product that no one could reasonably have foreseen or eliminated. The social costs view is a strong version of the doctrine of *caveat vendor:* let the seller beware.

### 6.5.1: Utilitarian Arguments Underlying the Social Costs View

The social costs view, which has formed the basis of the legal doctrine of **strict liability**, is founded on utilitarian arguments.[49] The utilitarian arguments for this view hold that the "external" costs of injuries resulting from unavoidable defects in the design of an artifact constitute part of the costs society must pay for producing and using an artifact. By having the manufacturer bear the external costs that result from these injuries as well as the ordinary internal costs of design and manufacture, all costs are internalized and added on as part of the price of the product. Internalizing all costs in this way, according to proponents of this view, will lead to a more efficient use of society's resources for three main reasons:

1. Because the price will reflect all the costs of producing and using the artifact, market forces will ensure that the product is not overproduced and resources are not wasted on it. (By contrast, if some costs were not included in the price, then manufacturers would tend to consume resources to produce more than is needed.)
2. Because manufacturers have to pay the costs of injuries, they will be motivated to exercise greater care and

thereby reduce the number of injuries. Therefore, manufacturers will strive to cut down the social costs of injuries, which means a more efficient use of our resources. To produce the maximum benefits possible from our limited resources, therefore, the social costs of injuries from defective products should be internalized by passing them on to the manufacturer even when the manufacturer has done all that could be done to eliminate such defects.

3. Internalizing the costs of injury in this way enables the manufacturer to distribute losses among all the users of a product instead of allowing losses to fall on a few injured individuals who otherwise would have to bear all the costs of injury. Such a distribution of costs would seem to be more fair than imposing the costs on a few victims.

Underlying this third view of the duties of the manufacturer are the standard utilitarian assumptions about the value of efficiency. This view assumes that an efficient use of resources is so important for society that social costs should be allocated in whatever way will lead to a more efficient use and care of our resources. On this basis, the social costs view argues that a manufacturer should bear the social costs for injuries caused by defects in a product even when no negligence was involved and no contractual relationship existed between the manufacturer and user.

## On the Edge

### Selling Personalized Genetics Directly to Consumers

About 250 companies on the Internet now sell genetic tests directly to consumers. These companies include 23andMe, Navigenics, GenePlanet, Gene by Gene, DNA Tribes, Genelex, Genova Diagnostics, Sure Genomics, Suracell, African Ancestry.[50] The companies ask customers to collect a sample of their genetic DNA with a cheek swab and send it to them for testing. During testing, most companies put the customer's gene sample on a small flat "DNA microarray chip" that already contains pieces of DNA matching known genes (or gene mutations). If one of the customer's genes matches one of the pieces of DNA on the chip, it binds to the DNA fragment, which creates a tiny fluorescent glow showing that the gene indicated by the DNA fragment is in the sample. A computer then analyzes the pattern of glowing spots on the chip and prints out a list of the genes (or gene mutations) in the customer's sample. Scientists have discovered a few genes that are associated with specific diseases or personal characteristics. Studies found, for example, genes or gene mutations that are linked to cystic fibrosis, Tay Sachs disease, and Lou Gehrig's disease, genes that increase the risk of certain breast, colon, and thyroid cancers, and genes associated with sensation seeking, eye color, obesity, and lactose intolerance. They also found that some genes are more often found in people whose ancestors came from certain regions of the world. The gene-testing companies say that based on these studies and their own genetic research, they can give customers valuable personalized information (for a price, of course).

Critics say that some companies make claims that have little scientific validity. One company, Gene Planet, advertises on its website that it provides "an individually tailored diet and life-style plan based on a genetic analysis of each individual . . . based on the fact that each individual possesses a specific genetic makeup and therefore each individual has specific nutritional needs." Another site promises: "Based upon . . . [genetic] analysis, Suracell recommends to each client a personalized regimen of nutraceuticals [vitamin supplements]." Thirty companies offer to identify people's ancestry based on their genetic profiles. One company, for example, states: "DNA Tribes . . . uses genetic material . . . to measure your genetic connections to individual ethnic groups and major world regions." Several companies offer paternity testing and "infidelity" tests, including a British company named "Who'z the Daddy?" Thirty-eight companies claim they test for genes related to athletic performance, such as DNA Fit, which advertises that "we test your DNA for 20 key genes to help you truly understand your body, and how best to train for your genetics." For $1,500 Map My Gene offers to test for 46 distinct talents and character traits such as optimism and shyness.

A couple of companies offer to test for compatibility between lovers. Instant Chemistry, Inc., for example, claims on its website that "scientific research has shown that relationship markers—a combination of genetics and psychology—strongly affect who we are attracted to and how successful our relationships are. . . . Complementary genes result in a higher level of physical attraction and a higher likelihood of a long-term stable relationship." Some companies, like Chemlaba, claim to do it all: "With a simple saliva sample we'll help you gain insight into your traits, from baldness to muscle performance. Discover risk factors for 95 diseases. Know your predicted response to drugs, from blood thinners to coffee. And uncover your ancestral origins." Critics claim, however, that with a few exceptions, most studies have shown only weak connections between genes and specific traits, disease risks, drug responses, nutritional or vitamin needs, talents, athletic performance, compatibility, or ancestral origins. Many studies that link specific genes to a disease are only preliminary, and the full picture has not yet been worked out, while other studies conclude that many traits are the result of complex and unclear interactions among many genes and the environment.

Moreover, critics say, it is wrong to tell customers their genes put them at risk of a deadly disease without proper counseling, especially when the scientific studies are weak and many other environmental, demographic, and lifestyle factors determine actual onset of a disease. Some critics argue that unexpected information about one's ancestry or paternity or susceptibility to a disease could have a profound and potentially harmful impact on a person. Ordinary consumers, critics conclude, are being sold a product that they do not have the expertise to interpret. However, defenders of the tests say consumers have a right to know what genes they carry and what science has learned about those genes. Besides, some companies claim, much of the information they provide is something that "is fun" to know and can have little if any harmful consequences. The companies charge as little as $150 to test for two or three genes, and perhaps $1,500 to test for a full suite of genes.

WRITING PROMPT

**Evaluate the Ethics of Do-It-Yourself Genetic Testing**

1. Evaluate the ethics of selling gene tests directly to consumers like these genetic-testing companies are doing. What would each of the three views of a business's duties to consumers say about what the companies are doing? Under what conditions do you think selling the tests would be ethically legitimate, and why?
2. Check out the video of the U.S. Government Accountability Office's undercover interviews with salespeople at direct-to-consumer genetic-testing companies at *http://www.gao.gov/products/gao-10-847t*. Evaluate the selling practices shown in the video.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## 6.5.2: Criticisms and Defense of the Social Costs View

Arguments for and against the social costs view deserve much more discussion than we can give them here. The view is essentially an attempt to come to grips with the problem of allocating the costs of injuries between two morally innocent parties: the manufacturer who could not foresee or prevent a product-related injury and the consumer who could not guard against the injury because the hazard was unknown. This allocation problem will arise in any society that, like ours, has come to rely on technology whose effects do not become evident until years after the technology is introduced. Unfortunately, it is also a problem that may have no "fair" solution.

Defenders of the social costs view have replied that in reality, the costs of consumer liability suits are not large. Studies have shown that the number of liability suits filed in state courts has increased at a fairly low rate.[51] Less than 1 percent of product-related injuries results in suits, and successful suits average payments of only a few thousand dollars.[52] Defenders of the social costs view also point out that insurance companies and the insurance industry as a whole have remained quite profitable; they also claim that higher insurance costs are due to factors other than an increase in the amount of liability claims.[53]

***Quick Review 6.5***
**Criticisms of the Social Cost View**

- It is unjust to manufacturers since compensatory justice says one should compensate injured parties only if the injury was foreseeable and preventable.
- It falsely assumes that the social cost view prevents accidents; instead, it encourages consumer carelessness by relieving them of responsibility for their injuries.
- It has increased the number of successful consumer lawsuits, which imposes heavy losses on insurance companies and makes insurance too expensive for many firms; however, studies show only a small increase in lawsuits, and insurance firms remain profitable.

# 6.6: Advertising Ethics

**OBJECTIVE: Assess the ethical concerns associated with information and persuasion in advertising**

The advertising industry is a massive business. Over $189 billion was spent in 2015 on advertising in the United States, and $592 billion worldwide.[54] In the United States, more than $58 billion was spent on digital advertising alone and another $28 billion on mobile Internet advertising.[55] There are over 6,000 advertising agencies in the United States, and many of them employ several thousand people.

Who pays for these advertising expenditures? In the end, advertising costs must be covered by the prices consumers pay for the goods they buy—the consumer pays. What do consumers get for their advertising dollar? According to most consumers, they get very little. Surveys have shown that 66 percent of consumers feel that advertising does not reduce prices, 65 percent believe it makes people buy things they should not buy, 54 percent feel advertisements insult their intelligence, and 63 percent feel advertisements do not present the truth.[56] However, defenders of the advertising industry see things differently.

### Criticisms of the Social Costs View

Justice based in hindsight, concern for what really makes consumers safe, and burdens placed on the producer and insurers are three arguments against the social costs view.[57, 58, 59]

Interactive

**The Social Costs View Is Unjust**

The major criticism of the social costs view of the manufacturer's duties is that it is unjust. It is unjust, critics charge, because it violates the basic canons of compensatory justice. Compensatory justice implies that a person should have to compensate an injured party only if the person could have foreseen and prevented the injury. By forcing manufacturers to pay for injuries they could neither foresee nor prevent, the social costs view (and the legal theory of "strict liability" that flows from it) treats manufacturers unjustly. Moreover, insofar as the social costs view encourages passing the costs of injuries on to all consumers (in the form of higher prices), consumers are also being treated unfairly since they had nothing to do with the injuries.

**The Social Costs View Contains an Incorrect Assumption**

**The Social Costs View Places an Undue Burden**

Advertising, they claim, "is, before all else, communication."[60] Its basic function is to provide consumers with information about the products available to them—a beneficial service.[61]

Is advertising a waste or a benefit? Does it harm consumers or help them?

## 6.6.1: Distinguishing Advertising from Other Communication

***Commercial advertising*** is sometimes defined as a form of "information" and an advertiser as "one who gives information." The definition of *commercial advertising* implies that the principal function of advertising is to provide information to consumers. However, this definition fails to distinguish advertisements from, say, articles in publications such as *Consumer Reports*, which compare, test, and objectively evaluate the durability, safety, defects, and usefulness of various products. One study found that more than half of all television ads contained no consumer information whatsoever about the advertised product and that only half of all magazine ads contained more than one informational cue.[62] Consider how much information is conveyed by the following advertisements:

"Got Milk?" (America's Dairy Farmers and Milk Processors)
"Just do it" (Nike)
"Embrace your demons" (cinnamon-flavored Altoids)
"Think different" (Apple)
"Can you hear me now? Good." (Verizon)

"Have it your way" (Burger King)
"Inside every woman is a glow just waiting to come out" (Dove soap)
"It is, in the end, the simple idea that one plus one can, and must, equal more than two" (Chrysler cars)
"I'm lovin' it" (McDonald's)
"The United Colors of Benetton" (Benetton)
"Before there was a Land Rover there was a dream" (Land Rover SUV)

Advertisements often do not include much objective information for the simple reason that their primary function is not that of providing unbiased information. The primary function of commercial advertisements, rather, is to sell a product to prospective buyers, and whatever information they happen to carry is subsidiary to this basic function and usually determined by it.

A more helpful way of characterizing commercial advertising is in terms of the buyer–seller relationship: commercial advertising can be defined as a certain kind of communication between a seller and potential buyers. It is distinguished from other forms of communication by the following two features:

1. Advertising is publicly addressed to a mass audience as distinct from a private message to a specific individual. Because of this public feature, advertising can have widespread social effects.
2. Advertising is intended to induce members of its audience to buy the seller's products. An advertisement can succeed in this intent in two main ways:
   a. By creating a desire for the seller's product in consumers
   b. By creating a belief in consumers that the product is a means of satisfying some desire the buyer already has

Discussion of the ethical aspects of advertising can be organized around the various features identified in this definition: its social effects, its creation of consumer desires, and its effects on consumer beliefs. We begin by discussing the social effects of advertising.

***Quick Review 6.6***
**Characteristics of Advertising**

- It is a public communication aimed at a large social group intended to induce members of this audience to buy the seller's products.
- It succeeds by creating a desire for the seller's product or a belief that a product will satisfy a preexisting desire.

## 6.6.2: The Social Effects of Advertising

Critics of advertising claim that it has several adverse effects on society: it degrades people's tastes, it wastes valuable resources, and it creates monopoly power. We examine these criticisms, one by one.

**THE PSYCHOLOGICAL EFFECTS OF ADVERTISING** A familiar criticism of advertising is that it debases the tastes of the public by presenting irritating and aesthetically unpleasant displays.[63] To be effective, advertisements must often be intrusive, strident, and repetitive. Therefore, so that they are understood by the most simple-minded person, advertisements are often boring, insipid, and insult the intelligence of viewers. In illustrating the use of toothpaste, mouthwashes, deodorants, and underwear, for example, advertisements sometimes employ images that many people find vulgar, offensive, disgusting, and tasteless. However, although these sorts of criticisms may be accurate, they do not seem to raise truly ethical issues. It is certainly unfortunate that advertisements do not measure up to our aesthetic norms, but this does not imply that they also violate our ethical norms.

More to the point is the criticism that advertising debases the tastes of consumers by gradually and subtly inculcating materialistic values and ideas about how happiness is achieved.[64] Because advertising necessarily emphasizes the consumption of material goods, people are led to forget the importance of their other, more basic needs and of other, more realistic ways of achieving self-fulfillment. As a result, personal efforts are diverted from "nonmaterialistic" aims and objectives, which are more likely to increase the happiness of people, and are instead channeled into expanded material consumption. Consumer advocate Mary Gardiner Jones once wrote, for example, that the message of any television advertisement has two basic premises:

- The first is that it is by acquiring things that we will "gratify our basic and inner needs and aspirations." That is, all of our problems will be "instantly eliminated by the use of a product."
- The second premise is that everyone is "externally motivated," in the sense that we all want to emulate "our neighbors" or "popular successful individuals" and that personal success comes from having external things instead of being "the product of years of study and training." Advertisements lead us to adopt this "essentially materialistic" message.[65]

The difficulty with this kind of criticism, however, is that it is uncertain whether advertising actually has the large psychological effects the criticism attributes to it.[66] A person's beliefs and attitudes are notoriously difficult to change without their willingness to accept the message being offered. Thus, the success of advertising may depend more on its appeal to the values consumers already possess than on its ability to instill new values. If this is so, then advertising does not so much create society's values as reflect them.

# On the Edge

## Advertising Death to Kids?

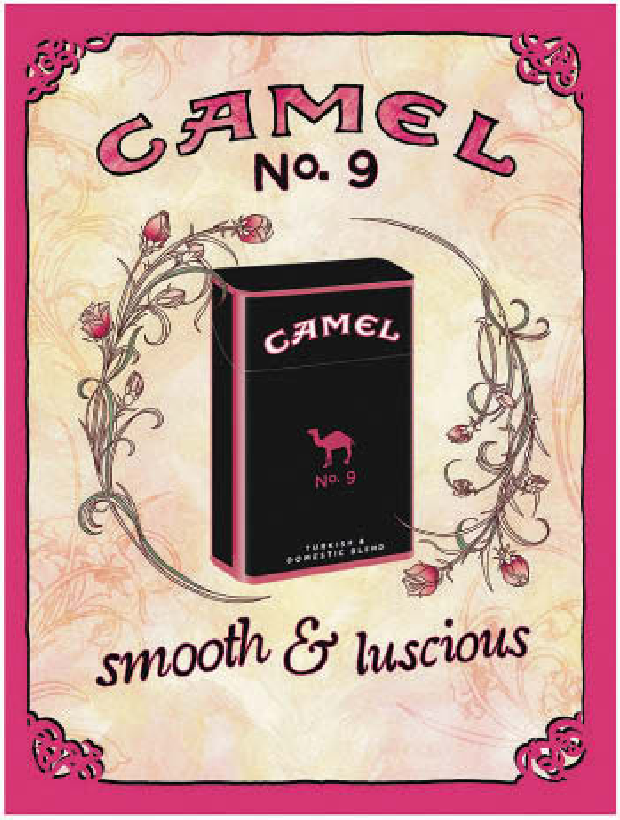
Because they end up killing 4 million of their worldwide customers each year, tobacco companies like R.J. Reynolds have to keep recruiting new smokers.[67] Few people start smoking after they reach adulthood (88 percent of smokers start before they are 18), so new recruits have to come from the ranks of children. As an internal report by a cigarette company stated: "Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens." So in spite of a 1998 legal settlement prohibiting cigarette promotions aimed at children, R.J. Reynolds (RJR) has run large multi-page ads promoting a "collaboration between Camel and independent artists and record labels" in *Rolling Stone* magazine whose readers include more than 1.5 million teenagers. The tobacco ads featured cartoons of animals, monsters, aliens, and space ships and references to "an alternate dimension where everyone wears Black Converse." RJR has marketed Camel cigarettes flavored with tastes of cocoa, Asian mint, sweet apple, and toasted honey. An internal RJR memo suggested making "a cigarette which is obviously youth oriented . . . for example, a flavor which would be candy-like but give the satisfaction of a cigarette." RJR has also promoted a new product, "Camel No. 9," packaged in a pink wrapper, in women's magazines whose readers include a high percentage of young girls. The number of teen girls who now say Camel ads are their favorite ads has doubled since the promotion began.

RJR and the other cigarette companies also heavily advertise e-cigarettes, whose vapors contain formaldehyde, heavy metals, and nicotine. Several studies have shown that smoking e-cigarettes ultimately encourages users to begin smoking ordinary cigarettes. The legal restrictions on advertising of regular cigarettes

### Did You Try Smoking as a Teenager?

Many of us tried cigarettes when we were younger; perhaps it was a one-time experiment or a few years' habit. Some of us have continued smoking. We may not have thought about it when we were 13, but tobacco companies were pitching cigarettes to us even then.

Interactive




RJR promoted this pink-colored Camel No. 9 cigarette box in magazines whose readers included a high percentage of young girls.

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do not apply to e-cigarettes, which are advertised with the same marketing tactics earlier used to advertise ordinary cigarettes. The cigarette companies have developed e-cigarettes with flavors that are designed to appeal to youngsters. RJR, for example, now sells crema-, chai-, berry-, and mint-flavored e-cigarettes.

The tobacco companies are spending more money (now a record 90 percent of the $12.5 billion they spend on tobacco promotions) advertising in retail stores and other places where their ads will be visible to children, placing them at children's eye level or next to candy shelves. At least once a week, most teens (75 percent) visit retail stores, 80 percent of which post tobacco ads inside, and 60 percent of which post tobacco ads outside. Advertisements for those cigarette brands most popular with children reach 80 percent of children an average of 17 times a year. According to the U.S. Surgeon General, cigarettes are known to injure nearly every bodily organ by inducing deadly cancerous tumors inside the mouth, lungs, throat, larynx, esophagus, bladder, stomach, cervix, kidney, and pancreas, and by causing emphysema and heart attacks. Joe Tye, an industry critic, argues that cigarette advertisements are the most deceptive of all advertisements because they use "images of independence" to promote products that cause "profound dependence," images of "health and vitality" to promote products that cause "disease and suffering," and images of "life" to promote products that bring "death." Numerous studies show banning cigarette ads would significantly reduce teen smoking. However, tobacco companies oppose ad restrictions. They argue that ad restrictions violate free speech; that cigarette ads are not deceptive and smokers know the risks which are on every pack and ad; that people have a right to smoke and to have information about cigarette brands; that cigarette ads do not make people start smoking or smoke more but only keep smokers from changing brand; and that cigarette ads do not intentionally target children.

### WRITING PROMPT

**The Ethical Duties of Manufacturing and R.J. Reynolds**

1. What, if any, are the ethical reasons why RJR should change its promotions and what, if any, changes should it make? Are any of the arguments tobacco companies make in their defense legitimate? Explain.
2. What would each of the three views of a manufacturer's duties to consumers imply about RJR's cigarette promotions?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

**ADVERTISING AND WASTE** A second major criticism brought against advertising is that it is wasteful, and thus it violates utilitarian principles.[68] Economists sometimes distinguish between production costs and selling costs.

- *Production costs* are the costs of the resources consumed in producing or improving a product.
- *Selling costs* are the additional costs of resources that do not go into changing the product but are invested instead in getting people to buy the product.

The costs of resources consumed by advertising, critics claim, are essentially "selling costs": they are not used to improve the product, but to merely persuade people to buy it. The resources consumed by advertisements do not add anything to the utility of the product.

Substantial uncertainty surrounds the question of whether advertising is responsible for a rise in the total consumption of goods.[69] Studies have shown that advertising frequently fails to stimulate consumption of a product, and consumption in many industries has increased despite minimal advertising expenditures. Thus, advertising appears to be effective for individual companies not because it expands consumption, but only because it shifts consumption away from one product to another. If this is true, then economists are correct when they claim that, beyond the level needed to impart information, advertising becomes a waste of resources because it does nothing more than shift demand from one firm to another.[70]

Moreover, even if advertising were an effective spur to consumption, many authors have argued, this is not necessarily a blessing. E. F. Schumacher, Herman E. Daly, and other economists have claimed that the most pressing social need at present is finding ways to *decrease* consumption.[71] Increasing consumption has led to a rapid industrial expansion that has polluted much of the natural environment and has rapidly depleted our nonrenewable resources. Unless we limit consumption, we will soon outrun the finite natural resources our planet possesses with disastrous consequences for us all. If this is so, then the claim that advertising induces ever higher levels of consumption is not in its favor.

**ADVERTISING AND MARKET POWER** For many decades, Nicholas Kaldor and others have claimed that the massive advertising campaigns of modern manufacturers enable them to achieve and maintain monopoly (or oligopoly) power over their markets.[72] Monopolies, as we have seen, lead to higher consumer prices. Kaldor's argument was simple. Large manufacturers have the financial resources to mount massive and expensive advertising campaigns to introduce their products. These campaigns create in consumers a "loyalty" to the brand name of the manufacturer, giving the manufacturer control of a major portion of the market. Small firms are then unable to break into the market because they cannot finance the expensive advertising campaigns that would be required to get consumers to switch their brand loyalties. As a result, a few

### Do Advertisements Waste Resources or Add Utility?

Critics assert that resources used in advertising are "wasted" because they are expended without adding to consumer utility in any way. Defenders of advertising counter that information brings utility and that advertising creates a beneficial rise in demand.[73, 74, 75]

Interactive

**Advertising Produces and Transmits Information**

Defenders of advertising argue that advertising does in fact produce something: it produces and transmits information on the availability and the nature of products. Yet as many have pointed out, even in this respect, the information content of advertisements is minimal and could be transmitted by substantially less expensive means.

**Advertising Serves to Produce a Rise in the Demand for All Products**

large oligopoly firms emerge in control of consumer markets from which small firms are effectively barred. Advertising, then, is supposed to reduce competition and raise barriers to entry into markets.

However, is there a connection between advertising and market power? If advertising does raise costs for consumers by encouraging monopoly markets, there should be a statistical connection between the amount of advertising revenues spent by an industry and the degree of market concentration in that industry. The more concentrated and less competitive industries should exhibit high levels of advertising, whereas less concentrated and more competitive industries should exhibit correspondingly lower levels. Unfortunately, the statistical studies aimed at uncovering a connection between advertising intensity and market concentration have been inconclusive.[76] Some concentrated industries (e.g., soaps, cigarettes, breakfast cereals) expend large amounts on advertising, but others (e.g., drugs, cosmetics) do not. Moreover, in at least some oligopoly industries (e.g., the auto industry), smaller firms spend more per unit on advertising than the large major firms. Whether advertising harms consumers by diminishing competition is an interesting but unsettled question.

The criticisms of advertising based on its social effects are inconclusive. They are inconclusive because it is unknown whether advertising has the capacity to produce the effects that the critics assume it has. To establish the case for or against advertising on the basis of its effects on society will require a great deal more research on the exact nature of the psychological and economic effects advertising has.

***Quick Review 6.7***
**Criticisms of Advertising Based on Its Social Effects**

- It debases the tastes of the public; but this criticism is not a moral criticism.
- It inculcates materialistic values; but this criticism ignores the lack of evidence that advertisements can change people's values.
- Its costs are selling costs that, unlike production costs, do not add to the utility of products and so waste resources; but this criticism ignores how advertising can increase consumption, which is good; however, studies suggest advertising does not increase consumption and, anyway, increasing consumption is not necessarily good.
- It is used by big firms to create brand loyalties that let them become monopolies or oligopolies; however, this criticism ignores studies showing that monopoly or oligopoly firms do not advertise more than small firms.

## 6.6.3: Advertising and the Creation of Consumer Desires

John K. Galbraith and others have argued that advertising is manipulative: it is the creation of desires in consumers for the sole purpose of absorbing industrial output.[77] Galbraith distinguished two kinds of desires: those that have a "physical" basis, such as desires for food and shelter, and those that are "psychological in origin," such as the individual's desires for goods that "give him a sense of personal achievement, accord him a feeling of equality with his neighbors, direct his mind from thought, serve sexual aspiration, promise social acceptability, enhance his subjective feeling of health, contribute by conventional canons to personal beauty, or are otherwise psychologically rewarding."[78] The physically based desires originate in the buyer and are relatively immune to being changed by persuasion. The psychological desires, however, are capable of being managed, controlled, and expanded by advertising. Because the demand created by physical needs is finite, producers soon produce enough to meet these needs. If production is to expand, therefore, producers must create new demand by manipulating the pliable psychological desires through advertising. Advertising is therefore used to create psychological desires for the sole purpose of "ensuring that people buy what is produced"—that is, to absorb the output of an expanding industrial system.

The effect of this management of demand through advertising is to shift the focus of decision in the purchase of goods from the consumer, where it is beyond control, to the firm, where it is subject to control.[79] Production is not molded to serve human desires; rather, human desires are molded to serve the needs of production. If this view of Galbraith's is correct, then advertising violates the individual's right to choose: Advertising manipulates the consumer. The consumer is used merely as a means for advancing the ends and purposes of producers, and this diminishes the consumer's capacity to freely choose.[80]

It is not clear that Galbraith's argument is correct. As we have already seen, the psychological effects of advertising are still unclear. Consequently, it is unclear whether psychological desires can be manipulated by advertising in the wholesale way that Galbraith's argument assumes.[81] Moreover, as F. A. von Hayek and others have pointed out, the "creation" of psychological wants did not originate with modern advertising.[82] New wants have always been "created" by the invention of novel and attractive products (such as the first bow and arrow, the first painting, the first perfume), and such a creation of wants seems harmless enough.

However, although it is unclear whether advertising as a whole has the massive manipulative effects that Galbraith attributes to it, it is clear that some particular advertisements are at least intended to manipulate. They are intended to arouse in consumers a psychological desire for the product without consumers' knowledge and without consumers being able to rationally weigh whether the product is in their own best interests. Advertisements that intentionally rely on "subliminal suggestion," or that attempt to make consumers associate unreal sexual or social fulfillment with a product, fall into this class, as do advertisements that are aimed at children.

Suppa Corporation in Fallbrook, California, briefly tested candy advertisements printed on paper on which the word *buy* was written so it would register subconsciously, but could not be consciously perceived unless one specifically looked for it. Subsequent tests showed that the ads created more of a desire to buy candy than those printed on paper on which the word *no* appeared in a similar subliminal manner.[83] Manipulative ads aimed at children are exemplified by a criticism the National Advertising Division of the Council of Better Business Bureaus recently leveled at a Mattel, Inc. television commercial aimed at children, which mixed animation sequences with group shots of dolls. Children who are still learning to distinguish between fantasy and reality, the council felt, would not be given "an accurate depiction of the products" pictured in the advertisements.[84] The council also criticized a Walt Disney Music Co. advertisement of a limited-time offer that conveyed a "sense of urgency" that children might find "overwhelming." Critics have also claimed that television shows of animated characters resembling toy dolls and figures that are advertised on the same show are, in effect, prolonged advertisements for these toys. The effect of such "half-hour advertisements," they allege, is to manipulate vulnerable children by feeding them commercials under the guise of entertainment.[85] Moreover, such advertisement programs often contain high levels of violence because their cartoon superhero characters, such as "He-Man," "Rambo," "GI Joe," and "Transformers," are violent. Advertising that promotes toys modeled on violent characters or promotes military toys indirectly promotes aggression and violent behavior in children who are highly suggestible and easily manipulated, critics claim, and it is therefore unethical.[86] Advertisements of this sort are manipulative insofar as they circumvent conscious reasoning and seek to influence the consumer to do what the advertiser wants and not what is in the consumer's interests.[87] Specifically, they violate the consumer's right to be treated as a free and equal rational being.

***Quick Review 6.8***
**Criticism of Advertising Based on Its Effects on Desires**

- Galbraith claimed advertising creates psychological desires that, unlike physical desires, are pliable and unlimited.
- Psychological desires are created so firms can use consumers to absorb industrial output.
- Using consumers in this way treats people as means and not as ends and so is unethical.
- This criticism ignores studies that suggest advertising cannot create and manipulate desires; on the other hand, subliminal ads can manipulate desires, and children's desires can be manipulated.

## 6.6.4: Advertising and Its Deceptive Effects on Consumer Beliefs

The most common criticism of advertising concerns its effect on consumer beliefs. Because advertising is a form of communication, it can be as truthful or deceptive as any other form of communication. Most criticisms of advertising focus on the deceptive aspects of modern advertising.

Deceptive advertising can take several forms. An advertisement can misrepresent the nature of the product by using deceptive mock-ups, using untrue paid testimonials, inserting the word *guarantee* where nothing is guaranteed, quoting misleading prices, failing to disclose defects in a product, misleadingly disparaging a competitor's goods, or simulating well-known brand names. Some deceptive forms of advertising involve more complex schemes. For example, bait advertisements announce the sale of goods that later prove not to be available or to be defective. Once consumers are lured into the store, they are pressured to purchase another, more expensive item.

A long ethical tradition has consistently condemned deception in advertising on the grounds that it violates consumers' rights to choose for themselves (a Kantian argument) and on the grounds that it generates a public distrust of advertising that diminishes the utility of this form and even of other forms of communication (a utilitarian argument).[88] The central problem, then, is not understanding why deceptive advertising is wrong, but understanding at what point it becomes deceptive and, therefore, unethical.

The moral issues raised by advertising are complex and involve several still unsolved problems. Table 6.1 summarizes the main factors that should be taken into consideration when determining the ethical nature of a given advertisement.

***Quick Review 6.9***
**Deceptive Advertising Requires . . .**

- An author who (unethically) intends to make the audience believe what he or she knows is false by means of an intentional act or utterance
- Media or intermediaries who communicate the false message of the advertisement and so are also responsible for its deceptive effects
- An audience who is vulnerable to the deception and who lacks the capacity to recognize the deceptive nature of the advertisement

# 6.7: Consumer Privacy

**OBJECTIVE: Outline ethical and unethical business practices as they relate to the consumer's right to privacy**

Advances in computer-processing power, database software, and communication technologies have given us the power to collect, manipulate, and disseminate personal information about consumers on an unprecedented scale. This new power over the collection, manipulation, and dissemination of personal information has enabled mass invasions of the privacy of consumers and has created the potential for significant harm arising from the spread of mistaken or false information.

## Ethical Application

### British Intelligence and the U.S. Medical Information Bureau

In Great Britain, companies register with the government the kind of information they will collect from consumers. A pair of British investigators reported that businesses were collecting highly detailed and very personal information about their customers. For example, the Midland Bank was given approval to collect information about the sex lives of customers who were applying for insurance; another company was cleared to collect and store sexual and political information about any of its customers. In other instances, a retailer, W.H. Smith, had permission to collect sexual data for "personnel and employee administration"; a leisure company, Grand Metropolitan, could store similar information for use by its corporate lawyers; and BT was approved to collect information about political party affiliation "as a reference tool."[89]

In the United States, fairly complete files on the medical history of consumers is maintained by the Medical Information Bureau (MIB), a company founded in 1902 to provide insurance companies with information about the health of individuals applying for life insurance to detect fraudulent applications. The MIB currently has medical histories on about 15 million people. Information is collected from the forms consumers fill out when applying for life insurance, the applicant's physician, hospitals, employment records, the Department of Motor Vehicles (DMV), and even interviews with employers or friends. However, information in these files is sometimes inaccurate. One individual was erroneously reported to have AIDS and to be gay, whereas another was wrongly reported to be an alcoholic.[90]

### Three Elements of Communication: Participation in Deception

All communication involves three elements:
The author(s) who originates the communication
The medium that carries the communication
The audience who receives the communication.

Because advertising is a form of communication, ethical problems related to deception can be organized around these three elements of communication.

Interactive

**The Author's Role in Deception**

Deception involves three necessary conditions in the author of a communication:

1. The author must intend to have the audience believe something false.
2. The author must know it is false.
3. The author must intentionally utter or do something that leads the audience to believe the falsehood.

These conditions indicate that the deliberate intent to have an audience believe something false by merely implying it is already a deception. They also indicate, however, that the advertiser cannot be held morally responsible for misinterpretations of an advertisement when these are the unintended and unforeseen results of unreasonable carelessness on the part of the audience. The "author" of an advertisement should be taken to include not only the heads of an advertising agency but also the persons who create advertising copy and those who "endorse" a product. By offering their positive cooperation in the making of an advertisement, they become morally responsible for its deceptive effects as long as they knew what they were doing and could have opted out of doing it.

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**Table 6.1** Evaluating an Advertisement for Ethics

Three main factors should be considered when evaluating the ethics of an advertisement: social effects, effects on desire, and effects on belief. This table presents the main factors and the types of questions associated with them.

Interactive

| Main Factor | Associated Questions |
|---|---|
| Social effects | What does the advertiser intend the effect of the advertisement to be? What are the actual effects of the advertisement on individuals and on society as a whole? |
| Effects on desire | Does the advertisement inform or does it also seek to persuade? If it is persuasive, does it attempt to create an irrational and possibly injurious desire? |
| Effects on belief | Is the content of the advertisement truthful? Does the advertisement have a tendency to mislead those to whom it is directed? |

Check Your Understanding

The most complete files on consumers are those maintained by credit bureaus. Credit bureaus provide credit reports about specific individuals to banks, retailers, employers, and other businesses who ask for information about specific customers. These credit reports include information about a person's credit card accounts, mortgages, bank loans, student loans, history of payments on these with special notes on late payments, foreclosures, bankruptcies, details about loan amounts, nonpayment of property taxes, personal or property liens, divorce proceedings, marriage licenses, driver licenses, civil lawsuits, present and past employers, present and previous addresses, and other personal information compiled from various sources. Currently, three main bureaus—Experian (formerly TRW), Equifax, and TransUnion LLC—compile information on about 150 million consumers. Every day fresh credit data come into each bureau that must be entered into the appropriate files. Equifax has estimated that its staff must input some 65 million updates each day. Not surprisingly, a study by *Consumer Reports* found errors in 43 percent of the reports they analyzed.[91] These errors can result in a person being refused a loan, credit card, or job. Beyond the problems created by errors in the data files maintained on them, consumers worry that the detailed information that credit bureaus compile will be given to inappropriate parties. For example, until a few years ago, credit bureaus would sell names from their files to junk mailers. The potential for invading consumers' privacy is clearly quite high. To discuss this issue, however, it is important to have a clearer idea about what privacy is and why consumers and others have a right to privacy.

## 6.7.1: Defining the Right to Privacy

Speaking broadly, the right to privacy is the right to be left alone. We do not discuss this broad characterization of the right to privacy, however, but concentrate on privacy as the right of individuals not to have others spy on their private life. In this more narrow sense, the *right to privacy* can be defined as the right of persons to determine what, to whom, and how much information about themselves will be disclosed to other parties.[92]

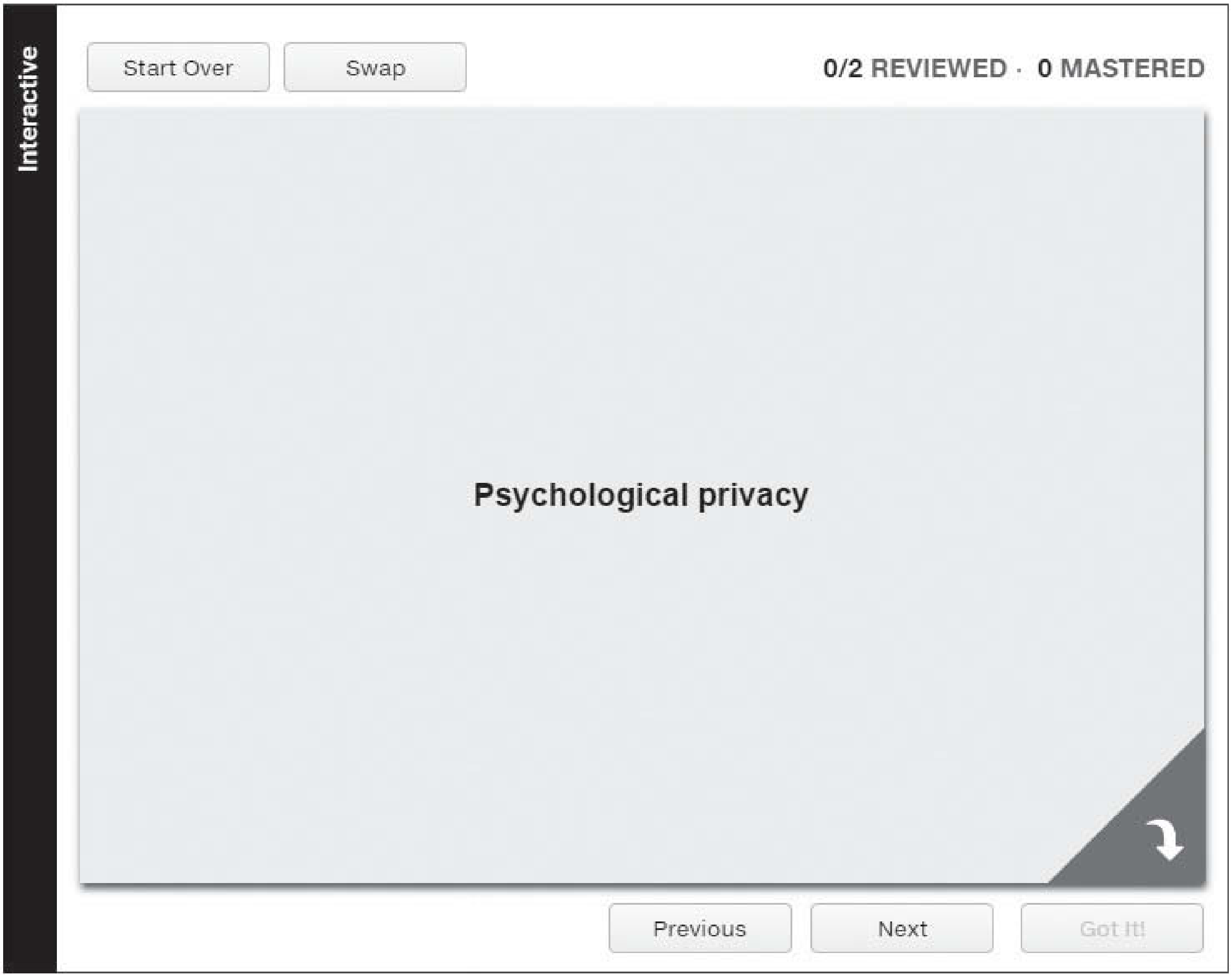
The purpose of rights is to enable individuals to pursue their significant interests and to protect these interests from the intrusions of other individuals. To say that persons have a moral right to something is to say at least that they have a substantial interest in that "something." To claim that people have a right to privacy, therefore, implies that people have a substantial interest in privacy and see it as so important that it should be protected by giving it the status of a right.

***Quick Review 6.10***
**The Value of Privacy**

- It protects individuals from disclosures that can shame, can encourage interference in one's private life, hurt loved ones, and lead to self-incrimination.
- It enables the intimacy that develops personal relationships, the trust and confidentiality that underlies client-professional relationships, the ability to maintain distinct social roles, and the ability to determine how others will see us.

### Psychological and Physical Privacy

There are two basic types of privacy: psychological and physical.[93]



### Valuable Functions of Privacy

Why is our interest in privacy considered important enough to surround it with the protection of a right? Privacy is important because it has several protective and enabling functions.[94]

Interactive

Protective Functions | Enabling Functions

Privacy has the following protective functions:

1. Privacy ensures that others do not acquire information about us that, if revealed, would expose us to shame, ridicule, embarrassment, blackmail, or other harm.
2. Privacy also prevents others from interfering in our plans simply because they do not hold the same values we hold. Our private plans may involve activities that, although harming no one, might be viewed with distaste by other people. Privacy protects us against their intrusions and thereby allows us the freedom to behave in unconventional ways.
3. Privacy protects those whom we love from being injured by having their beliefs about us shaken. There may be things about ourselves that, if revealed, might hurt those whom we love. Privacy ensures that such matters are not made public.
4. Privacy also protects individuals from being led to incriminate themselves. By protecting their privacy, people are protected against involuntarily harming their own reputations.

## 6.7.2: Privacy within a Business Context

Clearly, our interest in privacy is important enough to recognize it as a right that all people have, including consumers. However, this right must be balanced against the rights and legitimate needs of others. For example, if banks are to provide loans to individuals, they need to know something about the credit history of those individuals and how diligent they have been in repaying previous loans. Consumers ultimately benefit from such a banking system. Insurance companies that provide life insurance need to know whether an individual has any life-threatening illnesses, and so they must have access to the individual's medical information. Consumers benefit from having life insurance available to them. Thus, businesses can provide significant consumer benefits, but they can provide those benefits only if agencies exist that can collect information about individuals and make that information available to those businesses. At the same time, consumers' rights to privacy have to be balanced with the legitimate needs of businesses. Several considerations have been suggested as key to balancing legitimate business needs with the right to privacy: purpose; relevance; informing, consent; accuracy; and security, recipients, and uses. See Table 6.2 for details on each of these considerations.

**Table 6.2** Business Efforts to Respect the Right to Privacy

| Consideration | Description |
|---|---|
| **Purpose** | The purpose for which information about specific consumers is collected must be a legitimate business need. In this context, a purpose is legitimate if it results in benefits that are generally enjoyed by the people about whom the information is being collected. Consumers benefit, for example, if banks are generally willing to extend loans, insurers are generally willing to insure them, and credit card companies are generally willing to provide credit. This point does not mean that a specific individual will benefit from having personal information available to, say, a bank, because the bank may refuse to give that specific person a loan on the basis of the person's credit record. It merely means that consumers benefit generally from having a banking system (or credit card or insurance system) available that is willing to provide loans, and such a system requires a mechanism for collecting information on its potential customers. |
| **Relevance** | Databases containing information on consumers should include only information that is directly relevant to the purpose for which the database is being compiled. Thus, credit information provided to banks or credit card issuing agencies should not include information about sexual orientation, political affiliations, medical history, or other information not directly relevant to determining an individual's creditworthiness. |
| **Informing** | Entities collecting information on consumers should inform consumers that the information is being collected and inform them about the purpose for which the information is being collected. Doing so enables consumers to voluntarily choose not to engage in those transactions that will result in revealing information about themselves that they do not want to reveal. |
| **Consent** | A business should collect information about an individual only if that individual has explicitly or implicitly consented to provide that information to that business and only if the information is to be used for the purpose for which the individual consented to have it used. Consent may be explicit, such as when a person provides information on a credit card application. However, consent may be implicit, such as when a person makes a purchase with a credit card knowing that a record of that purchase will be kept by the company issuing the credit card and the record will be collected by a credit bureau. In the latter case, the very act of using the credit card constitutes acceptance of the conditions the credit card company imposes on use of the card, particularly if the credit card company has explicitly advised the consumer that such information will be collected and reported to a credit bureau. |
| **Accuracy** | Agencies collecting information on a person must take reasonable steps to ensure that the information they store is accurate and that any inaccuracies called to their attention are corrected. Toward this end, agencies should allow individuals to see what information they have collected on them and allow them to bring inaccuracies to their attention. |
| **Security, recipients, and uses** | Agencies that collect information on specific individuals must ensure that information is secure and not revealed to parties that the individual has not explicitly or implicitly consented to be a recipient of that information or used in ways to which the consumer did not consent. If an individual provides information to one business so that the business can better serve that individual, it is wrong for that business to give or sell that information to another business without the individual's consent. |

# Web Resources

Readers who want to conduct online research on consumer issues might begin by turning to the websites of the following organizations: the National Safety Council (*http://www.nsc.org*), the Consumer Product Safety Commission (*http://www.cpsc.gov*), and the Federal Trade Commission (*http://www.ftc.gov*). Articles on consumer law can be found at Nolo Press (*http://www.nolo.com*) and *Consumer World* (*http://www.consumerworld.org*). Statistics on consumer injuries can be found at Fatality Analysis Reporting system (*http://www.fars.nhtsa.dot.gov*), National Highway Traffic Safety Administration (*http://www.nhtsa.dot.gov*), FedStats (*https://fedstats.sites.usa.gov*), National Center for Health Statistics (*http://www.cdc.gov/nchs*), and Centers for Disease Control and Prevention "Injury Prevention & Control: Data & Statistics (WISQARS)" (*http://www.cdc.gov/injury/wisqars/index.html*)

## SHARED WRITING

**The Ethics of Consumer Production and Marketing**

1. Discuss the arguments for and against the three main views of the manufacturer's duties to consumers. In your judgment, which view is most adequate, and why? Is one view more appropriate than the others in certain marketing areas? Explain and give examples.
2. Who should decide (a) how much information should be provided by manufacturers, (b) how good products should be, and (c) how truthful advertisements should be? The government? Manufacturers? Consumer groups? The free market? Explain your views.
3. Carefully examine two or more current advertisements taken from newspapers or magazines and assess the extent to which they meet what you would consider adequate ethical standards for advertising. Be prepared to defend your standards.

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit

0 characters | 140 minimum

# **Case Study 6.1:** Promoting Infant Formula in the Twenty-First Century

In July 2015 the United Nations Children's Fund (UNICEF) posted an update on its website stating that in the developing world the deaths of more than 800,000 children under five could be prevented if mothers there would breastfeed their babies instead of trying to feed them on infant formula.[1] Babies that were exclusively breastfed in the first six months of their lives, the update also said, were 14 times less likely to die than those who were not breastfed, and were significantly less likely to die from an acute respiratory infection or diarrhea, the two major killers of children. The benefits of breastfeeding were particularly significant in "developing country situations" where diseases were rampant and access to clean water and sanitation were limited.

The "developing country situations" mentioned in the UNICEF statement include several developing countries in which the aggressive marketing practices of companies that manufactured infant formula had led millions of women to abandon breastfeeding in favor of feeding their babies the infant formulas promoted by the companies. The global infant formula market is lucrative; it was estimated to be about $45 billion in 2014 and was expected to grow to more than $70 billion by 2019.[2] A report issued in 2013 by nongovernmental organization (NGO) Save the Children noted:

> [T]he marketing activities of some manufacturers has led to infant formula being used unnecessarily and improperly, ultimately putting children at risk. In 1981, the World Health Assembly adopted a set of standards known as the International Code of Marketing of Breast-milk Substitutes. . . . "The Code" regulates marketing tactics that can undermine breastfeeding, including advertising, free samples, targeting mothers and health claims on packaging. . . . [T]here continue to be too many examples of violations of the Code by some breast-milk substitute companies. Among the most worrying violations is the alleged targeting of health workers with encouragement to promote the companies' products to mothers of young infants.[3]

The marketing code that had been adopted by the United Nations World Health Assembly in 1981 had been a milestone in a long battle to get the companies that manufacture infant formula to stop promoting their formulas in developing countries where use of the formulas created significant risks for newborns. That battle, which continues to the present day, had begun more than a decade earlier.

## Development of the Infant Formula Market

Infant formulas are manufactured substitutes for breast milk. The first commercial infant formula, called "Liebig's Soluble food for Babies," was developed by Justus von Liebig in 1867 to help mothers who could not nurse their babies and who until then had to rely on homemade brews of fresh cow's milk, cream diluted with water, condensed milk, or mixtures of these combined with corn, flour, or rice.[4] Over the years, other companies began to offer their own infant formulas, and many made important improvements to the formulas, such as adding vitamin C to prevent scurvy and vitamin D to prevent rickets.

By the 1970s, 75 percent of all American babies were being fed infant formula, and two kinds of companies were producing and marketing the formulas: drug companies and food companies.[5]

- The main American drug companies producing infant formula—Bristol-Myers and Abbott Laboratories—tended to emphasize dietary research in the development of their formulas and tended to market their formulas through medical channels: physicians, nurses, hospitals, clinics, professional health journals, pharmacies, and medical detail staff.
- The food companies—Nestlé, a Swiss company, and Borden's and American Home Products, both U.S. companies—entered the infant formula business as a way of diversifying the condensed milk products they were already producing and they tended to market their product through conventional consumer-oriented mass advertising and distribute the formulas along with their other food products.

Birth rates during the 1970s in the United States and Europe were declining, and infant formula companies turned to marketing their products to the developing world where birth rates were still high. In addition, large numbers of people in the developing world were moving into cities and urban areas where they were accessible to modern mass-marketing techniques. In growing cities, married women often had to work outside the home and they too were looking for ways to feed their babies while they were at work.

All of these factors made the developing world an attractive market to the infant formula companies. Bristol-Myers pushed hard to extend the company's reach into the Caribbean, Central America, and the Philippines. Abbott Laboratories moved into Africa and Southeast Asia. American Home Products expanded into Southeast Asia, Latin America, and Africa. Borden's went into Latin America, the Caribbean, and Southeast Asia. Nestlé, which had emerged as the world's largest producer of infant formula, attempted to build up a significant presence in every national market.

As they moved into the developing world, the drug companies continued to rely heavily on medical channels and promoted their infant formulas through doctors, nurses, clinics, hospitals, and pharmacies. In particular, the drug companies provided hospitals with "mothercraft" nurses who dressed in white uniforms and who promoted and distributed samples of the formulas to new mothers along with advice on hygienic child care and feeding.

The food companies, on the other hand, tended to promote their products primarily through intensive mass-media advertising, including sound trucks, newspapers, television, radio, popular magazines, and billboards. Both types of companies, however, learned from each other, and each borrowed and used the marketing practices of the other.

Many medical personnel in the developing world were happy to see the appearance of the infant formulas. Prior to the introduction of the formulas, infants in the developing world were regularly weaned from breast-feeding with rice water, sweetened cow's milk, sweetened condensed milk, and other supplemental foods. The formulas provided a healthier and preferable method of weaning. Moreover, undernourished or sickly mothers had not had a readily available and healthy alternative to supplement their breast milk until the formulas appeared. As well, working mothers could turn to the formulas when work outside the house made it impossible for them to breast-feed their babies. The powdered formulas were especially attractive in tropical regions, since they could be stored without refrigeration.

## Concerns in Developing Countries

As the infant formula manufacturers expanded their marketing into the developing world, health officials began to voice concern that the incidence of malnutrition and diarrhea was rising among babies in developing countries due to an increasing reliance on the formulas and a concomitant decline of breast-feeding. In a series of studies, Dr. Derrick B. Jelliffe and other experts on infant nutrition concluded that the trend toward infant formulas was dangerous and that breast milk was the only ideal food for growing infants because it contains both the nutrients essential to a child's health and the antibodies that protect the child against disease.[6] Moreover, they claimed, using the powdered formulas safely required amenities women in developing countries often did not have.

If a mother is unable to nurse her child, Jelliffe and others argued, then commercial formulas would provide a safe substitute only if they were used under sanitary conditions and according to the instructions provided with the formulas. In the developing countries, they pointed out, these conditions were often absent. Hygiene was lacking, sterilization procedures might be difficult to employ, drinking water was often contaminated, and many mothers were illiterate and so unable to read written instructions. The poor economic conditions of most developing countries also led impoverished mothers to dilute the powdered formulas to make them last longer, leaving the baby undernourished. Dr. Jelliffe summarized these and other dangers related to the use of infant formulas in the developing world:

> We know that infant mortality is rapidly increasing in the developing world. We also know that breast-feeding is decreasing throughout the developing world, while sales of infant formula are increasing by leaps and bounds. There is alarming evidence that the sale of infant formula is leading directly to the infant deaths, and that the formula industry's promotional practices are primarily to blame. Consider how it happens: A poor mother with a new baby is gently urged by "mothercraft" or "milk" nurses at the hospital in which the baby was born, not to breast-feed her infant. Instead, she is told, she should adopt the modern, scientific infant feeding practice of bottle-feeding formula, the same kind of formula advertised on the radio and on billboards and flyers, with pictures of fat happy babies sitting beside cans of powdered formula-just the way all the better educated mothers do these days. Unaware that the "nurse" was being paid a commission to sell the formula, the mother takes her "expert advice," allows her breast milk to dry up and takes the baby home with free bottles and nipples and several cans of formula generously provided by the hospital. Alas, she is illiterate and cannot read the instructions that tell her to sterilize the bottles, the nipples, and the water that she mixes with the formula. Even if she could read, how is she to carry out the sterilization procedures on her three-stone stove? But the water supply is contaminated, and soon the baby develops diarrhea. That lowers his ability to absorb nutrients from the formula. Then, of course, the formula given by the hospital rapidly runs out, and she finds that it is very expensive to buy. So she does not buy enough, and extends it with too much contaminated water. Now the infant has malnutrition added to his intestinal illness, and between them, he dies of malnutrition and dehydration. In order to make a profit on this hitherto untapped market, the infant formula industry, especially Nestlé S.A., has adopted deceptive hard-sell promotional practices (including undermining the mother's confidence in her ability to produce enough milk for her baby) that deliberately disrupt the new mother's breast-feeding in order to sell their product. That disruption was the cause of that child's death . . . by malnutrition.[7]

Dr. Jelliffe estimated that infant deaths in the developing world directly or indirectly attributable to the use of infant formula might be as high as 10 million per year. However, other experts estimated that infant deaths attributable to the use of infant formula numbered about 1.5 million babies a year.

## Organizing to Address Issues and Marketing Practices

In 1974, War on Want, one of several NGOs that had begun to address the issue, published a pamphlet entitled *The Baby Killer*, which drew attention to the activities of the infant formula companies in the developing world. Several of the examples of how the companies were promoting their products involved Nestlé, which by now was the major distributor of infant formula. A year later, another NGO, the Third World Action Group, reprinted the pamphlet in Switzerland with the title *Nestlé Kills Babies!* Nestlé immediately sued the group for libel. Although Nestlé won the suit, the judge at the end of the trial publicly and strongly reprimanded Nestlé for its actions and imposed a token fine of 300 Swiss francs on the publishers of the pamphlet. But the public trial had attracted the attention of the media, and the issue was being publicized throughout the world.

Critics of the infant formula companies focused on two marketing practices of the companies:

1. Intensive consumer advertising that implied that the use of infant formula was nutritionally or socially superior to breast-feeding
2. Use of medical personnel (or people dressed like medical personnel) to endorse or promote the infant formulas directly to new mothers

Doug Clement, one of the founders of the Infant Formula Action Coalition (INFACT), an NGO addressing the issue, said in a public statement that during his own investigative travels through developing nations, he had seen how the companies promoted their formulas. In Thailand and Nigeria, he said, large advertisements of the formulas were plastered on the sides of trucks; in Barbados, Bristol-Meyers advertised its "Enfamil" on the back cover of the telephone book; in the Philippines, color posters on the walls of hospital maternity wards showed healthy babies next to Nestle's formulas. Infant formula ads made up about 14 percent of all radio ads in Kenya, 90 percent of which were for Nestle's Lactogen. In Malaysia the companies hired "Mothercraft nurses" to work as sales people in clinics where they approached new mothers, talked about feeding their babies infant formula, and passed out samples to the mothers. Because they wore white uniforms, the mothers may have thought the Mothercraft nurses were medical personnel and so accepted their recommendations as the "modern, healthy and Western way to feed babies." [8] Over time breast feeding came to be seen as an old and vulgar tradition, while bottle-feeding was accepted as a modern status symbol.

Many NGOs by now had become concerned with the issue and were demanding that the infant formula companies stop selling their formulas in regions where their use created risks for newborns. Others argued that advertisements and labels should state explicitly that breast-feeding was superior to using the formulas and that the formulas were not equivalent or comparable to mother's milk. To demonstrate that many companies failed to explain that using a formula was inferior to breast-feeding, another NGO, the Interfaith Center for Corporate Responsibility, reported that it had analyzed the labels on several cans of infant formula available in stores in Guatemala and that the labels read as follows when translated into English:[9]

**SIMILAC—American Home Products**

"There is no food equivalent that more closely resembles the milk of healthy well-fed mothers. SIMILAC With Iron, Similar to Mother's Milk."

**WYETH S-26—American Home Products**

"Nourishes the baby like the mother's breast. S-6: A superior food for the infant, offers the baby all the formula he wants, just as if you were giving him the breast."

**NAN—Nestlé**

"Maternal Lactation is the most adequate for the baby but in case of its total or partial absence, or if for other reasons it is necessary to replace or complement it, you can use NAN with total confidence, a powdered food quantitatively and qualitatively similar to mother's milk, for use right from the infant's birth."

## Companies Respond

The infant formula companies responded in several ways to the criticisms. Some declared that women of developing nations should be allowed the same freedom of choice to use the formulas that women of developed nations had and it was wrong to deny them that freedom; others argued that the real problems were poverty, illiteracy, and contaminated water, and that they were not responsible for these factors.[10] A spokesperson for Nestlé declared that the criticisms were an "attack on the free world's economic system" and that a "worldwide church organization, with the stated purpose of undermining the free enterprise system, is in the forefront of this activity."[11] Representatives of the drug companies claimed that withdrawing infant formulas from the developing world would create even greater problems for those women who could not nurse their babies. For example, a spokesperson for Abbot Laboratories said:

> [In cases] related to maternal disease, infant deformities, serious illness, prematurity and inadequacy of breast-milk . . . a formula may be necessary to complement or replace breast-milk if the child is to progress normally. . . . [Moreover,] women of low socioeconomic status in developing countries are often malnourished . . . they produce an at-risk newborn of low birth weight in up to 50 percent of the cases. . . . If fed solely at the breast low birth weight infants begin to exhibit signs of growth retardation, reduced activity and other symptoms of serious malnutrition at about three months. . . . The infant's poor state of malnutrition is associated with higher susceptibility to infection and disease. . . . Over time we believe it will become increasingly clear that a high-quality infant formula, closely patterned after breast-milk and fed with breast-milk may be nutritionally preferable for many infants.[12]

Another way the infant formula producers responded to their critics was by adopting codes of ethics that addressed the infant formula issue. For example, Nestlé and several food companies formed the International Council of Infant Food Industries (ICIFI) and pledged to adopt a code of marketing ethics. The code the member companies of the ICIFI adopted stated, in part, the following:

> —Product information for the public will always recognize that breast-milk is the feeding of choice . . . Product labeling will affirm breast-feeding as the first choice for the nutrition of infants . . .
>
> —Explicitly worded instructions and demonstrations for product use will be provided. . . . In cooperation with health authorities, professional communications and educational materials will be provided to caution against misuse . . .
>
> —Individual contacts by mothercraft personnel and issuance of complimentary supplies of breast-milk substitutes will be in consultation with medical or nursing personnel. . . . Mothercraft personnel will support doctors . . . and will not discourage mothers from . . . breast-feeding.[13]

The ICIFI code, however, did not address how the companies should or should not promote their formulas to mothers, nor whether the formulas should be distributed, made available, and sold to mothers who might not be able to use them correctly.

Abbott Laboratories and the other drug companies did not believe that the ICIFI code adequately addressed what they claimed was the major problem: advertising the formulas directly to consumers. Abbott Laboratories developed its own code of ethics that stated, in part, the following:

- We believe that unsupervised, direct promotion of infant feeding products to mothers can unjustly impel them to make decisions concerning the care and nutrition of their babies for which they may lack adequate medical or nutritional knowledge. Therefore, we do not advertise our products through general circulation magazines, directories, newspapers, radio, television, billboards, and other public mass media.
- We do not encourage use of our products where private purchase would impose a financial hardship on the family, or where inadequate facilities for preparation constitute a hazard to infant health.

### International Baby Food Action Network

In 1979, many of the NGOs campaigning against the infant formula companies had joined together to form the International Baby Food Action Network (IBFAN), a coalition of groups dedicated to protecting mothers and children from the risks associated with infant formulas. Once the 1981 International Code of Marketing of Breast-milk Substitutes had been adopted, IBFAN organized a network of 200 groups located in 196 countries to monitor whether the companies were abiding by the code.[14, 15, 16, 17, 18, 19, 20]

Interactive

In 1988, IBFAN published the first of its *State of the Code by Country* reports, which detailed how the infant formula companies were implementing the 1981 code. The findings of the report were disappointing. The companies were not only continuing their intensive promotions of infant formula, but many were doing so in direct violation of the requirements of the code. Particularly troubling was that IBFAN's monitoring revealed that the companies were "flooding health facilities with free and low-cost supplies of their formulas." Also troubling was an announcement by the United Nations' World Health Assembly that it was concerned by "continuing decreasing breastfeeding trends in many countries." Nestlé, especially, seemed to be a repetitive violator of the code. So significant were the violations that IBFAN resumed the boycott of Nestlé in 1988.

1 of 4 Previous Next

- If any contact with mothers is made . . . it must be with the explicit agreement of a health care professional. Samples are supplied only to professional health care personnel at their request. . . .
- Our product label and printed instructions, in addition to stressing the importance of breast-feeding, will emphasize the need for accurate, proper proportions in preparing the formula. Pictographs as well as the written word will be included in appropriate language.[21]

## The Need to Move Further toward a Solution

Like the ICIFI code, the Abbott Laboratories code did not address the question of whether the formulas should be made available and sold to mothers unable to use them correctly. Abbott Laboratories, like the other infant formula companies, often distributed its products through grocery stores and other retail outlets where they could be purchased by anyone. Although the drug companies also sold their products through pharmacies, in most developing countries anyone could purchase any pharmaceutical product without a prescription.

The codes did not satisfy the companies' critics. Thousands of babies, they said, were still dying every day because the drug companies continued to aggressively promote their formulas to women who were unknowingly putting their children's lives at risk. Consequently, in 1977 INFACT organized a worldwide boycott against all Nestlé products, charging them with marketing infant formula in the developing world in ways that were leading to the deaths of hundreds of thousands of babies. Dozens of NGOs around the world supported the boycott. Nestlé was a natural target for INFACT. With revenues of approximately $10 billion in 1977, Nestlé had become the world's largest food-processing

### Importance of Breast-Feeding and Risks Involved in Using Infant Formula

By 2016, medical research had firmly established the enormous health benefits of breast-feeding for babies in both rich and poor countries. It had also established the equally significant risks associated with using infant formulas, particularly during the first six months of a newborn's life.[22, 23, 24, 25]

Interactive

**Importance of Breast-Feeding**

Newborns given breast milk in the first hour of their lives were up to three times more likely to survive than those breast-fed a day later; compared with babies that are exclusively breast-fed for the first six months of their lives. Babies who are not breast-fed are 15 times more likely to die from pneumonia and 11 times more likely to die of diarrhea. Babies who are not breast-fed at all are 14 times more likely to die compared with those who are exclusively breast-fed, while babies who are only partially breast-fed are 4 times more likely to die. Several studies have shown that breast-feeding a baby is associated (later in that child's life) with higher performance in intelligence tests, improved academic performance, increased long-term earnings and productivity, reduced obesity, and reduced incidence of diabetes. Studies have also shown that mothers who breast-feed have a significantly lower risk of breast cancer and ovarian cancer, and that current rates of breast-feeding prevent about 20,000 deaths from breast cancer each year.

**Study on the Benefits of Breast-Feeding**

**Risks Involved in Using Infant Formula**

company and sold more infant formula in countries around the world than any of the other infant formula companies.

The growing awareness of the issue prompted the United Nations to address the problem. In 1981, after working on the issue for many years, and after intense lobbying from numerous NGOs as well as the infant formula companies, the United Nations' World Health Assembly adopted the International Code of Marketing of Breast-milk Substitutes. A full 118 nations voted to adopt the code; only the United States voted against it. The code banned all direct promotion of breast-milk substitutes and set out requirements for labeling and marketing infant formulas by the infant formula companies. Specifically, the code stated that infant formula companies would not promote the formulas directly to the public, either in hospitals or stores; they would not give their formulas to mothers as free samples or gifts, nor provide them to maternity wards or hospitals for free or at subsidized or discounted prices; they would not give the formulas to health workers as gifts; any information about the formulas they provided to health workers would be restricted to factual or scientific information and would not be misleading; they would not promote the formulas to health workers nor would their sales people make any direct contact with mothers; they would not promote any of their other drinks or foods as appropriate for babies; they would label their products with directions that were in a language mothers could understand and that provided clear health warnings; they would not idealize the formulas nor idealize the use of infant formula; they would not use pictures of babies on the labels of their products.[26]

The code was voluntary, and initially only a few dozen nations passed legislation mandating the code. Nevertheless, most of the drug companies pledged to abide by the code. Although Nestlé at first refused to adopt the code, in January 1984, the company finally succumbed and agreed it would implement the code in developing countries. In response to Nestlé's agreement, INFACT agreed to suspend the boycott, but vowed that they would continue to monitor whether the companies were abiding by the code.

## Where We Are Today

By 2016, the ethics of promoting infant formulas was being questioned not just in developing countries, but in all countries.

### WRITING PROMPT

**Evaluate the Ethics of Infant Formula Marketing**

1. How did the marketing strategies of food companies such as Nestlé differ from those of drug companies such as Abbot Laboratories? How did the code of the International Council of Infant Food Industries (ICIFI) fit the marketing strategies of the food companies, and how did the code developed by Abbot Laboratories fit the marketing strategies of the drug companies?
2. Assess whether it would be ethically right for the infant formula companies to withdraw their products totally from the developing world, basing your assessment on the probable costs and benefits of withdrawing, the way that withdrawal would impact the rights of stakeholders in the developing world, the justice of withdrawing, and the impact that withdrawal would have on the obligations of caring.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Case Notes


1. "Breastfeeding," UNICEF, July 2015, accessed April 15, 2016, http://www.unicef.org/nutrition/index_24824.html.
2. Nigel C. Rollins et al., "Why Invest, and What It Will Take to Improve Breastfeeding Practices?" *Lancet* 387, no. 10017 (January 30, 2016): 495.
3. Frances Mason, Kathryn Rawe, and Simon Wright, *Superfood For Babies: How Overcoming Barriers to Breastfeeding Will Save Children's Lives* (London: Save the Children, 2013).
4. Harvey Levenstein, *Revolution at the Table: the Transformation of the American Diet* (New York: Oxford University Press, 1988), p. 122.
5. The information in this and the following paragraph is drawn from James E. Post, "The International Infant Formula Industry," in *Marketing and Promotion of Infant Formula in the Developing Nations, 1978: Hearings Before the Subcommittee on Health and Scientific Research of the Committee on Human Resources*, United States Senate, 95th Cong. (1978), pp. 215–41. The text of the hearings are hereafter cited as "Hearings." The full text of the *hearings* is available at https://catalog.hathitrust.org/Record/002755265.
6. D. B. Jelliffe, *Child Nutrition in Developing Countries* (Washington, DC: U.S. Government Printing Office, 1966). See also D. B. Jelliffe, "World Trends in Infant Feeding," *American Journal of Clinical Nutrition* 29, no. 11 (1976): 1227–37.
7. Ibid.
8. Doug Clement, "Infant Formula Malnutrition: Threat to the Third World," *Christian Century*, March 1, 1978, p. 209.
9. *Hearings*, pp. 720–21.
10. See Post, "The International Infant Formula Industry," p. 124.
11. *Hearings*, p. 127.
12. Ibid., pp. 263–68.
13. Ibid., pp. 887–88.
14. "History of the Campaign," Baby Milk Action, accessed May 1, 2016, http://archive.babymilkaction.org/pages/history.html.
15. Ibid.
16. A. Taylor, "Violations of the International Code of Marketing of Breast Milk Substitutes: Prevalence in Four Countries," *British Medical Journal* 316 (1998): 1117–12.
17. Association for Rational Use of Medication in Pakistan, *Milking Profits: How Nestl, Puts Sales Ahead of Infant Health* (Islamabad, Pakistan: Association for Rational Use of Medication in Pakistan, December 1999), http://archive.babymilkaction.org/pdfs/milkingprofits.pdf.
18. Luann Martin, *Infant and Young Child Feeding Programme Review:* Case Study: Uganda (New York: UNICEF, 2009).
19. Mary Champeny et al., "Point-of-Sale Promotion of Breastmilk Substitutes and Commercially Produced Complementary Foods in Cambodia, Nepal, Senegal and Tanzania," *Maternal & Child Nutrition* 12, Suppl. 2 (2016): 126–39.
20. Bureau Veritas, *Independent Assurance of Compliance with the Nestlé, Policy and Instructions for Implementation of the WHO International Code of Marketing of Breast Milk Substitutes in Pakistan (August 2015)* (London: Bureau Veritas UK Ltd., 2015), http://www.nestle.com/asset-library/documents/r_and_d/compliance/assurance-statement-bureau-veritas-pakistan-2015.pdf.
21. Ibid., pp. 206–7.
22. Frances Mason, Kathryn Rawe, and Simon Wright, *Superfood for Babies: How Overcoming Barriers to Breastfeeding Will Save Children's Lives* (London: Save the Children, 2013).
23. Cesar G. Victora et al., "Breastfeeding in the 21st century: Epidemiology, Mechanisms, and Lifelong Effect," *Lancet* 387, no. 10017 (January 30, 2016): 475–90.
24. Ibid.
25. Rollins et al., "Why Invest, and What It Will Take," p. 499.
26. *International Code of Marketing of Breast-Milk Substitutes* (Geneva: World Health Organization, 1981), http://www.who.int/nutrition/publications/code_english.pdf.


# Case Study 6.2: Reducing Debt at Credit Solutions of America

Doug Van Arsdale began Credit Solutions of America (CSA) in 2003 in Richardson, Texas, with five employees.[27] Eventually, the company moved its headquarters to Dallas, grew to more than 1,000 employees in several states, and had tens of thousands of customers enrolled in its debt-reduction programs. Company revenues in 2007 were $77,354,088, double its 2006 revenues of $40,333,517. When Van Arsdale founded CSA, he used his own funds and developed its programs, processes, and procedures on his own. In 2007, the company won the prestigious J.D. Power and Associates award for "An Outstanding Customer Service Experience." Why is it that such an outstanding company, so devoted to serving its customers, was sued by the attorney generals of eight states for customer fraud?[28]

CSA was part of the "debt settlement" or "debt management" industry. Debt settlement companies help consumers who have accumulated a large amount of debt and who are now unable to continue making monthly payments on their debt and who also cannot pay their debts off in full.[29] One option for such consumers is to file for personal bankruptcy in a federal court. Filing for personal bankruptcy stops all collection efforts by creditors and allows a judge to have the debtor's assets sold to pay off as much of his debt as possible, and then to issue a court order that eliminates any remaining debts. When a debtor reaches the point of bankruptcy, he or she will usually have little or no assets left, so creditors often get nothing. Bankruptcy, in effect, allows a person who has been overwhelmed by debt to have his or her debts forgiven and to start over with a clean slate. However, bankruptcy has some long-lasting serious consequences. The bankruptcy will stay on a person's credit report for 10 years, and during that time it will be almost impossible for the person to get a loan, get a credit card, buy a home, buy anything on credit (e.g., a car), and get life insurance. It will also make getting a job difficult. Because of these serious negative consequences, most debtors are reluctant to file for bankruptcy and will first try to find some other way to settle their debts. That is where debt settlement companies come in.

There are several categories of debt settlement companies:

- Some debt settlement companies provide traditional "credit counseling," which consists of showing their customers how to put together a budget and a plan for paying off their debts, and helping them work with creditors to reduce their interest rates or their penalty fees.
- Other debt settlement companies provide "debt consolidation loans," which provide the customer with a single loan that they use to pay off all their other debts. The loan allows repayment over several years so that each month's payment is low enough for the customer to afford.
- A third category of debt settlement companies provide "debt management," which consists of negotiating directly with the customer's creditors on behalf of the customer. They may try to convince the creditors to reduce the customer's monthly payments to an affordable level, usually by making the payoff period longer but sometimes by forgiving part of the debt.

However, these options seemed inadequate to Van Arsdale. Before he founded CSA, he had spent nine months researching and studying the industry.[30] He discovered, he said, that there was a need for an "effective alternative to both bankruptcy and consumer credit counseling." The main problem, he said, was that "in our society, most customers with debt problems are treated poorly [and] I saw that consumers needed someone who was exclusively on their side." So he decided to establish a different kind of debt settlement company, one that would provide more vigorous help to consumers who were being swamped by their debt.

## The Debt Settlement Business Model

CSA initiated a fourth category of debt settlement companies. This fourth category consisted of companies that engage in an aggressive kind of debt relief that tries to *force* creditors to reduce the customer's debt. Companies in this category work primarily with customers who have unsecured debt (i.e., debt that is not backed by an asset such as a house, a car, or shares of stock) that the creditor can repossess if the customer cannot repay the debt. Since the main form of unsecured debt is credit card debt, most of CSA's customers had credit card debts that they could not repay and whose monthly payments they could no longer afford. A person was required to have had at least $6,000 of unsecured debt to become a customer of CSA.

Debt settlement companies operate by suggesting to their customers that they stop making all monthly payments on their unsecured debts.[31] CSA told its customers that although it could not legally advise them to stop paying their creditors, the CSA "program" would not work unless they stopped making payments. Customers were instructed to open a savings account and each month to deposit there the money they would have used to make their payments. They were also asked to agree to let CSA handle all contacts with their creditors from that point on. After several months of failing to make their regular payments, a customer's debts normally would go into default and the creditors would begin demanding their money, calling and writing letters trying to collect, and even threatening to sue. After a period of time, the debt settlement company, CSA, would contact the creditors and negotiate a substantial reduction of the loan, perhaps suggesting that if the loan is not reduced the creditor may not get any of their money back because the customer may file for bankruptcy.

Although creditors are unwilling to discuss reductions when they are getting their monthly payments, they are more open to doing so when they are not getting any money from the customer anyway—which is why this kind of debt management works only if customers stop making payments on their debts. In many cases, creditors at this point will agree to a settlement (i.e., agree to reduce the debt), perhaps by 30 percent, but very often by as much as 40 percent or even 60 percent, depending on the circumstances and the skills of the negotiator. This part of its program was a feature that Van Arsdale's company often advertised on its website:

> Debt settlement specifically reduces your current outstanding total balances 40–60% . . . A typical settlement can be accomplished within 36 months or less with a lower monthly payment than any other debt resolutions option . . . More than 200,000 people from every walk of life have entrusted us to help them become debt free. Credit Solutions is the industry leader, managing more than $2.25 billion of debt for our clients.[32]

If the negotiations are successful, the customer's debt is reduced to a level he or she can manage but without the negative consequences of a bankruptcy. The customer uses the money he or she has been putting in a savings account to make a beginning lump-sum payment to the creditor and then usually gets back to making monthly payments. Often the reduced debt is low enough for the customer to pay off in a matter of months.

In return for its services, CSA charged a fee of 15 percent of the total debt the customer wanted reduced, and the customer paid this fee in three large payments made in the first three months and then in smaller monthly installments spread over the next 14 months. CSA took these monthly fees out of the savings account the customer opened when he or she first stopped paying creditors. CSA began drawing its fees out of the customer's savings account at the beginning of the program, which was right when the customer would stop making monthly payments on his or her debts, but before the debts had defaulted and so before CSA was to begin to actively negotiate settlements. CSA did not start to negotiate with creditors until several months later when the creditors would be anxious to get at least some of their debt back, and the customer had saved up enough money to make the initial lump-sum payments creditors demand.

## Marketing and the Use of CSA Services

Customers signed up with CSA by calling one of its salespeople. The company had twice as many people working on sales than people working to resolve its customers' credit problems. The company gave its salespeople a script to follow when talking to customers, although the company also advised salespeople: "We are NOT EXCLUSIVELY SCRIPTED! Formulate your own artillery of rebuttals! Don't be a robot! Be creative!"[33] The sales script asked salespeople to explain that CSA's debt settlement was better than debt consolidation or credit counseling and that debt settlement would "dramatically reduce your debt and get you out in 3 years or less." If a customer were to ask, "Will I get sued?" the script suggested a response: "We want to reassure the client that there is nothing that can happen that we will not try to assist them with." If a customer were to ask, "What is this going to do to my credit?" the script suggested asking, "What's your current credit score?" which was designed to distract the customer from his or her own question since most consumers did not know their score. The salesperson might also say, "After you're out of the program, your score will be as good if not better than it is now." If the customer were to ask, "Can you guarantee that my creditors will settle with you?" the script suggested answering, "We guarantee our service fee because we know that your creditors will negotiate a settlement with us. (Let them know that we are currently building relationships with as many creditors as possible.) Some creditors actually set aside certain days of the week just to work with us. Notice, we do not say we 'don't guarantee,' but rather tell them what we can and do guarantee."

Van Arsdale felt that his company was able to provide help right when indebted consumers were at their lowest. "That's where we come into play and ultimately make a difference," he

### Customer Experiences

Some CSA customers posted comments online about their experience with the company.[35]

Interactive

One of CSA's satisfied customers posted a comment about her experience with CSA on *ConsumerAffairs.com*, a website that collects comments about debt settlement:

> I lost my job . . . and joined Credit Solutions in June 2009 after trouble paying all my credit card bills. . . . The first six months of the program was the hardest. I was receiving creditor calls, letters, etc. since I [had] stopped paying my monthly credit card bills. . . . Then, after 6 months an offer came in from a credit card I owed over $5K on . . . and I was able to settle my first account for less than half of what I actually owed. A few months later I paid off two more accounts . . . so I personally think it has been worth it. . . . Plus I have already saved twice as much as their total service fee . . . It is not easy, and yes your credit score will be destroyed, but in my situation, it seemed like the only way to get out of debt. Paying the rent and buying food for the kids seemed more important than my credit score at the time. —Tiffany of Orlando, FL Feb. 9, 2010

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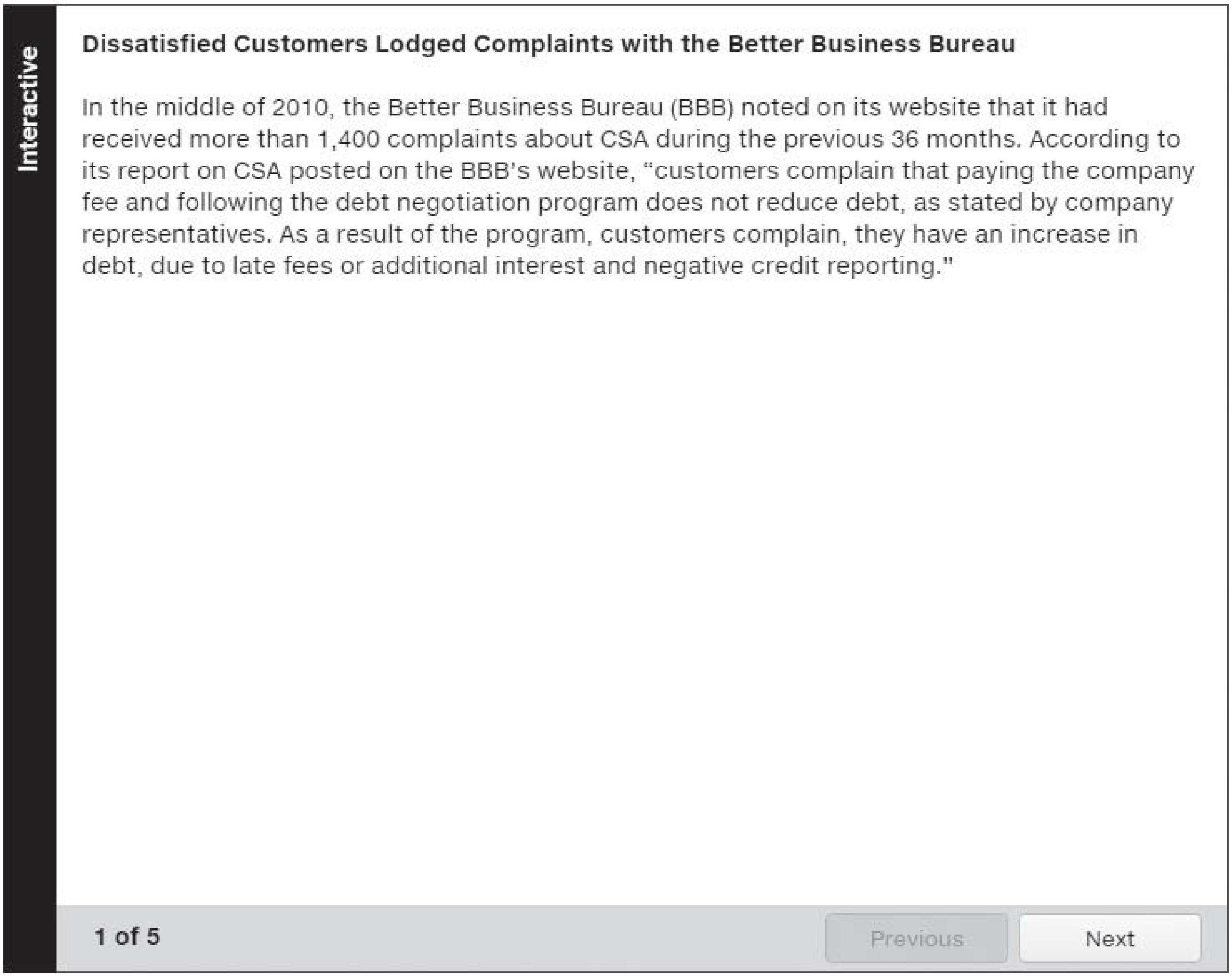
### Customers' Accusations and CSA's Defense against Accusations

Examples of the different types of problems faced by customers and explanations of how CSA handled them are included below.[37, 38, 39]




said.[34] Moreover, the company had even become a helpful resource for the creditors themselves. "Working with us on behalf of our mutual clients is very beneficial to them," he noted. "They save time and money that would have been spent on ineffective collection efforts."

The methods that CSA used to get creditors to reduce their customers' debts put considerable stress on the customers. When a customer stopped making his or her monthly payments, creditors started calling constantly, sending threatening letters, and adding "late fees" and other penalties to the debt. Later creditors may have turned the debt over to a collection agency, which was even more aggressive and harassing to the customer. Eventually, the customer could have been threatened with lawsuits, or the creditor would get a court order that allowed it to "garnish" (to take) part of the customer's wages. Also, the creditor would report the customer's failure to pay his or her debt to a credit agency so the customer's credit rating fell, which made it much more difficult for the customer to get credit in the future. In the extreme, the creditor could have actually sued the customer. Nevertheless, although the process was traumatic, the final outcome had the potential to leave CSA's customers satisfied.

## Complaints and Responses

A website called *Debt Consolidation Care* opened a forum entitled "Credit Solutions—Is it a scam company?" and quickly received over a hundred posts. Some were favorable to the company, such as that of the writer who had almost finished paying off his debts and who "had nothing but good things from them." However, most comments were negative, including one from a writer who signed up with Credit Solutions and then was harassed daily by debt collectors and threatened with lawsuits until "I was near suicidal."[36]

Doug Van Arsdale, who remained CEO of CSA until 2012, said in a statement that CSA "subscribes to the highest ethical standards" and remained focused on its customers.[40] The company, he said, "treats them with respect and assists them with getting their lives back in order, regardless of their situation."[41]

## WRITING PROMPT

**The Ethics of CSA's Business Practices**

1. What stakeholders were affected by CSA's business practices? Explain the ethics of CSA's activities by assessing how it treated those stakeholders.
2. Which complaints made against CSA by customers and others could have been the result of misunderstanding how CSA carries out its debt-reduction activities? Which complaints, if any, cannot be explained as the result of misunderstanding how CSA carries out its debt-reduction activities?
3. In your judgment, should it be illegal for companies to attempt to settle or reduce customers' debts in the way that CSA attempted to do?
4. Suppose that CSA charged no more than it was able to recover for its customers, up to a set maximum charge of, say, $2,000. Would this change make its treatment of its customers ethical? Why or why not?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Case Notes


27. State of Texas v. CSA-Credit Solutions of America, Inc., Case No. D-1-GV-09-000417, Filed March 26, 2009, in the District Court of Travis County, Texas, 261st Judicial District, Plaintiff's Original Petition., p. 6; revenue data and information on Doug Van Arsdale is from "Credit Solutions," The American Business Awards, accessed November 4, 2016, http://www.stevieawards.com/pubs/awards/403_2591_19325.cfm.
28. "News 8 Finds CEO Sued for Deceiving Customers Back in Business," *WFAA.com*, August 10, 2016, http://www.wfaa.com/news/local/investigates/news-8-finds-ceo-sued-for-deceiving-customers-back-in-business/293586107.
29. "Facts for Consumers, Knee Deep in Debt," Federal Trade Commission, accessed January 13, 2011, http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre19.shtm.
30. All Van Arsdale quotations from "Ernst & Young's Entrepreneur of the Year Finalists," *D Magazine*, June 11, 2008 [From D CEO, July 2008], http://www.dmagazine.com/Home/2008/06/05/Ernst__Youngs_Entrepreneur_of_the_Year_Finalists.aspx?redirected=1.
31. State of Texas v. CSA-Credit Solutions of America, Inc., p. 2.
32. Ibid., p. 7.
33. Ibid., pp. 8–12.
34. Quotes are from "Ernst & Young's Entrepreneur of the Year Finalists."
35. "Credit Solutions of America," ConsumerAffairs.com, accessed November 4, 2016, http://www.consumeraffairs.com/debt_counsel/credit_solutions.html#ixzz0xejZbTyl.
36. See Debt Consolidation Care Forums, http://www.debtconsolidationcare.com/settlement/credit-solutions-scam.html.
37. "BBB Reliability Report for Credit Solutions," Better Business Bureau, accessed January 30, http://www.bbb.org/dallas/business-reviews/debt-relief-services/credit-solutions-in-dallas-tx-90005445.
38. David Streitfeld, "2 Firms Accused of Fraud in Debt Settlement," *New York Times,* May 19, 2009.
39. Ibid.
40. "Cuomo Targets Debt Settlement Companies," *CNYcentral.com*, May 8, 2009, accessed January 17, 2011, http://www.cnycentral.com/news/story.aspx?list=190258&id=297298.
41. Quote is from "Ernst & Young's Entrepreneur of the Year Finalists."


# Summary

**1.** Consumers confront a wide array of problems, including dangerous products, deceptive selling practices, products that are poorly made, warranties that are not honored, deceptive advertising, and invasions of privacy. In some ways, the most serious of these is the problem of product safety. Some have argued that product safety should be left to the market since manufacturers will make safer products if consumers demand higher safety. However, these arguments wrongly assume that consumers are fully informed about products and capable of weighing risks rationally. Moreover, many consumer markets are monopolies or oligopolies that limit consumer choices. Since markets cannot be relied on to provide safety, businesses have an obligation to ensure their products are safe. There are three main views concerning the obligations businesses have to provide consumers with safe products: the contractual view, the due-care view, and the social costs view.

**2.** The contractual view assumes that the relationship between a business and its customers is a contractual one in which the business and its customers bargain as equals. The obligations of the business are to comply with all the express and implied claims the business makes about the reliability, service life, maintainability, and safety of its products. In addition, the business must not misrepresent the product and must not coerce its customers in any way. However, businesses have no obligation to provide any safety measures beyond those they explicitly claim their products have. The problem with the contractual view is that many of its key assumptions are mistaken. The maker of a product, for example, does not directly bargain or contract with consumers who buy the product from a retailer; moreover, both the maker and the retailer have much more expertise and knowledge about the product than consumers.

3. The due-care view was developed to correct the deficiencies of the contractual view. The due-care view holds that since the manufacturer is more knowledgeable about its products and since consumers must rely on the manufacturer's expertise, the manufacturer has an obligation to ensure that consumers are not harmed by its products. The manufacturer must therefore exercise "due care" when designing, producing, and marketing products to ensure that consumers are not injured by its products. A problem raised by the due-care view is that it is silent about who should pay for product injuries that cannot be foreseen by either the manufacturer or the consumer.
4. The social costs view (which has formed the basis of the legal doctrine of strict liability) holds that the manufacturer should pay the costs of all injuries caused by defects in its products, even if the manufacturer exercised all due care to prevent any injuries and even if an injury could not be foreseen. The rationale behind the social costs view is that injuries should be treated as part of the "external" costs of bringing a product to market, and such external costs should be internalized by having the manufacturer absorb them and adding them to the price of the product. The social costs view is often criticized as being unjust to manufacturers.
5. Advertising is often criticized for "debasing" the tastes of the public. Lowering public tastes does not seem to qualify as an ethical issue. However, deceptive advertising is certainly an ethical issue, and violates the right of consumers to the truth about the products they buy.
6. Advances in computer hardware and software have given businesses the ability to collect and process large amounts of personal information about consumers. Critics argue that acquiring and using much of this personal information is a violation of consumers—right to privacy. The right to privacy is based on the notion that people have a legitimate interest in being able to control who has access to their personal information. Specifically, the right to privacy provides protective and enabling functions: for example, it ensures that others do not acquire information that would expose an individual to shame or injury; and it enables an individual to develop personal relationships based on confidentiality and to determine how others view him or her. Since consumers are justified in claiming a right to privacy, then, businesses should respect that right by collecting only that consumer information which is necessary and relevant for a legitimate business purpose; by ensuring that the consumer is informed about the purpose of the information being collected; by securing the consumer's consent to collect that information; by ensuring that the information is accurate; and by not allowing the information to be used by others for purposes other than those to which the consumer consented.

## Chapter 7

# The Ethics of Job Discrimination

Female and minority workers are the fastest-growing demographic group of new employees.

## Learning Objectives

**7.1** Describe the legal climate and key legal decisions that have affected how discrimination in the workplace is viewed

**7.2** Analyze the nature of job discrimination based on study of intentional, unintentional, individual, and institutional forms

**7.3** Outline the extent of employment discrimination by making comparisons among groups

**7.4** Analyze discrimination using utilitarian, rights-based, and justice-based arguments

**7.5** Examine the policy of affirmative action from practical, legal, and moral points of view

Businesses not only engage in external exchanges but also coordinate the activities of various internal constituencies. Employees must be hired and organized, stockholders and creditors must be solicited, and managerial talent must be tapped. Inevitably, conflicts arise within and between these internal constituencies as they interact with each other and as they seek to distribute benefits among themselves.

Perhaps more than any other contemporary social issue, discrimination has been approached in ethical terms: the words *justice*, *equality*, *racism*, and *rights* inevitably find their way into debates over the issue. This chapter analyzes the various sides of this ethical issue. The chapter begins by examining the nature and extent of discrimination. It then turns to discussing the ethical aspects of discriminatory behavior in employment and ends with a discussion of diversity and affirmative action programs in business. The chapter explores how companies can make distinctions between job candidates without discrimination, looks at the widespread nature of discrimination, analyzes exactly what is unethical about discriminating by race and gender, and defines and discusses affirmative action and related controversies.

# 7.1: Divided over Discrimination

**OBJECTIVE: Describe the legal climate and key legal decisions that have affected how discrimination in the workplace is viewed**

In 2011, the U.S. Court of Appeals for the Fifth Circuit ruled that the University of Texas at Austin did not engage in racial discrimination when it used race as one criteria for determining which students would be admitted into the university.[1] The admissions process the university used was an *affirmative action* plan aimed at ensuring that the student body of the university included people from a diverse range of geographical areas, socioeconomic classes, experiences, backgrounds, and, of course, races. The ruling of the Fifth Circuit Court was unusual because 15 years earlier, the *same* court had ruled that it was illegal and discriminatory for the university to take race into account in its admissions programs. Thus, in its 2011 decision, the court in effect reversed its own earlier decision.

This reversal was based on a 2003 U.S. Supreme Court decision that had considered the claims of Barbara Grutter, who argued that the University of Michigan had unlawfully discriminated against her when it turned down her application for admission because she is white.

## 7.1.1: A Key Legal Case: Grutter v. Bollinger

When Barbara Grutter was denied admission to the University of Michigan Law School, she sued both the university and Lee Bollinger, president of the university at the time (*Grutter v. Bollinger*). Many companies took notice because they used hiring programs that were in some respects like those of the university. Grutter claimed that the university's affirmative action program had unfairly given preference to minority students with "similar credentials" to her own. Here is the timeline:

- The U.S. District Court for the Eastern District of Michigan first heard her case in the winter of 2001. The district court agreed with Grutter and ruled on March 27, 2001, that the University of Michigan had engaged in a form of racial discrimination by showing preference to minority students in violation of Grutter's right to equal treatment.
- The University of Michigan appealed the district court's ruling to the Court of Appeals for the Sixth Circuit. In a split decision on May 14, 2002, the judges of the court of appeals overturned the earlier district court's ruling. The court of appeals held that the University of Michigan's preferential program was both fair and constitutional to the extent that it sought diversity, defined as a student population that possesses a diverse range of ages, ethnicities, genders, races, talents, experiences, and other significant human qualities.
- Grutter was not satisfied with this decision, so she took her case to the nation's highest court, the U.S. Supreme Court. The Supreme Court, in a separate case (*Gratz v. Bollinger*), had ruled that an affirmative action program used by the University of Michigan in its undergraduate programs was unconstitutional because it was not "narrowly tailored" and so gave *too* much weight to race. Would the Supreme Court also reject the law school's affirmative action program?
- On June 23, 2003, the Supreme Court reached its decision: it is fair and constitutional, the Supreme Court held, for a university to show preference to minorities in admissions if its goal is to achieve "diversity" in a way that is "narrowly tailored" to achieve this goal, and the University of Michigan's Law School program met these criteria.

> Student body diversity is a compelling state interest that can justify using race in university admissions. . . . Major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to

> widely diverse people, cultures, ideas, and viewpoints. . . . Moreover, because universities, and in particular, law schools, represent the training ground for a large number of the Nation's leaders, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity. Thus, the Law School has a compelling interest in attaining a diverse student body. The Law School's admissions program bears the hallmarks of a narrowly tailored plan. . . . Universities cannot establish quotas for members of certain racial or ethnic groups or put them on separate admissions tracks. . . . The Law School's admissions program, [however,] . . . is flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes race or ethnicity the defining feature of the application.[2]

**A CONTROVERSIAL DECISION** Earlier, more than five dozen major U.S. corporations had urged the court to protect the University of Michigan's goal of achieving diversity through its affirmative action program. In an amicus brief (an opinion in favor of a position by a party or parties not directly connected to a case), the corporations—including 3M, Intel, Microsoft, Hewlett-Packard, Nike, Coca-Cola, Shell, Ernst & Young, Kellogg, Procter & Gamble, General Motors, and over 50 others—argued:

> In the experience of [these companies], individuals who have been educated in a diverse setting are more likely to succeed, because they can make valuable contributions to the workforce in several important and concrete ways. First, a diverse group of individuals educated in a cross-cultural environment has the ability to facilitate unique and creative approaches to problem-solving arising from the integration of different perspectives. Second, such individuals are better able to develop products and services that appeal to a variety of consumers and to market offerings in ways that appeal to those consumers. Third, a racially diverse group of managers with cross-cultural experience is better able to work with business partners, employees, and clientele in the United States and around the world. Fourth, individuals who have been educated in a diverse setting are likely to contribute to a positive work environment, by decreasing incidents of discrimination and stereotyping. Overall, an educational environment that ensures participation by diverse people, viewpoints and ideas will help produce the most talented workforce.[3]

While most of the judges of the U.S. Supreme Court agreed with these corporations and their affirmation of the importance of diversity, their decision was not unanimous. Like the judges who had earlier disagreed over the Grutter case, the judges on the Supreme Court were also divided about the fairness of affirmative action programs and the legitimacy of pursuing diversity. Although five of the Supreme Court's nine judges held that affirmative action was fair and not a form of unconstitutional discrimination, four of the judges, including Clarence Thomas, a black man, were harshly critical of that opinion. Thomas asserted that showing preference to minorities was harmful "racial discrimination":

> I believe what lies beneath the Court's decision today are the benighted notions that one can tell when racial discrimination benefits (rather than hurts) minority groups, and that racial discrimination is necessary to remedy general societal ills. . . . Clearly the majority still cannot commit to the principle that racial classifications are per se harmful and that almost no amount of benefit in the eye of the beholder can justify such classifications. . . . This discrimination engender[s] attitudes of superiority or, alternatively, provoke[s] resentment among those who believe that they have been wronged by the government's use of race. These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are "entitled" to preferences.[4]

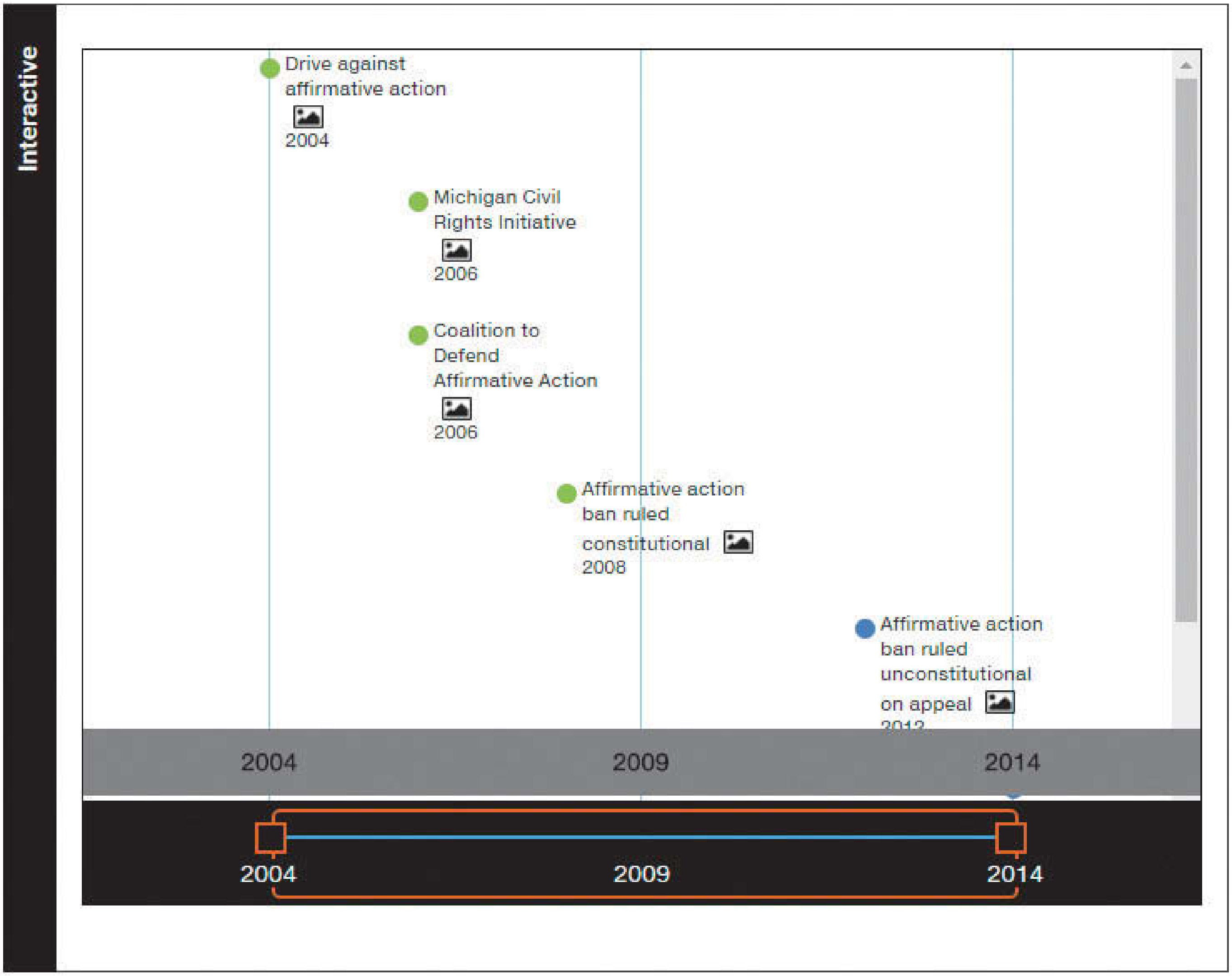
**MORE THAN A DECADE OF DIVISION** The 2003 decision of the U.S. Supreme Court did not end the controversy. After the Supreme Court's decision was announced, the Michigan state legislature began a divisive and rancorous debate over whether to pass a law that would withhold state funds from public universities—including the University of Michigan—that used affirmative action programs. The debate over the issue was so heated and belligerent that a fistfight broke out on the floor of the legislature between opponents and supporters of the measure. In the end, a deeply divided legislature passed the law. Even then the matter did not end.

## 7.1.2: Continuing Debates over Diversity in Business

The 2011 University of Texas court of appeals decision, the 2003 Supreme Court decision in the University of Michigan Law School case, the polarizing campaigns to pass state laws banning affirmative action, and the conflicting judicial rulings on whether such bans are constitutional all indicate that our nation today remains divided over our legacy of discrimination and over the justice of dealing with the effects of past discrimination through affirmative action programs. Many businesses, like the Fortune 500 companies that supported the goal of diversity, believe that it is key to competing in a rapidly globalizing world because, as the Supreme Court stated, "the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." Many, however, believe that attempts to achieve diversity

### From Grassroots to the U.S. Supreme Court: The University of Michigan and Affirmative Action

Developments surrounding *Grutter v. Bollinger* continued for 10 years (from 2004 to 2014) after the U.S. Supreme Court ruled that the university's ban on affirmative action was not unconstitutional.




through affirmative action programs are themselves forms of unjust "reverse discrimination."

The debates over equality, diversity, and discrimination have been prolonged and acrimonious. Controversy continues to swirl around the nature of the plight of racial minorities, the inequality of women, and the harm that whites or males have suffered as a result of preference shown to women and minorities. These continuing debates over racial and sexual diversity have often focused on business and its needs. This focus is inevitable: racial and sexual discrimination have had a long history in business, and diversity is widely believed to have significant benefits for business.

# 7.2: The Nature of Job Discrimination

**OBJECTIVE: Analyze the nature of job discrimination based on study of intentional, unintentional, individual, and institutional forms**

A few years ago, the American Broadcasting Company (ABC) sent a male and female, Chris and Julie, out on a live experiment. Their goal was to apply in person for jobs several companies were advertising. As you will see, the experience of Chris and Julie suggests that discrimination based on gender is alive and well. Results from this experiment lay the groundwork for our analysis of the nature of job discrimination.

## Ethical Application

### Same Qualifications, Different Offers

#### Part 1

Chris and Julie were both blonde, trim, neatly dressed college graduates in their 20s, with identical resumes indicating management experience. Unknown to the companies, both were secretly wired for sound and had hidden cameras. One company indicated in its help-wanted ad that it had several open positions. However, when the company recruiter spoke with Julie, the only job he brought up was a job answering telephones. A few minutes later, the same recruiter spoke with Chris. He was offered a management job. When interviewed afterward by ABC, the company recruiter said he would never want a man answering his telephone. Another company had advertised positions as territory managers for lawn-care services. The owner of the company gave Julie a typing test, discussed her fiancé's business with her, and then offered her a job as a receptionist at $6 per hour. When the owner interviewed Chris, however, he gave him an aptitude test, chatted with him about how he kept fit, and offered him a job as territory manager paying $300 to $500 per week. When the owner was later interviewed by ABC, he commented that women "do not do well as territory managers, which involves some physical labor." According to the owner, he had also hired one other woman as a receptionist and had hired several other males as territory managers.[5]

Several other researchers have replicated the findings of the ABC gender-discrimination study and came up with similar results.[6] Numerous similar experiments suggest that racial discrimination also continues to thrive.

#### Part 2

In a study on racial discrimination, researchers at the Urban Institute paired several young black men with similar young white men, matching them in openness, energy level, articulateness, physical characteristics, clothing, and job experience. Young Hispanic males fluent in English were likewise matched with young white males. Each member of each pair was trained and coached in mock interviews to act exactly like the other, then they applied in person for the same jobs, ranging from general laborer to management trainee in manufacturing, hotels, restaurants, retail sales, and office work. Despite the fact that all were equally qualified for the same jobs, blacks and Hispanics were offered jobs 50 percent fewer times than the young white males. In another study, white students paired with black students applied for low-wage, entry-level jobs in Milwaukee. While the white applicants told employers they had been in jail for 18 months, the black applicants presented themselves with a clean record. Yet the white ex-cons were called back for interviews 17 percent of the time, while their crime-free black equivalents were called back only 14 percent of the time. In short, being black is about equivalent to having an 18-month jail conviction. In yet another study, identical resumes were sent to random help-wanted ads in Boston and Chicago. Half of the resumes carried the "white-sounding" names "Emily" and "Greg," while the other half carried the "African-American-sounding" names "Lakisha" and "Jamal." The white-sounding names received 50 percent more callbacks for interviews.[7]

## 7.2.1: Discrimination Is Not Morally Neutral

Today, outright sexist and racist bigotry is rarely exhibited or expressed openly; on the contrary, virtually everyone will sincerely and forcefully deny that they are prejudiced against women or minorities. Yet, the studies described above suggest that both minorities and women today continue to be treated differently from their white or male counterparts. Studies such as these, as it were, catch us in the very act of discriminating against minorities or women, perhaps without us even realizing what we are doing.

> **The root meaning of the term *discriminate* is "to distinguish one object from another," a morally neutral and not necessarily wrongful activity.**

However, in modern usage, the term often is not morally neutral; it is often intended to refer to the wrongful act of distinguishing illicitly among people not on the basis of individual merit, but on the basis of prejudice or some other invidious or morally reprehensible attitude.[8] This morally charged notion of invidious discrimination as it applies to employment is what is at issue in this chapter. In this sense, to discriminate in employment is to make an adverse decision (or set of decisions) against employees (or prospective employees) who belong to a certain class because of morally unjustified prejudice toward members of that class, whether or not that prejudice is consciously held.

Employment discrimination in the United States historically has been directed at a surprisingly large number of groups. These groups have included religious groups (such as Muslims, Jews, Catholics), ethnic groups (such as Italians, Poles, and Irish), racial groups (such as blacks, Asians, and Hispanics/Latinos), and groups based on gender and

### Elements of Discrimination

Discrimination can be based on an overt and conscious racist bias against a group, or it can arise from unconscious stereotypes about the members of a group. Thus, discrimination in employment must involve three basic elements.

Interactive

**First Element: Decision is Not Based on Individual Merit**

The decision against one or more employees (or prospective employees) is not based on individual merit, such as the ability to perform a given job, seniority, or other morally legitimate qualifications.

**Second Element: Decision is Based on Prejudice**

**Third Element: Decision Would Have or Has a Negative or Harmful Impact**

sexuality (such as women and LGBTQ [lesbian, gay, bisexual, transgender, and queer] persons). We have an embarrassingly rich history of discrimination.

## 7.2.2: Forms of Discrimination: Intentional and Institutional Aspects

A helpful framework for analyzing different forms of discrimination can be constructed by distinguishing the extent to which a discriminatory act is intentional (conscious) or unintentional (unconscious), and the extent to which it is an individual (isolated) or institutional (systematic) act.[9]

Table 7.1 describes the four categories of discriminatory action in further detail.

***Quick Review 7.1***
**Forms of Discrimination**

- Intentional discrimination is conscious and deliberate discrimination.
- Unintentional discrimination is discrimination that is not consciously or deliberately sought, but is brought about by stereotypes or as an unintended outcome.
- Individual discrimination is the discrimination of one or a few individuals acting on their own.
- Institutional discrimination is discrimination that is the result of the actions of all or many of the people in an institution and of their routine processes and policies.

### Distinguishing Forms of Discrimination

Many initial denials of discrimination are based on the misunderstanding that discrimination comes in many forms and can be unintentional.

Interactive

**Intentional Discrimination versus Unintentional Discrimination**

*Intentional discrimination* is carried out consciously and deliberately, while *unintentional discrimination* is not consciously or deliberately sought, but it is generally the result of unconscious factors such as stereotypes or processes that have unintended outcomes.

**Individual Discrimination versus Institutional Discrimination**

**HISTORICAL PERSPECTIVE** During the latter part of the last century, an important shift in emphasis occurred—from seeing discrimination primarily as an intentional and individual matter to also seeing it as an institutionalized and perhaps unintentional outcome of routine behavior.

Starting in the 1970s, many people came to believe that if a company hired for certain positions from an area in which qualified minorities made up 30 percent of the people in the pool of available workers, then it might be considered to be discriminatory on the grounds that qualified minorities should make up about 25 to 35 percent of the company's workers in those positions. If the company hired, say, only 4 or 5 percent minorities in those positions, that could be considered a form of discrimination. The discrimination would be remedied when the proportions of minorities within the organization more or less matched their proportions in the available pool of workers. To remedy any imbalances, companies were asked to use **affirmative action programs**. For example, a U.S. Department of Labor guidebook for employers issued in February, 1970 stated:

> An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and thus to increase materially the utilization of minorities and women at all levels and in all segments of his work force where deficiencies exist. . . . "Underutilization" is defined as having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.[10]

The Equal Employment Opportunity Act of 1972 gave the **Equal Employment Opportunity Commission (EEOC)** increased power to combat this form of discrimination and to

**Table 7.1** Discriminatory Actions

Interactive

| Term | Description |
|---|---|
| Individual and intentional | A discriminatory act may be the isolated act of a single *individual* who *intentionally* discriminates out of personal prejudice. In the ABC experiment, for example, the attitudes held by the male interviewer may not be characteristic of all company interviewers: his behavior toward female job seekers may be an intentional, but isolated, instance of gender discrimination in hiring. |
| Institutional and intentional | A discriminatory act may be part of the routine *institutional* behavior of a group that *intentionally* discriminates because of the shared prejudices of its members. Aryan Nations, Stormfront, and the White Aryan Resistance, for example, are organizations that engage in intentional institutionalized discriminatory behavior against minorities of virtually every kind. |
| Individual and unintentional | An act of discrimination may be the isolated act of a single (or a few) *individual*(s) who *unintentionally* discriminates against women or minorities because the individual has unconscious stereotypes about the abilities of women or minorities, perhaps absorbed from surrounding society. If the interviewer quoted in the ABC experiment, for example, acted unintentionally, then his actions would fall into this third category. |
| Institutional and unintentional | A discriminatory act may be the result of the *institutionalized* routines of a corporate organization whose procedures and practices discriminate against women or minorities *unintentionally*; that is, without anyone in the organization consciously intending that result. The companies studied in the ABC experiment, for example, were organizations in which the best-paying jobs were routinely assigned to men and the worst-paying jobs were routinely assigned to women—based on the stereotypical assumption that women are fit for some jobs and not for others. There may be no conscious intent to discriminate, but the result is the same: a recurring and widespread pattern of racially or sexually based preferences biased against minority or female candidates. |

Check Your Understanding

even require affirmative action programs to correct any deficiencies. The EEOC is a national (federal) government agency established in 1964 to enforce our federal civil rights laws.

However, the view that an institution is discriminatory if a minority group is merely underrepresented within its ranks was criticized from the beginning. Discrimination is the *intentional* act of *individuals*, critics have argued, and it is individual women and minorities whom it mistreats.

Consequently, these critics claimed, we should not conclude that discrimination exists until we know that a specific individual or individuals *intentionally* discriminated against another individual in a specific instance.

**THE INTENTIONALITY DEBATE** The view that intentionality must accompany discrimination is problematic for a number of reasons:

1. Most obviously, it rules out or at least ignores the possibility of unintentional discrimination. Most of us have unconscious negative stereotypes or unconscious negative associations related to various racial, ethnic, age-based, or other social groups (To see if you have such unconscious biases, take the Project Implicit tests at https://implicit.harvard.edu/implicit/takeatest.html). A number of studies have demonstrated that these stereotypes or associations influence our decisions even when we do not intend them to do so, do not know they are doing so, and may even consciously try not to let them influence us.[11] Yet, even if not intended, these unconscious stereotypes or associations lead us to systematically discount the merits of members of the groups about whom we have these stereotypes and associations. In fact, an impressively large number of studies have shown that even when we genuinely and consciously avoid being biased toward a racial or social group, even when we are sincerely and deeply convinced that we are not prejudiced against

### Mid-Twentieth Century Legal View of Discrimination

The legal definition of the term discrimination began to evolve with the landmark Civil Rights Act of 1964.

Interactive

**Early 1960s** | **Late 1960s** | **The 1970s**

During the early 1960s, employment discrimination was seen primarily as an intentional act performed by one individual on another. Title VII of the Civil Rights Act of 1964 (amended in 1972 and 1991)—the fundamental U.S. law against discrimination—seems to have had this notion of discrimination in mind when it stated:

> It shall be an unlawful employment practice for an employer
>
> 1. to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin or
> 2. to limit, segregate, or classify his employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, sex, or national origin.

minorities or other groups, we harbor unconscious attitudes that influence the judgments we make about the members of those racial or social groups.[12]

2. Another problem with this view is that it is generally impossible to know when, or even whether, a specific individual was intentionally discriminated against in a particular job-related context. Individuals compete with other individuals for jobs and promotions. Whether a specific individual wins a specific job or promotion at a particular time depends on a number of variables. They include the candidate's qualifications, the fairness of the hiring manager and any unconscious stereotypes he or she may hold, and numerous chance factors (e.g., who the other candidates are, the qualifications of the other candidates, how the manager feels on the day he or she makes the decision, and how the candidate performs during the interview). Consequently, when a minority individual loses in this competitive process, there is generally no way of knowing whether that individual's loss was the result of his or her qualifications, some chance factor, or intentional discrimination.
3. The only way of knowing whether discrimination has occurred is by looking at what happens to minorities as a group over a period of time. If minorities as a group regularly lose out in a competitive process in which their abilities as a group match those of nonminorities, then we may conclude that the process itself is discriminatory even though we may not know which particular individuals were intentionally discriminated against.[13]

### Late-Twentieth Century Legal View of Discrimination

Policy in the United States shifted away from attempts to remedy institutionalized unintentional racism in the 1980s and back toward a favorable climate for affirmative action in the 1990s.

Interactive

**The 1980s** | **The 1990s**

During the 1980s, government policy in the United States shifted toward the view that efforts to deal with discrimination should not focus on discrimination in its institutionalized unintentional forms. Starting in about 1981, therefore, the federal government began to actively oppose affirmative action programs based on statistical analyses of systematic discrimination. The Reagan administration, for example, held that only individuals who could prove that they had been the victims of discrimination aimed specifically and intentionally at them should be eligible for special treatment in hiring or promotions. Although the administration was largely unsuccessful in its efforts to dismantle affirmative action programs altogether, it did succeed in naming a majority of U.S. Supreme Court justices who rendered decisions that tended to undermine some legal supports of affirmative action programs.

***Quick Review 7.2***

**Controversy over Forms of Discrimination**

- Four possible kinds of discrimination are (1) individual and intentional, (2) institutional and intentional, (3) individual and unintentional, and (4) institutional and unintentional.
- In the 1960s, discrimination was seen as individual and intentional; by the 1970s, it was seen to have institutional and unintentional forms—as indicated by an “underrepresentation” of minorities and women—and was to be remedied with affirmative action.
- In the 1980s, some insisted that discrimination was only individual and intentional, but in the 1990s, the view that it can also be institutional and unintentional prevails.

**DISTINCTION BETWEEN PREVENTION AND REMEDY** For purposes of analysis, it is important to keep the ethical issues raised by policies that aim to prevent discrimination (intentional or unintentional) separate from those raised by policies that aim to remedy discrimination after it has already happened by, say, achieving a proportional representation of minorities within a business (e.g., through affirmative action). We will discuss each of these issues separately, since each raises distinct ethical issues.

It is a commonly held belief, especially among whites, that, although our institutions used to be discriminatory, this is no longer the case because of the great strides minorities and women have made during the last few years.

### Visible Leadership of Women and Minorities

While we do see women and minorities in high public office and in business leadership, we must examine whether and to what extent our business institutions today are discriminatory.

Interactive

**Diversity in High Public Office**

Barack Obama was elected president in 2008 and served until 2016. In 1966, Edward Brooke became the first African-American to be elected senator since Reconstruction; in 1979, Edward Hidalgo became the first Latino Secretary of the Navy; in 1981, Sandra Day O'Connor became the first female Supreme Court Justice; in 1990, Dr. Antonia Novello was named the first Hispanic U.S. Surgeon General; in 1989, Colin Powell was named the first African-American Chair of the Joint Chiefs of Staff, and in 2001 he was the first African-American Secretary of State; in 2007, Nancy Pelosi became the first female Speaker of the House of Representatives; and in 2009, Sonia Sotomayor became the first Hispanic Supreme Court Justice.

**1 of 2** Previous Next

Because minorities and women hold prominent leadership roles and have achieved success in various fields, many believe that discrimination against minorities is no longer a significant problem in the United States. In a recent national Gallup poll, for example, 72 percent of whites in the United States said that blacks now have as good a chance as whites to get any kind of job for which they are qualified (only 36 percent of blacks felt the same), and 78 percent thought blacks were treated as fairly as whites on the job (only 43 percent of blacks thought the same).[14] Another poll found, in fact, that 60 percent of white U.S. workers think that discrimination against whites is now as bad as discrimination against blacks and other minorities.[15] If the belief that discrimination against minorities is a thing of the past is correct—and it is at least challenged by the experiments described earlier, in which matched pairs of male and female or white and minority people applied for the same job—then there is not much point in discussing the issue of discrimination. However, is this belief correct?

## On the Edge

### Work Environment at Plainfield Healthcare Center

Plainfield Healthcare Center is an Indiana nursing home that cares for elderly women in frail health who live there full time.[16] Brenda Chaney, a black certified nurses aide (CNA) worked at the center. Each day, the center gave Brenda a sheet that assigned specific patients to her and she was responsible for attending to the needs of her patients along with any other CNAs assigned the same patients. Next to each patient's name on the assignment sheet was an indication of the care the patient needed and various notes about each patient's condition, special needs, or special requests. Marjorie Latshaw, a white elderly woman, was a patient who had lived at the center for several months and who suspected she would live there until her death. Latshaw felt that since the center was her home, she had a right to have things arranged as she would have arranged them for herself in the privacy of her own home. Indiana laws state that residents in nursing homes have a right to "choose a personal attending physician and other providers of services." So when she was admitted to the nursing home, Latshaw insisted that she be attended only by white caretakers.

The nursing home had a policy of honoring each resident's requests as far as possible, and this included honoring residents' racial preferences in caretakers. Consequently, the daily assignment sheets that Chaney received indicated, next to Latshaw's name, "Prefers No Black CNAs." The managers of the nursing home were clear that this meant that all black CNAs were "banned" from assisting Latshaw or any other white patient that made a similar request. The managers of Plainfield Healthcare Center said that if they did not honor Latshaw's requests, they would not be following Indiana state laws which said residents of nursing homes have the right to have access to the providers they choose, the right to privacy, and the right to bodily autonomy (i.e., the right to determine what is done to one's body). Federal civil rights laws on equal employment opportunity normally overrule state laws, and federal civil rights laws prohibit employers from accommodating the discriminatory preferences of their customers. However, federal courts had ruled that those laws do not prohibit *nursing homes* from accommodating their patient's privacy rights when patients asked that their providers be members of their *own gender*. Plainfield Healthcare Center's managers decided that this same reasoning meant that a nursing home could accommodate its patients when they requested that their caretakers be of their *own race*.

Chaney was extremely upset by the policy of the nursing home, but because she feared being fired and needed the job, she went along with it. Although Latshaw was sometimes on her assignment sheet, she refrained from assisting her. Once when Latshaw fell to the ground, Chaney was forced to search the facility looking for a white nurses aide to help Latshaw get up, as she had insisted. Other white patients had also said they wanted only white CNAs to help them and regularly rejected Chaney's offers of assistance. These racially based rejections of her offers to help humiliated and depressed Chaney and often reduced her to tears. Moreover, the policy seemed to encourage some of her white co-workers who had made racial slurs; one co-worker once called her a "black bitch" and another asked why the center "keeps on hiring all of these black niggers? They're not gonna stay anyway." Another co-worker reminded her several times that she could not touch certain patients because she was black. However, the managers of the center immediately responded when Chaney complained by reprimanding the co-workers and the slurs stopped. Nevertheless, Chaney was fired when one of her co-workers alleged that she had used profanity while helping a patient, although another patient who witnessed the event denied the allegation and although Chaney's supervisor pointed out she had never heard her use profanity at work.

WRITING PROMPT

**Racism and Work Environment**

1. Form an ethical position on the decision of the managers of Plainfield Healthcare Center to honor their white patients' requests to be helped only by members of their own race. Consider whether Brenda Chaney was subjected to a hostile workplace on the basis of her race. If yes, how?
2. Did the managers of Plainfield Healthcare Center unethically discriminate against Chaney? Explain your answer.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

# 7.3: The Extent of Discrimination in the United States

**OBJECTIVE: Outline the extent of employment discrimination by making comparisons among groups**

How do we determine whether a society's institutions are discriminating against a certain group? One way is by looking at how the members of that group are treated by those institutions. A *prima facie* ("at first view") indication of discrimination exists when a disproportionate number of the members of a certain group are in the less desirable positions within the institution, despite their preferences and abilities.[17] Looking at three kinds of comparisons can show how U.S. institutions treat minorities and women today:

1. The average benefits our institutions bestow on minorities and females compared with the average benefits they bestow on other groups
2. The proportion of minorities and women found in the lowest levels of our institutions compared with the proportions of other groups at those levels
3. The proportions of women and minorities that hold the more advantageous positions in our institutions compared with the proportions of other groups in those positions.

If we look at U.S. society in terms of these three kinds of comparisons, it becomes clear that some form of racial and gender-based discrimination is present in U.S. institutions today.

**_Quick Review 7.3_**
***Prima Facie* Indicators of Discrimination**

- The average benefits minorities and women receive compared with others
- The proportions of minorities and women at the lowest economic levels
- The proportions of minorities and women at the highest economic levels

## 7.3.1: Average Income Comparisons: Race and Gender

Income comparisons provide the most revealing indications that racial and gender-based discrimination takes place in our society. Although these comparisons do not imply that such discrimination is intentional, they do suggest that it is at least institutionalized.

In terms of income equality along racial lines, if we compare the average total incomes of nonwhite families with the average total incomes of white families in the United States, we find that the income of white families is substantially above that of nonwhite families (see Figure 7.1).

**INCOME INEQUALITY** Comparisons of the incomes of individuals also reveal large inequalities based on gender and race. A comparison of average incomes for men and women shows that women continue to receive only a portion of what men receive. One study found that firms employing mostly men paid their workers on average 40 percent more than those employing mostly women.[19, 20, 21]

The disparities between the earnings of men and women, as well as those between the earnings of whites and minorities, have continued for decades. See Figure 7.2.

**LANDSCAPE OF WOMEN'S EARNING POWER** Studies have shown that the disparities in earnings between men and women begin as soon as they graduate from college, contrary to the optimistic and legitimate hope held by each generation of graduating women that "our generation will be different." A study by the American Association of University Women, for example, found that a year out of college, women's median earnings were only 82 percent of their male colleagues' median earnings.[22] An earlier report found that if women specialized in a female-dominated major such as education, their median earnings were about 95 percent of their male counterparts' median earnings, but if they specialized in a male-dominated major such as mathematics, they ended up with median earnings that were only 75 percent of their male colleagues' median earnings.[23] The study also found that 10 years after graduation, women

**Figure 7.1** Average Family Incomes by Race (2014 Dollars)

Contrary to a commonly held belief, the average family income gap between whites and minorities has not decreased but has increased. Since 1970, even during periods of prosperity when all incomes increased, real minority family incomes have not caught up with white family income.[18]

In 1975, as this figure indicates, the average income for a black family was 64 percent of a white family's average income, and the average Hispanic family income was 68 percent of the average white family income. By 2014, the average incomes of a black family and a Hispanic family had both fallen to only 61 percent of the average white family's income.

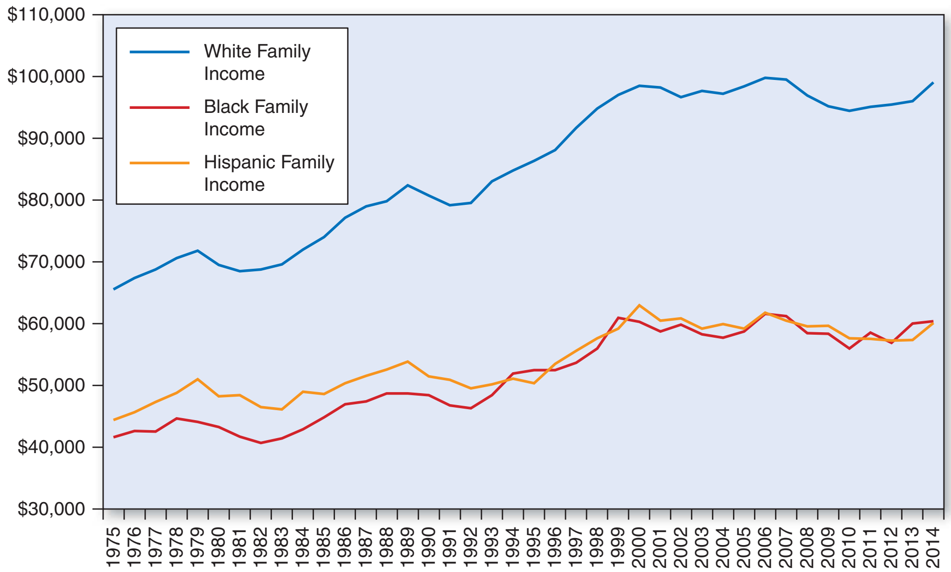
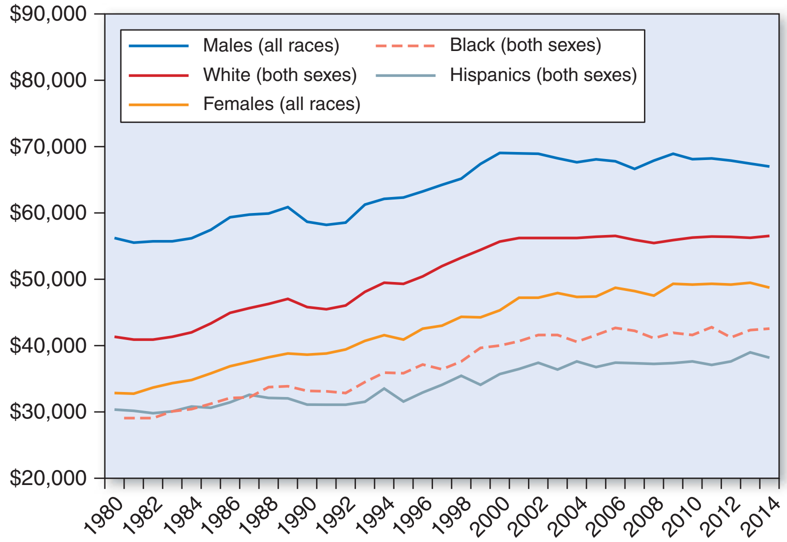


**Figure 7.2** Average Earnings of Male, Female, White, Black, and Hispanic Full-Time Individual Workers, 1980–2014 (2014 Dollars)

As the figure shows, the earnings of males have long been significantly higher than the earnings of women. It also shows that the earnings of whites have continuously been higher than those of blacks and Hispanics.[24]

The gap between the median earnings of men and the median earnings of women narrowed from 60 percent in 1964 to 79 percent in 2014 (the median earnings for a group is the amount of earnings at which half of the people in the group have higher earnings, and half have lower earnings), but it took half a century for women to make that 19 percent improvement. Moreover, in 2014, full-time working men earned an average of $67,011, while full-time working women earned an average of $48,924, which is only 73 percent of a man's *average* earnings (the average earnings for a group are the total earnings of the group divided by the number of people in the group). Some of the improvement in the ratio of female and male earnings has come about not as a result of declining discrimination, but as a result of declines in the average earnings of men due to an ongoing decline in the number of manufacturing jobs traditionally occupied by men.




had fallen even further behind their male cohort, earning only 69 percent of what their male colleagues earned. This pattern has endured for decades. An early study in 1980—more than a decade and a half after our civil rights laws were enacted—of white men and women ages 21 to 22 found that although their qualifications had increased substantially relative to men's, women's starting salaries were 83 percent of men's—an actual *decline* from 1970, when women of that age and education earned 86 percent of what men earned.[25]

In fact, as Table 7.2 shows, no matter how much education women just out of college have, their average earnings

**Table 7.2** Average Earnings of Year-Round Full-Time Working Men and Women Recently Out of School, 2014

As the following table indicates, a young woman aged 18 to 24 who graduated from high school will earn less than a young man who never went beyond the eighth grade. A young woman aged 18 to 24 with an associate degree will earn less than a young man in the same age group who never graduated from high school. A young woman aged 25 to 34 who graduated from high school will earn about the same as a young man aged 25 to 34 with only an elementary school education. As well, a young woman aged 25 to 34 with a master's degree will earn less than a young man aged 25 to 34 with only a bachelor's degree.[26]

| | Average Earnings of 18- to 24-Year-Olds | | Average Earnings of 25- to 34-Year-Olds | |
|---|---|---|---|---|
| **Education** | **Men ($)** | **Women ($)** | **Men ($)** | **Women ($)** |
| **Elementary** | 24,260 | NA | 30,120 | 22,548 |
| **High school**<br>some, no diploma | 37,747 | 19,006 | 32,886 | 24,190 |
| diploma | 30,283 | 21,779 | 39,492 | 30,701 |
| **College**<br>some, no degree | 29,985 | 23,058 | 45,037 | 33,154 |
| associate degree | 32,668 | 26,463 | 48,585 | 37,561 |
| bachelor's degree | 44,933 | 38,995 | 65,911 | 51,144 |
| master's degree | NA | NA | 82,203 | 58,041 |
| professional degree | NA | NA | 101,324 | 90,741 |

**Table 7.3** Average Earnings of Year-Round Full-Time Workers, 18 Years Old and Over, by Education, Race, and Sex, 2014

As the following table shows, over the course of their lives female college graduates have lower average yearly earnings ($58,894) than male graduates ($84,576). In fact, the average earnings of a woman who graduated with a master's degree ($69,233) will be quite a bit less than the average earnings of a man with only an undergraduate bachelor's degree ($84,576). The average earnings of a woman with a high school degree ($34,394) will not only be less than the average earnings of a man with a high school degree ($46,688) but also be less than the average earnings of a man who never graduated from high school ($39,980).[27]

| | Both Men and Women | | | | |
|---|---|---|---|---|---|
| Education | Men's Average Earnings ($) | Women's Average Earnings ($) | Whites' Average Earnings ($) | Blacks' Average Earnings ($) | Hispanics' Average Earnings ($) |
| **Elementary** | 32,122 | 29,156 | 50,456 | 29,532 | 28,384 |
| **High school** some, no diploma | 39,980 | 25,525 | 44,084 | 31,027 | 29,744 |
| diploma | 46,688 | 34,394 | 45,801 | 35,091 | 36,264 |
| **College** some, no degree | 54,349 | 38,646 | 51,207 | 39,996 | 40,997 |
| associate degree | 59,983 | 43,110 | 54,432 | 42,218 | 45,721 |
| bachelor's degree | 84,576 | 58,894 | 75,862 | 59,159 | 60,920 |
| master's degree | 107,619 | 69,233 | 89,443 | 76,377 | 73,311 |
| professional degree | 172,568 | 121,252 | 160,397 | 108,630 | 123,063 |
| doctorate degree | 128,269 | 98,295 | 119,796 | 101,062 | 117,341 |

are significantly less than the earnings of comparable men. Table 7.3 shows the earnings disparities continue throughout life. As table 7.4 shows, the earning disparities between men and women extend to virtually all occupations.

**LANDSCAPE OF MINORITY EARNING POWER** Black and Hispanic minorities do not fare much better than females. Figure 7.2 shows that the earnings of both blacks and Hispanics are consistently less than the earnings of whites. Since 1990, the average earnings of blacks have stayed at around 70 percent of the average earnings of whites. In fact, in 2014 the average earnings of black full-time workers were 70 percent of the average earnings of full-time white workers, the same as their 1990 level when they received 70 percent of the average earnings of white workers. The average earnings of full-time Hispanic workers have also failed to increase relative to white workers. In 2014, the average earnings of Hispanic full-time workers were 63 percent of those of white full-time workers, a *decline* from 1990 when Hispanic full-time workers made about 66 percent of the average earnings of white workers.[28]

Like the gap between the earnings of males and females, there is also a gap between the earnings of whites and minorities that education does not eradicate. As Table 7.3 indicates, the earnings of a black person with a master's degree ($76,377) are significantly less than the earnings of a white person with a master's degree ($89,443), and a black person with an associate college degree earns less ($42,218) than a white person who never graduated from high school ($44,084). Hispanics suffer a similar earnings gap. A Hispanic who graduates from high school earns less ($36,264) than a white person who completed elementary school but did not graduate from high school ($44,084), and a Hispanic who earns a master's degree earns less ($73,311) than a white person with only a bachelor's degree ($75,862).

## 7.3.2: Lowest Income Group Comparisons: Poverty

The lowest identified income group in the United States consists of those people whose annual income falls below the poverty level. Here, too, we find that women fare worse than men and minorities fare worse than whites.

## 7.3.3: Desirable Occupation Comparisons

The evidence of racial and gender-based discrimination provided by the quantitative measures we have presented can be filled out somewhat qualitatively by looking at people's occupations.

For many decades, certain jobs have traditionally been thought of as "women's jobs" because they are predominantly filled by females, such as secretaries (94 percent female), teachers' assistants (92 percent), receptionists (92 percent), dental assistants (93 percent), childcare workers (97 percent), and hairdressers (91 percent);

**Table 7.4** Median Weekly Earnings of Full-Time Male and Female Workers by Major Occupational Group, 2015

The earning disparities between men and women extend to all occupations, as the following table indicates. In every major occupational group, women's weekly earnings are only a portion of men's, ranging from legal occupations (where women earn only 60 percent of what men earn) to construction and mining (where the few women who work in these areas earn 94 percent of what men earn). In every single occupational group, women earn less than men.[29]

| Occupational Group | Median Weekly Earnings Men ($) | Median Weekly Earnings Women ($) | Women's Earnings as Percentage of Men's (%) |
|---|---|---|---|
| Management occupations | 1,486 | 1,139 | 77 |
| Business and financial operations occupations | 1,327 | 1,004 | 76 |
| Professional and related occupations | 1,343 | 963 | 72 |
| Architecture and engineering occupations | 1,452 | 1,257 | 87 |
| Life, physical, and social science occupations | 1,379 | 1,067 | 77 |
| Community and social service occupations | 973 | 845 | 87 |
| Legal occupations | 1,877 | 1,135 | 60 |
| Education, training, and library occupations | 1,144 | 907 | 79 |
| Arts, entertainment, sports, and media occupations | 1,088 | 942 | 87 |
| Healthcare practitioners | 1,272 | 991 | 78 |
| Healthcare support occupations | 577 | 490 | 85 |
| Protective service occupations | 851 | 655 | 77 |
| Food preparation and serving occupations | 481 | 414 | 86 |
| Building and grounds cleaning occupations | 517 | 419 | 81 |
| Personal care and service occupations | 597 | 475 | 80 |
| Sales and related occupations | 880 | 578 | 66 |
| Office and administrative support occupations | 693 | 646 | 93 |
| Farming, fishing, and forestry occupations | 477 | 437 | 92 |
| Construction and extraction (mining) occupations | 751 | 704 | 94 |
| Installation, maintenance, and repair occupations | 842 | 761 | 90 |
| Production occupations | 729 | 519 | 71 |
| Transportation and material moving occupations | 679 | 494 | 73 |

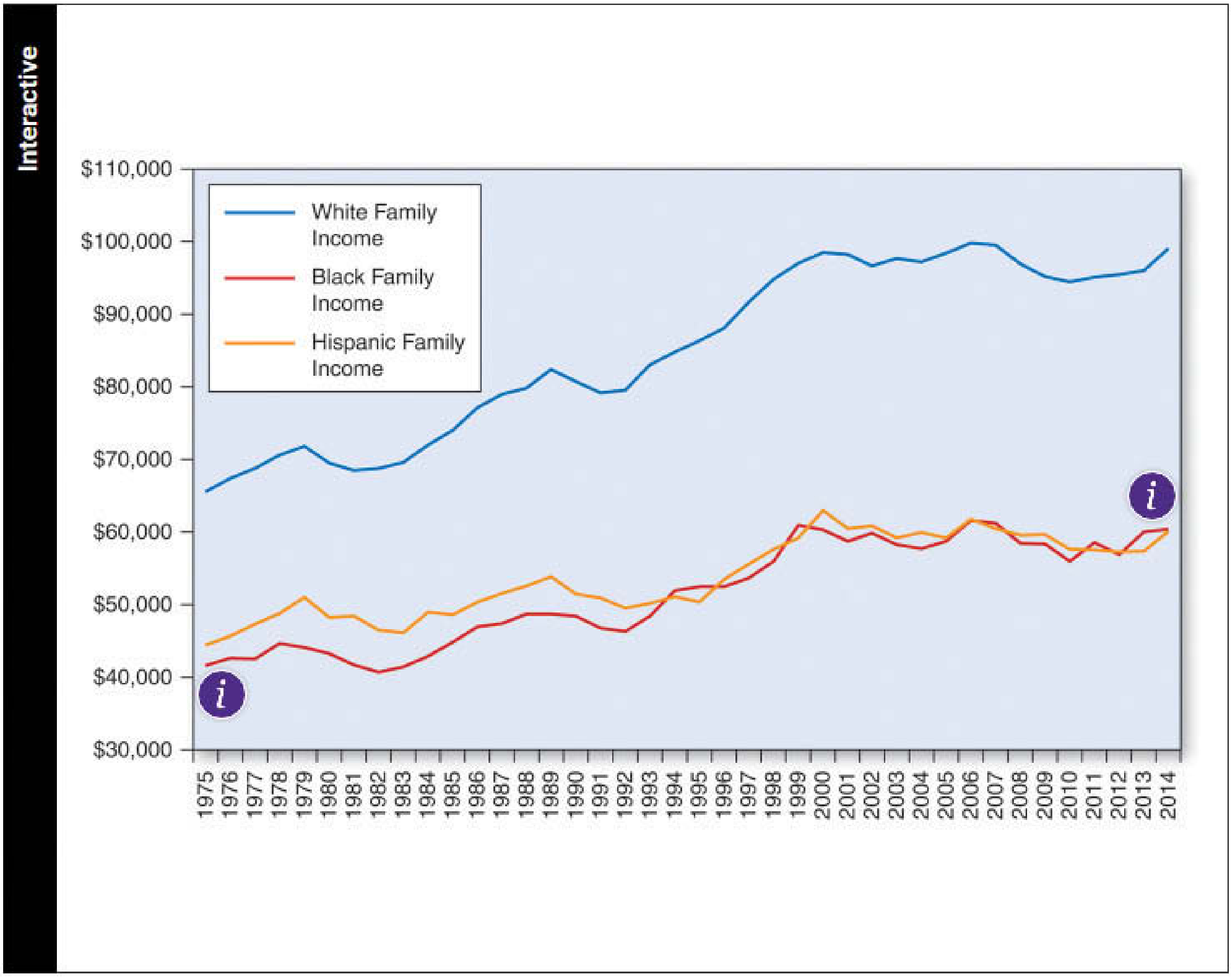
while other jobs have been thought of as "men's jobs" because they are predominantly filled by males, such as mechanics (98 percent male), electrical power-line workers (99 percent), crane operators (95 percent), brick layers (100 percent), welders (96 percent), and roofers (99 percent). However, salaries for the women's jobs are noticeably lower (secretaries, $35,724; teachers' assistants, $28,132; receptionists, $29,900; dental assistants, $27,612; childcare workers, $22,724; hairdressers, $23,972) in comparison to the salaries for the men's jobs (mechanics, $37,544; electrical power-line workers, $57,460; crane operators, $51,376; brick layers, $33,904; welders, $39,520; roofers, $30,368), although both sets of jobs require about the same amount of education and training. In fact, the more well-paying occupations tend to be "men's jobs," while lower-paying occupations tend to be "women's jobs."[30] Table 7.5 shows the median weekly earnings for men and women in a variety of occupations and the percentage of men and women in those occupations.

Studies also indicate that, despite two decades of women entering the workforce in record numbers, female managers still are not being promoted from middle-management positions into senior or top-management positions; it is said they encounter an impenetrable **glass ceiling** through which they may "look but not enter."[31] Consequently, although many women have moved into middle-management positions in recent years, all but a very few have been blocked from entering the top-paying executive positions. Blacks and Hispanics are in a similar situation. We noted above that there are women and minorities who are CEOs of large companies, but their number is miniscule. As of 2016, only 21 (4 percent) of the Fortune 500 companies had women as president or CEO, only 5 (1 percent) of the Fortune 500 companies had black CEOs, and only 9 (1.8 percent) had Hispanic CEOs.[32]

**EDUCATION AND EMPLOYMENT CHOICES DO NOT EXPLAIN THE GAP** The fact that women and minorities end up in positions that earn less than white males is not

### Graphical Representation of Poverty Rates by Gender of Family-Head and by Race.

In 2014, the poverty level was set at $24,230 for a family of four. (By comparison, the average tuition, room, and board costs of attending a public four-year college during the 2015/2016 school year were about $19,548, plus another $2,500 in books and miscellaneous, for a total of about $22,048.) The graphs provide evidence that poverty is also heavily influenced by gender and race..[33, 34, 35]




explainable in terms of the lower educational levels of minorities and women.[36] If we return to Table 7.3, we see that in 2014, the average earnings for a male, full-time, year-round worker who graduated junior college were $59,983, which is more than the $58,894 earned by a female, full-time, year-round worker who graduated from a four-year college program. In the same year, the average earnings of a white worker who attended high school but never graduated were $44,084, which is more than the $35,091 earned by a black worker who graduated high school. Moreover, the average earnings of a white worker with a college degree were $75,862, which is more than the $73,311 earned by a Hispanic worker with both a college and a master's degree.

Nor can the large disparities in earnings between white males and women or minorities be wholly accounted for by the preferences or qualifications of the two latter groups.[37] It is sometimes suggested that women *voluntarily choose* to work in those jobs that have relatively low pay and low prestige. It is suggested, for example, that women believe only certain jobs (such as secretary or kindergarten teacher) are appropriate for women, that many women choose courses of study that suit them only for such jobs, that many women choose those jobs because they plan to raise children and these jobs are relatively easy to leave and reenter, that many women choose these jobs because they have limited demands and allow them time to raise children, and that many women defer to the demands of

**Table 7.5** Median Weekly Earnings of Selected Occupations and Percentage of Men and Women in Those Occupations, 2015

As the following table suggests, the higher the proportion of women in an occupation, the lower the pay for that occupation tends to be. Although there are many exceptions (some of which appear in the table), a negative correlation exists between the proportion of women in an occupation and the earnings level of that occupation: the more women in an occupation, the lower its earnings tend to be.[38]

| Occupation | Weekly Earnings ($) | Percentage of Total in Occupation Who Are | |
|---|---|---|---|
| | | Men (%) | Women (%) |
| Childcare workers | 437 | 3 | 97 |
| Receptionists | 575 | 8 | 92 |
| Licensed practical nurses | 743 | 9 | 91 |
| Bookkeepers | 692 | 11 | 92 |
| Legal assistants | 927 | 14 | 86 |
| Social workers | 877 | 19 | 81 |
| Clinical lab technicians | 901 | 25 | 75 |
| Human resources managers | 1,365 | 27 | 73 |
| Tax collectors | 1,051 | 34 | 66 |
| High school teachers | 1,066 | 42 | 58 |
| Accountants | 1,132 | 42 | 58 |
| Producers and directors | 1,270 | 55 | 45 |
| College teachers | 1,258 | 56 | 43 |
| Marketing managers | 1,462 | 60 | 40 |
| Physicians | 1,824 | 62 | 38 |
| Lawyers | 1,886 | 63 | 37 |
| Computer systems analysts | 1,389 | 65 | 35 |
| Chief executives | 2,041 | 72 | 28 |
| Computer software developers | 1,682 | 82 | 18 |
| Aerospace engineers | 1,662 | 87 | 13 |
| Electrical engineers | 1,778 | 87 | 13 |
| Airplane pilots | 1,735 | 91 | 9 |
| Engineering managers | 1,899 | 92 | 8 |

their husbands' careers and choose to forgo developing their own careers. Choice does in fact play a role in pay differentials. As we saw, women often choose to enter occupations that already have large proportions of female workers, and those occupations tend to pay less than "men's jobs." However, researchers who have studied the differences in earnings between men and women have all concluded that the wage differences between men and women and between whites and minorities cannot be accounted for simply on the basis of such factors. One study found that only half of the earnings gap between men and women might be accounted for by women's choices, whereas other studies have found that women's choices could account for somewhat more or somewhat less of the earnings gap.[39]

All studies, however, have demonstrated that only a portion of the gap can be accounted for on the basis of male and female differences in education, work experience, work continuity, self-imposed work restrictions, and absenteeism.[40] These studies show that, even after taking such differences into account, a gap between the earnings of men and women remains that can only be accounted for by discrimination in the labor market. A report of the National Academy of Sciences concluded that about 35 to 40 percent of the difference in average wages is due to "sex segregation," which in turn is due to women being steered into lower-paying "women's jobs."[41] Some studies have shown that perhaps only one-tenth of the wage differences between men and women can be accounted for by differences in their personalities and tastes.[42] Similar studies have shown that half of the earning differences between white and minority workers cannot be accounted for by differences of work history, on-the-job training, absenteeism, or self-imposed restrictions on work hours and location.[43] One study concluded that although "discrimination cannot be measured directly" because "it is illegal," nevertheless "one way to discover discrimination is to eliminate other explanations for the pay gap" between men and women. Although "the 'explanations' for the pay gap [between men and women] are included" in a statistical analysis, the study concludes, "they cannot fully explain the pay disparity"; thus, "while discrimination cannot be measured directly, it is reasonable to assume that this pay gap is the product of gender discrimination."[44]

**DIFFERENCES IN CAREER ADVANCEMENT FOR WOMEN** As women advance in their careers, they often encounter barriers (again, the so-called glass ceiling) when attempting to advance into the highest-paying, top-management positions. As Table 7.5 indicates, occupations filled mostly by men are awarded the highest pay. Surveys have found that over 90 percent of newly promoted corporation chairs, presidents, and vice presidents—positions which carry the highest corporate salaries—are men. In fact, some studies have suggested that the percentage of women being promoted to the top corporate level is declining.

Another factor that contributes to the male-female earnings gap is that married women who want children, unlike married men who want children, currently encounter major difficulties in their career advancement. One survey found that 52 percent of the few married women who were promoted to vice president remained childless, whereas only 7 percent of the married men had no children. Another survey found that during the 10 years following their college graduation, 54 percent of those women who had made significant advances up the corporate ladder had done so by remaining childless. Several studies have found that women with professional careers are six times more likely than their husbands to be the one who stays home with a sick child; even women at the level of corporate vice president report that they must carry a greater share of such burdens than their husbands.[45]

### Workforce Disadvantage

Minorities and women face additional instances of discrimination in the workplace.[46, 47, 48, 49, 50, 51, 52]

**Interactive**

**New Jobs Demand More Specialized Education and Skills**

When minorities hit the labor market, they find that most of the well-paying jobs awaiting them require greater skills and education than they have. Of all the new jobs that have been created during the past two decades, more than half require some education beyond high school and almost a third require a college degree. Among the fastest-growing fields are professions with relatively high education requirements, such as technicians, engineers, social scientists, lawyers, mathematicians, scientists, and health professionals. In contrast, jobs that require relatively low levels of education and skills, such as machine tenders and operators, blue-collar supervisors, assemblers, hand workers, miners, and farmers, have been declining in number. Even many jobs that require relatively low levels of skill now have tough requirements: secretaries, clerks, and cashiers need the ability to read and write clearly, understand directions, and use computers; assembly line workers are being required to learn statistical process control methods employing basic algebra and statistics. Thus, most good new jobs demand more education and higher levels of language, math, and reasoning skills.

**Minorities Are Disadvantaged in Terms of Skill Levels and Education**

**Women Face Sexual Harassment**

***Quick Review 7.4***
**Discrimination in the United States**

- The gap between average family incomes of whites and minorities has not decreased.
- Gaps between average incomes and median earnings of men and women have decreased but are still large; women earn less than less-educated men; women earn less in every occupational group.
- Gaps between the average earnings of minorities and of whites have hardly narrowed; minorities earn less than less-educated whites; the percentage of minorities in poverty is two to three times the white percentage.
- The poverty rate of families headed by women is twice that of male-headed families.
- The salaries of "women's jobs" are significantly lower than "men's jobs."
- Top-paying executive positions are filled by men; a "glass ceiling" stops women.
- The earnings gaps are not explained by education, career choices, preferences, work history, training, or absenteeism.

**OTHER DISADVANTAGES FOR MINORITIES AND WOMEN** Minorities entering the workforce also encounter other disadvantages that contribute to the racial wage-gap.

**DAMAGE OF SEXUAL HARASSMENT** A federal court vividly described the injuries that sexual harassment can inflict on a person:

> Cheryl Mathis's relationship with Mr. Sanders began on terms she described as good, but it later became clear that Sanders sought some kind of personal relationship with her. Whenever Mathis was in his office he wanted the door to outside offices closed, and he began discussing very personal matters with her, such as the lack of a sexual relationship with his wife. He then began bombarding her with unwelcome invitations for drinks, lunch, dinner, breakfast, and asking himself to her house. Mathis made it clear that she was not interested in a personal relationship with her married boss. . . . Sanders also commented on Mathis's appearance, making lewd references to parts of her body. As Mathis rejected Sanders's advances, he would become belligerent. By the spring of 1983 Mathis began to suffer from severe bouts of trembling and crying which became progressively worse and eventually caused her to be hospitalized on two separate occasions, once for a week in June, 1983, and again in July for a few days. During this entire summer Mathis remained out on sick leave, not returning to work until September, 1983. . . . As soon as she returned to work, Sanders's harassment resumed . . . and once again she was forced to seek medical help and did not work. . . . The harassment not only tormented . . . Mathis, it created hostility between her and other members of the department who apparently resented the plaintiff's familiarity with Sanders.[53]

Every year thousands of complaints of sexual harassment are filed with the EEOC. Thousands of other complaints are lodged with state civil rights commissions that enforce state civil rights laws. While the great majority of these complaints are filed by women, an increasing number are being filed by men who find themselves being forced to endure sexual advances they do not want.[54] In 2013, about 18 percent of the sexual harassment claims filed with the EEOC were filed by men; a survey found that one-third of all working men had been subjected to sexual harassment during the previous year.[55] We will discuss this topic further in Module 7.4.5.

***Quick Review 7.5***
**Increasing Problems for Women and Minorities**

- Women and minorities make up most new workers, but face significant disadvantages.
- Minorities need skills and education, but suffer a comparative lack of both.
- Women are steered into low-paying jobs and face a "glass ceiling" and sexual harassment.

## 7.3.4: A Reasonable Conclusion about Employment Discrimination

The various statistical comparisons that we have examined, together with the extensive research showing that these differences are not due in any simple way to differences in the preferences or qualifications of women and minorities, strongly suggest that many business organizations still harbor some degree of probably unintentional yet institutionalized discrimination, some of it no doubt a result of earlier discriminatory practices. Whether we compare average incomes, representation in the highest economic positions, or representation in the lowest economic positions, it turns out that women and minorities do not yet have opportunities equal to those of white males, even if during the last 30 years the racial and gender-based gaps have somewhat narrowed. Moreover, a number of troubling trends indicate that, unless we change the way we hire and promote people in our organizations, the situation for minorities and women will not improve.

It is important to recognize that finding that our institutions as a whole embody a degree of institutionalized discrimination does not show that any particular business organization is discriminatory. To find out whether a particular firm is perhaps unconsciously engaging in discriminatory behavior, we would have to make the same sorts of comparisons among the various employment levels of the firm that we made earlier among the various economic and occupational levels of U.S. society as a whole. To facilitate such comparisons within firms, employers today are required to report to the government the number of minorities and women their firm employs in each of the following nine categories: officials and managers, professionals, technicians, sales workers, office and clerical workers, skilled craftworkers, semiskilled operatives, unskilled laborers, and service workers.

# 7.4: Discrimination: Utility, Rights, and Justice

**OBJECTIVE: Analyze discrimination using utilitarian, rights-based, and justice-based arguments**

Given the statistics on the comparative incomes and low-status positions of minorities and women in the United States, the question we must ask ourselves is this: Are these inequalities wrong, and if so, how should businesses and managers deal with them? To be sure, these inequalities directly contradict the fundamental principles on which the United States was founded: "We hold these truths to be self-evident: that all men are created equal and endowed by their creator with certain inalienable rights."[56] However, historically we have often tolerated large discrepancies between these ideals and reality.

The ancestors of most black Americans living today were brought to this country as slaves, treated like cattle, and lived out their lives in bondage, despite the nation's ideals of equality. As the personal property of a white owner, blacks prior to the Civil War were not recognized as people and consequently had no legal powers, and no claims on their bodies or their labors. They were regarded by the U.S. Supreme Court in its 1857 Dred Scott decision as "beings of an inferior order . . . and so far inferior that they had no rights that the White man was bound to respect."[57] Women suffered marked inequality. Through much of the nineteenth century, women could not hold office, could not vote, could not serve on juries, nor bring suit in their own names. A married woman lost control over her property (which was acquired by her husband), she was considered incapable of making binding contracts, and, in an important 1873 decision (*Bradwell v. Illinois*), a married woman was declared by the U.S. Supreme Court to have "no legal existence, separate from her husband, who was regarded as her head and representative in the social state."[58]

Why are these forms of inequality wrong? Why is it wrong to discriminate? The arguments mustered against discrimination generally fall into three groups:

1. *Utilitarian arguments*, which claim that discrimination leads to an inefficient use of human resources
2. *Rights-based arguments*, which claim that discrimination violates basic human rights
3. *Justice-based arguments*, which claim that discrimination results in an unjust distribution of society's benefits and burdens

## 7.4.1: Utilitarian Arguments against Discrimination

The standard utilitarian argument against racial and gender-based discrimination is rooted in the idea that a society's productivity will be optimized to the extent that jobs are awarded on the basis of competency (or "merit").[59] Different jobs, the argument goes, require different skills and personality traits if they are to be carried out in as productive a manner as possible. Furthermore, different people have different skills and personality traits. Consequently, to ensure that jobs are maximally productive, they must be assigned to those individuals whose skills and personality traits qualify them as the most competent for the job. Insofar as jobs are assigned to individuals on the basis of other criteria unrelated to competency, productivity must necessarily decline. Discriminating among job applicants on the basis of race, sex, religion, or other characteristics unrelated to job performance is necessarily inefficient and, therefore, contrary to utilitarian principles.[60]

## 7.4.2: Rights-Based Arguments against Discrimination

Nonutilitarian arguments against racial and gender-based discrimination may take the approach that discrimination is wrong because it violates a person's basic moral rights.[61] Kantian theory, for example, holds that human beings should be treated as *ends* and never used merely as *means*. At a minimum, this principle means that each individual has a moral right to be treated as a free person equal to any other person and that all individuals have a correlative moral duty to treat each individual as a free and equal person. Discriminatory practices violate the principle in two ways:

- Discrimination is based on the belief that one group is inferior to other groups, that blacks, for example, are less competent or less worthy of respect than whites or perhaps that women are less competent or worthy of respect than men.[62] Discrimination may be based on stereotypes that see minorities as "lazy" or "shiftless" and see women as "emotional" and "weak." Such degrading stereotypes undermine the self-esteem of those groups against whom the stereotypes are directed and thereby, violate their right to be treated as equals.
- Discrimination places the members of groups who are discriminated against in lower social and economic positions: women and minorities have fewer job opportunities and are given lower salaries. Again, the right to be treated as a free and equal person is violated.[63]

A group of Kantian arguments, related to those mentioned, holds that discrimination is wrong because the person who discriminates would not want to see his or her behavior universalized.[64] In particular, the person would not want to

### Two Objections to the Utilitarian Argument Against Discrimination

Critics of the utilitarian argument against discrimination have raised two objections to the utilitarian argument.[65, 66, 67, 68, 69]

**Interactive**

**Objection 1** | **Objection 2**

If utilitarian arguments are correct, then jobs should be assigned on the basis of job-related qualifications only as long as such assignments will advance the public welfare. If, in a certain situation, the public welfare would be advanced to a greater degree by assigning jobs on the basis of some factor not related to job performance, then the utilitarian would have to hold that in those situations jobs should not be assigned on the basis of job-related qualifications, but on the basis of that other factor. For example, if society's welfare would be promoted more by assigning certain jobs on the basis of need (or gender or race) instead of on the basis of job qualifications, then the utilitarian would have to concede that need (or gender or race), and not job qualifications, is the proper basis for assigning those jobs.

be discriminated against on the basis of characteristics that have nothing whatever to do with the person's own ability to perform a given job. Because the person who discriminates would not want to see his or her own behavior universalized, according to Kant's first categorical imperative, it is morally wrong for that person to discriminate against others.

## 7.4.3: Justice-Based Arguments against Discrimination

A second group of nonutilitarian arguments against discrimination views it as a violation of the principles of justice. For example, John Rawls argued that among the principles of justice that the enlightened parties to the "original position" would choose for themselves is the principle of equal opportunity: "Social and economic inequalities are to be arranged so that they are attached to offices and positions open to all under conditions of fair equality of opportunity."[70] Discrimination violates this principle by arbitrarily closing off to minorities and women the more desirable positions in an institution, thereby not giving them an opportunity equal to that of others. Arbitrarily giving some individuals less of an opportunity to compete for jobs than others is unjust, according to Rawls.

Another approach to the morality of discrimination that also views it as a form of injustice is based on the formal *principle of justice*: individuals who are equal in all respects relevant to the kind of treatment in question should be treated equally even if they are dissimilar in other, nonrelevant respects. To many people, this principle is the defining feature of justice.[71] Discrimination in employment is wrong because it violates the basic principle of justice by differentiating between people on the basis of characteristics (race or gender) that are not relevant to the tasks they must perform. A major problem faced by this kind of argument against discrimination, however, is that of defining precisely what counts as a *relevant respect* for treating people differently and explaining why race and gender are not relevant, whereas something like intelligence or war service may be counted as relevant.

***Quick Review 7.6***
**Arguments against Discrimination**

- Utilitarian: Discrimination leads to an inefficient use of human resources, but opponents reply that some forms of discrimination may actually benefit society.
- Rights-based: Discrimination violates basic human rights by holding minorities and women as “inferior,” assigning them lower social and economic positions; discrimination cannot be universalized.
- Justice-based: Discrimination results in unjust distributions of benefits and burdens according to John Rawls, and it violates the formal principle of equality by differentiating among people on the basis of characteristics that are not relevant to job performance.

## 7.4.4: Recognizing Discriminatory Practices

Regardless of the problems inherent in some of the arguments against discrimination, it is clear that good reasons exist for holding that discrimination is wrong. It is consequently understandable that our laws have gradually been changed to conform to these moral requirements and that recognition has grown of the various ways in which discrimination in employment occurs.[72]

### Common Discriminatory Practices

Certain business practices are now widely recognized as having discriminatory outcomes, and managers should eliminate them to ensure their companies are not engaged in discrimination.

Interactive

**Recruitment Practices**

Firms that rely solely on the word-of-mouth referrals of present employees to recruit new workers tend to recruit only from those groups that are already represented in their labor force. Media and agency choice is another way firms may narrow their human resources (HR) searches in a discriminatory manner. When a firm's labor force is composed of only white males, this recruitment policy will tend to discriminate against minorities and women. When desirable job positions are only advertised in media (or by job-referral agencies) that are not used by minorities or women (such as in English newspapers not read by Spanish-speaking minorities) or are classified as "for men only," recruitment will be discriminatory.

**Screening Practices**

**Promotion Practices**

**Conditions of Employment**

**Discharge**

## 7.4.5: Specifics of Sexual Harassment

Women, as noted earlier, are victims of a particularly troublesome kind of discrimination that is both overt and coercive: **sexual harassment**. Although males are also subjected to some instances of sexual harassment, it is women who are by far the most frequent victims. For all of its acknowledged frequency, sexual harassment still remains difficult to define, to minitor, and to prevent. The EEOC published a set of guidelines defining sexual harassment and setting out what, in its view, is prohibited by the law. In their current form, the guidelines state:

> Unwelcome sexual advances, requests for sexual favors and other verbal or physical contact of a sexual nature constitute sexual harassment when
>
> 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
> 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
> 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.[73]

The guidelines go on to explain that an employer is responsible for all sexual harassment engaged in by employees, "regardless of whether the employer knew" the harassment was occurring and regardless of whether it was "forbidden by the employer."

**CLEAR MORAL JUSTIFICATION FOR THE EEOC SEXUAL HARASSMENT GUIDELINES** In several major respects, the EEOC sexual harassment guidelines are clearly morally justified. They are intended to outlaw those situations in which an employee is coerced into

### Sexual Harassment as Defined by EEOC

The EEOC guidelines imply that there are two distinct kinds of sexual harassment.

giving in to another employee's sexual demands by the threat of losing some significant job benefit, such as a promotion, raise, or even the job. This kind of degrading coercion inflicts great psychological harm on the employee, violates the employee's most basic rights to freedom and dignity, and is an outrageously unjust misuse of the power that a superior can exercise over subordinates. It is thus a crude violation of the moral standards of utilitarianism, rights, justice, and care.

## On the Edge

### Driving for Old Dominion

Old Dominion Freight Line is a trucking company that hires two kinds of drivers.[74] "Line Haul" drivers drive long distances and spend nights and weekends on the road. "Pickup and Delivery" drivers only drive locally and stay home, but they have to carry and stack heavy loads, so their job is more physically demanding. Out of 3,100 Pickup and Delivery drivers in the company, only five were women. Deborah Merritt worked for six years as a Line Haul driver, making long trips across the United States, sometimes driving over 500 miles per day. Still, she never complained and did her job well. However, Merritt wanted a Pickup and Delivery job so she would not have to spend time away from home. To show she could do the job, she filled in for Pickup and Delivery drivers when needed. Her supervisor said Merritt did a good job on Pickup and Delivery, and several clients complimented her work. When a full-time Pickup and Delivery job finally was available, Merritt told Bobby Howard, her Lynchburg, Virginia, terminal manager, that she wanted the job. Howard said he did not have the authority to fill the position. However, later, he in fact hired someone else to take the job: a male driver with less truck-driving experience. Merritt did not complain. A year later, another Pickup and Delivery job became available. Again, Howard hired a less-experienced male driver. When Merritt asked why he passed her over twice, Howard said it "had been discussed and it was decided that they could not let a woman have that position." He pointed out that "the company did not really have women. . . [Pickup and Delivery] drivers." An Old Dominion driver put it simply: "We don't have no females." Howard also told her that Old Dominion's Regional Vice President "was afraid [a female] would get hurt" and "didn't think a girl should have that position." An operations manager agreed, saying "this is not a woman's place."

Another year passed and a Pickup and Delivery job again became available. This time the company gave the position to Merritt, but told her that she would be on probation for 90 days and would lose the job if she had any performance problems. No male drivers had ever been required to go through a probation period. Merritt worked as a Pickup and Delivery driver for 90 days, and had no problems carrying freight or doing anything else required of the position. However, seven months later, she injured her ankle while moving boxes. Her doctor said she could not do Pickup and Delivery until it healed. Three months later, Merritt's ankle was well and her doctor told her "nothing . . . prevented her from performing her duties as a Pickup and Delivery driver. . . . [Her ankle was] as well, if not better, . . . than before her injury." So Merritt asked to have her Pickup and Delivery job back. However, Brian Stoddard, vice president of Safety and Personnel, said that she first had to take a "physical ability test" that would evaluate her strength, agility, and cardiovascular endurance and have her perform the tasks of a Pickup and Delivery driver. Merritt did not pass the test; but the test had been used only rarely and only when hiring new people. If male employees were injured while on the job, Stoddard admitted, he was "not necessarily going to send them for a [physical fitness] test." Moreover, Merritt said, she could obviously do the job since she did it for seven months and filled in for other drivers even longer. Nevertheless, Stoddard fired her because of her "inability to perform [the] job" as indicated by the test and later replaced her with a male driver.

#### WRITING PROMPT

**Discrimination in Practice**

1. Was the fact that Deborah Merritt did not pass the physical ability test sufficient justification for firing her? Why or why not?
2. Did Old Dominion Freight Line discriminate unjustly against Merritt? If you think firing her was unjust discrimination, then was it individual or institutionalized discrimination? Explain your answer.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## 7.4.6: Difficult Questions about the Hostile Workplace Guideline

Several aspects of the EEOC guidelines merit further discussion. As we noted, the guidelines prohibit more than specific acts of harassment. In addition to prohibiting harassing acts, they also prohibit conduct that "creates" an "intimidating, hostile or offensive working environment." That means that an employer is guilty of sexual harassment when the employer allows an environment that is hostile or offensive to women even in the absence of any particular incidents of sexual harassment. This point raises some difficult questions.

## Ethical Application

### Hostile Workplace

If the mechanics in a garage are accustomed to placing pin-ups in their place of work and are accustomed to recounting off-color jokes and using off-color language, are they guilty of creating an environment that is "hostile and offensive" to a female co-worker? In a well-known case, a federal court described the following real situation:

> For seven years the [female] plaintiff worked at Osceola as the sole woman in a salaried management position. In common work areas [she] and other female employees were exposed daily to displays of nude or partially clad women belonging to a number of male employees at Osceola. One poster, which remained on the wall for eight years, showed a prone woman who had a gold ball on her breasts with a man standing over her, golf club in hand, yelling "Fore!" And one desk plaque declared "Even male chauvinist pigs need love. . . . " In addition, Computer Division Supervisor Dough Henry regularly spewed anti-female obscenity. Henry routinely referred to women as "whores," "cunt," "pussy," and "tits. . . . " Of plaintiff, Henry specifically remarked, "All that bitch needs is a good lay" and called her "fat ass."[75]

Does a situation such as this represent an "intimidating, hostile, or offensive working environment," which the EEOC guidelines prohibit as sexual harassment?

### Critiques of the EEOC Sexual Harassment Guidelines and Responses

Although we have argued that it is morally wrong to create a work environment that sexually harasses women, the EEOC guidelines have been criticized as imperfect or unrealistic. In turn, counterarguments address these critiques.[76, 77]

Interactive

As a primary critique of the EEOC guidelines, some critics object that these kinds of environments were not created to intentionally degrade women, but that they are part of the "social mores of [male] American workers," that it is hopeless to try to change them, and that they do not unjustly harm women because women have the power to take care of themselves. A *Forbes* magazine article, for example, asked rhetorically, "Can women really think they have the right to a pristine work environment free of rude behavior?" Such sentiments are indicative of the uncertainties surrounding this issue.

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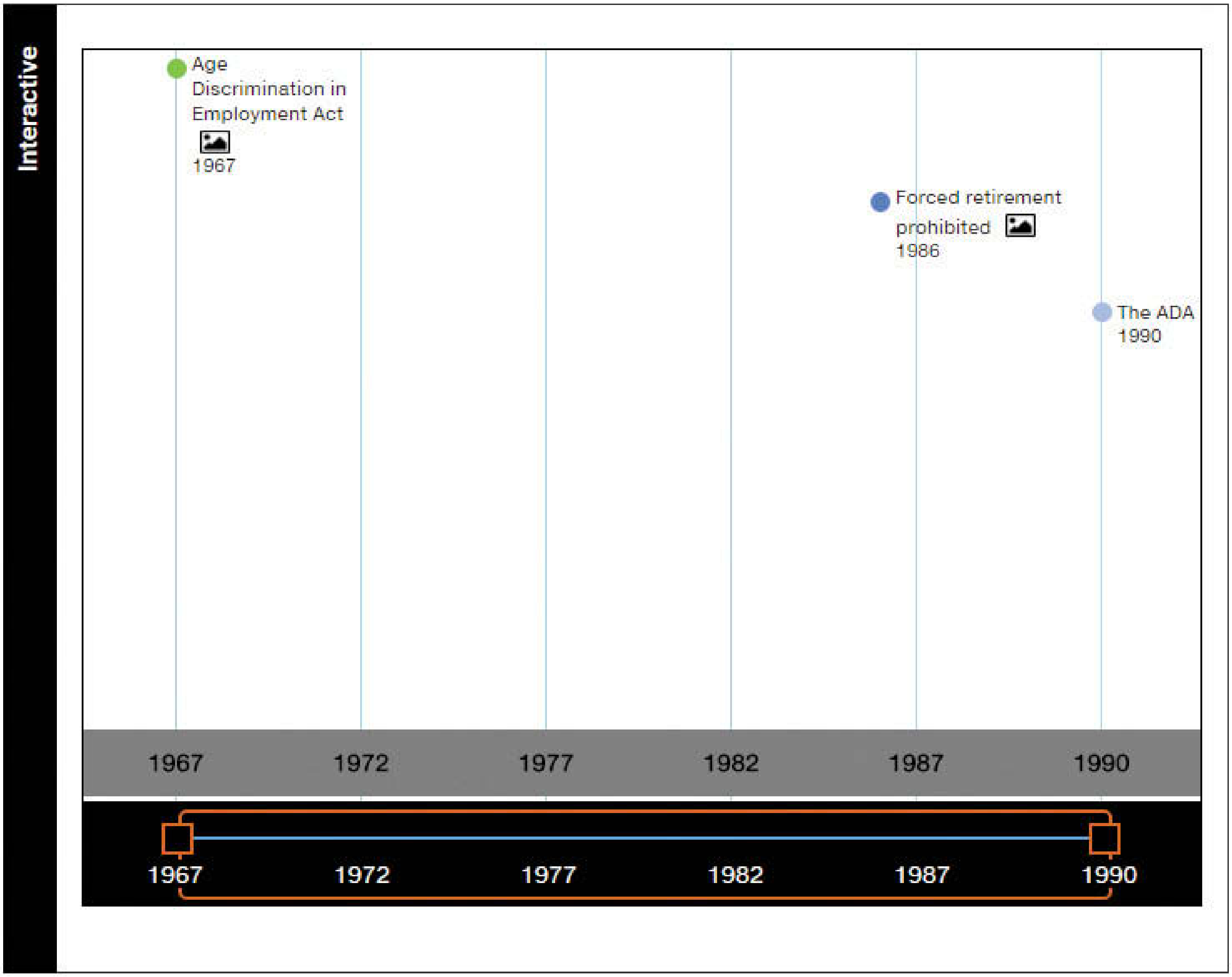
While an individual may react immediately with an answer to this question, the legal answer to the question in "Ethical Application" is unclear, and different courts have taken different positions on the question.

**INTENTIONALITY, EFFECT, AND EMPLOYER RESPONSIBILITY** A different question and one that is more relevant to our inquiry is this: Is it morally wrong to create or allow an "intimidating, hostile, or offensive working environment"? The answer to this question seems in general to be "yes" because such an environment is degrading, it is usually imposed by more powerful male parties upon more vulnerable female employees, and it imposes heavy costs on women because such environments tend to belittle them and make it more difficult for them to compete with males as equals.

***Quick Review 7.7***
**Objections to the Equal Employment Opportunity Commission's Sexual Harassment Guidelines**

- The guidelines prohibit "intimidating, hostile, or offensive working environment," but it is sometimes hard to distinguish this type of environment from one where male rudeness not intended to degrade women occurs.
- The guidelines prohibit "verbal or physical contact of a sexual nature" when it has the "effect of unreasonably interfering with an individual's work performance," but this seems to require use of purely subjective judgments.
- The guidelines prohibit "verbal conduct" that creates an "intimidating, hostile or offensive working environment," but this can conflict with the right to free speech.

## Age Discrimination and American Disabilities Act



- The guidelines hold the employer guilty for an employee's sexual harassment even if the employer did not know nor could have prevented it; some respond that eradicating sexual harassment justifies forcing the employer to be responsible for preventing it, and that it is an "external cost" employers should internalize.

## 7.4.7: Beyond Race and Gender: Other Groups

Are there other groups that deserve protection from discrimination?[78] Legal protection against discrimination for older and disabled workers was enacted in the last half of the twentieth century.

Since obesity is considered a disability, the Americans with Disabilities Act prohibits discriminating against workers on the basis of their obesity. Nevertheless, because of widespread stereotypes about the abilities and capacities of older workers and workers with disabilities, subtle and overt discrimination against these groups continues to pervade the United States.[79]

Although older workers and workers with disabilities at least have some legal protections against discrimination, such protections are rare for workers with nontraditional gender identities and sexual preferences. No federal laws prohibit discrimination on the basis of sexual orientation, and only about half of the states and some cities have laws prohibiting discrimination against LGBTQ people. A court held, for example, that Liberty Mutual Insurance Company was not acting illegally when it refused to hire a male merely on the grounds that he was "effeminate," and a court also cleared Budget Marketing, Inc., of acting illegally

### Peter Oiler and Winn-Dixie Stores

Winn-Dixie Stores fired Peter Oiler, a truck driver who had worked for the Louisiana supermarket chain for 21 years.

**Interactive**


*With more than 500 stores in Florida, Alabama, Louisiana, Georgia, and Mississippi, Winn-Dixie Stores, Inc., says it aspires to be the "leading neighbourhood grocer in every market it serves."*

Peter Oiler loaded groceries from the company's warehouse and drove them to Winn-Dixie stores in Louisiana and Mississippi. A good worker, he received above-average performance ratings and was promoted three times. Oiler had been married to his wife, Shirley, for 23 years.

Two years before he was fired, Oiler asked his supervisor, Greg Miles, to squelch a company rumor that he was gay. A year later, Miles met with Oiler and asked him if the rumor still bothered him. Oiler said it did because he was not gay but transgender. Oiler said he had no intention of having surgery or even of transitioning to live full-time as a woman.

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when that company fired a male who began to dress as a female prior to gender-reassignment surgery.[80]

Many managers are reluctant to hire overweight persons—a class of people that the laws of most states do not protect. For example, Philadelphia Electric Company refused to hire Joyce English on the grounds that she weighed 300 pounds and not because she was unable to perform the duties of the position for which she applied.[81] How should these groups—LGBTQ and obese persons—be protected against job discrimination? Some have argued that they should be protected on the same grounds that women and ethnic minorities are currently protected.[82] At the present time, these groups remain as vulnerable as women, minorities, older workers, and people with disabilities once were.

WRITING PROMPT

**Discrimination against Transgender People**

1. In relation to the ethics in the case of Winn-Dixie and Peter Oiler, do you find that Oiler experienced intentional, institutional, or some other kind of discrimination? Why?
2. If you agree that protections must be extended to transgender people, explain why.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

***Quick Review 7.8***
**In Addition to Race and Gender, Discrimination Can Be Based On . . .**

- Age, which is protected by the Age Discrimination in Employment Act
- Disability, which is protected by the Americans with Disabilities Act
- Sexual orientation, which has few protections against discrimination
- Transgender status, which has even fewer protections against discrimination
- Obesity, which to some extent is protected by the Americans with Disabilities Act.

# 7.5: Affirmative Action

**OBJECTIVE: Examine the policy of affirmative action from practical, legal, and moral points of view**

All of the equal opportunity policies discussed in this chapter are ways of making employment decisions blind with respect to gender and race. These policies are all negative: they aim to prevent any further discrimination. Therefore, they ignore how past discrimination has left minorities and women disadvantaged in comparison to nonminorities and men. Because of past discrimination, minorities and women do not have the kind of work skills and workplace qualifications that their more advantaged white and male counterparts have been able to acquire. Women and minorities are still underrepresented in the more prestigious and well-paying economic positions, which creates stereotypical impressions that they are not well-suited for these positions or that these positions are appropriate for whites or males. Past discrimination has also placed white and male employees in decision-making positions that determine who will be hired or promoted, and, psychologists have found, from early childhood people tend to favor those who are most like themselves (although in U.S. society, both whites and blacks tend to be biased toward lighter skin).[83] The policies discussed so far do not call for any positive steps to eliminate these lingering effects of past discrimination that tend to reproduce similar (perhaps unconscious) discriminatory behaviors in the present.

To rectify the effects of past discrimination, many employers have instituted affirmative action programs designed to achieve a more representative distribution of minorities and women within the firm by giving some degree of preference to women and minorities.

## 7.5.1: Legal Aspects of Affirmative Action

U.S. Supreme Court decisions have not been completely clear about the legality of affirmative action programs. A large number of federal court decisions have agreed that the use of affirmative action programs to redress racial or gender imbalances that are the result of previous discriminatory hiring practices is legitimate. Moreover, the Supreme Court has ruled that companies can legally use affirmative action programs to remedy a "manifest racial imbalance" or a "historic," "persistent," and "egregious" underrepresentation of women or minorities, even if the representation was not the result of past discriminatory job practices.[84] Over the years, the Supreme Court has placed additional conditions on affirmative action programs.

***Quick Review 7.9***
**Legal Status of Affirmative Action**

- Affirmative action is legal when used to correct a racial or sexual imbalance that is the result of previous discrimination, or to correct an "egregious," "persistent," and "manifest racial imbalance" not caused by previous discrimination; it can be used in hiring but not in layoffs; it cannot use "inflexible" quotas; it must be "narrowly tailored" to achieve the program's objectives; it can be used to achieve "educational diversity" and "broadcast diversity."

### What Does an Affirmative Action Program in the Workplace Involve?

The heart of an affirmative action program in the workplace is a detailed study (a "utilization analysis") of all the major job classifications in the firm.

Interactive

**Purpose of the Study**

The purpose of studying all the major job classifications in the firm is to determine whether there are fewer minorities or women in a particular job classification than could be reasonably expected by their availability in the local pool of workers from which the firm recruits.

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- Affirmative action cannot overrule seniority and cannot be used in government set-aside programs except as a "last resort" in an "extreme case" involving previous racial bias by the government.

## 7.5.2: Societal Aspects of Affirmative Action

Of course, affirmative action programs are not found only in the United States. In Canada, affirmative action programs are widely used for women, people with disabilities, Aboriginal people, and members of visible minority groups. India uses affirmative action programs particularly for members of the lowest castes who are underrepresented in schools and within government jobs. India's lowest castes, sometimes called the "Depressed Classes," include those once popularly referred to as "untouchables," people who have long been (and who in many parts of India still are) humiliated, shunned, oppressed, segregated, and impoverished, but for whom the government now reserves a certain percentage of places in schools and universities plus jobs in government. Many Chinese universities have affirmative action policies directed at several of their own ethnic minorities, while Romania uses affirmative action for the Roma people otherwise known as "gypsies." The South African government supports affirmative action programs for blacks, Indians, and coloreds. Israel uses such programs for Jewish Ethiopians. However, as in the United States, affirmative action is highly controversial and has been attacked in foreign nations.

### U.S. Supreme Court Rulings on Affirmative Action Programs

Based on U.S. Supreme Court decisions, race or gender can be only one of several factors affirmative action programs consider when making decisions about individuals; affirmative action targets cannot be inflexible "quotas"; and affirmative action programs must be temporary and must be "narrowly tailored" to achieve their objectives. Finally, affirmative action can be used to achieve "diversity," at least by educational institutions and, apparently, even by the government when it distributes broadcast licenses.[85, 86, 87, 88, 89]

**Interactive**

**Supreme Court Decision in 1984**

In June 1984, the Supreme Court ruled that companies may not set aside the seniority of white workers during layoffs in favor of women and minority workers hired under affirmative action plans as long as the seniority system was adopted without a discriminatory motive. Thus, although affirmative action programs that give preference to women or minorities as a group were not declared illegal, their effects could disappear during hard times because *the last hired, first-fired* rule of seniority would hit strongest at women and minorities recently hired through the programs. The 1984 Supreme Court decision also included a nonbinding advisory statement that

> If individual members of a . . . class demonstrate that they have been actual victims of the discriminatory practice, they may be awarded competitive seniority and given their rightful place on the seniority roster. However, . . . mere membership in the disadvantaged class is insufficient to warrant a seniority award; each individual must prove that the discriminatory practice had an impact on him.

**Supreme Court Decision in 1986**

**Later Supreme Court Decisions**

## 7.5.3: Compensation Arguments for Affirmative Action

Arguments that defend affirmative action as a form of compensation are based on the concept of compensatory justice.[90] Compensatory justice implies that people have an obligation to compensate those whom they have intentionally and unjustly wronged. Affirmative action programs are then interpreted as a form of reparation by which white male majorities now compensate women and minorities for unjustly injuring them by discriminating against them in the past. One version of this argument holds, for example, that blacks were wronged in the past by U.S. whites and that consequently the former should now receive compensation from whites.[91] Programs of preferential treatment provide that compensation.

The difficulty with arguments that defend affirmative action on the basis of the principle of compensation is that the principle requires that compensation should come only from those specific individuals who intentionally inflicted a wrong, and it requires them to compensate only those specific individuals whom they wronged. For example, if five red-haired persons wrongfully injure five black-haired persons, then compensatory justice obligates only the five

### Objection and Answers Concerning Affirmative Action Programs

Affirmative action programs have been attacked mainly on the grounds that, in attempting to correct the effects of past discrimination, the programs themselves have become racially or sexually discriminatory.[92, 93, 94, 95]

Interactive

**Argument: Reverse Discrimination against White Males**

By showing preference to minorities or women, critics argue, the programs institute a form of reverse discrimination against white males. A 45-year-old electrical worker, for example, is quoted as saying:

> What does bother me is the colored getting the preference because they're black. This I am against. I say, I don't care what his color is. If he has the ability to do the job, he should get the job—not because of his color. They shouldn't hire 20 percent just because they're black. This is discrimination in reverse as far as I'm concerned. . . . If they want it, they can earn it like I did. I am not saying deprive them of something—not at all.

Affirmative action programs are said to discriminate against white males by using a nonrelevant characteristic—race or sex—to make employment decisions, and this, critics argue, violates justice by violating the principles of equality and equal opportunity.

**Counterarguments: Compensation for Past Harm and Achieving Social Goals**

red-haired persons to give to only the five black-haired persons whatever the black-haired persons would have had if the five red-heads had not injured them. Compensatory justice, however, does not require that compensation should come from all the members of a group that contains some wrongdoers, nor does it require that compensation should go to all the members of a group that contains some injured parties. In this example, although justice requires that the five red-haired persons must compensate the five black-haired persons, it does not require that all red-haired persons should compensate all black-haired persons. By analogy, only the specific individuals who discriminated against minorities or women in the past should now be forced to make reparation of some sort, and they should make reparation only to those specific individuals against whom they discriminated.[96]

Although affirmative action programs usually benefit all the members of a racial or gender-based group, regardless of whether they specifically were discriminated against in the past, and because these programs hinder every white male regardless of whether he specifically discriminated against someone in the past, it follows that such preferential programs cannot be justified on the basis of compensatory justice.[97] In short, affirmative action programs are unfair because the beneficiaries of affirmative action are not the same individuals who were injured by past discrimination, and the people who must pay for their injuries are usually not the ones who inflicted those injuries.[98]

**COUNTERING THE OBJECTION TO COMPENSATION** Various authors have tried to counter the objection to the "affirmative action as compensation" argument by claiming that actually *every* black person (or every woman) living today has been injured by discrimination and that *every* white person (or every male) has benefited from those injuries. For example, the well-known philosopher Judith Jarvis Thomson wrote:

> But it is absurd to suppose that the young blacks and women now of an age to apply for jobs have not been wronged. . . . Even young blacks and women have lived through downgrading for being black or female. . . . And even those who were not themselves downgraded for being black or female have suffered the consequences of the downgrading of other blacks and women: lack of self-confidence and lack of self-respect.[99]

Philosopher Martin Redish wrote:

> It might also be argued that, whether or not the [white males] of this country have themselves participated in acts of discrimination, they have been the beneficiaries—conscious or unconscious—of a fundamentally racist society. They thus may be held independently "liable" to suppressed minorities for a form of unjust enrichment.[100]

It is unclear whether these arguments succeed in justifying affirmative action programs that benefit groups (all blacks and all women) instead of specific injured individuals and that penalize groups (white males) instead of specific wrongdoers.[101] Has every minority and woman really been injured, as Thomson claims, and are all white males really beneficiaries of discrimination as Redish implies? Even if a white male happens (through no fault of his own) to benefit from someone else's injury, does this make him "liable" for that injury?

***Quick Review 7.10***
**Compensation Argument for Affirmative Action**

- It claims affirmative action compensates groups for past discrimination.
- It is criticized as unfair because those who benefit were not harmed and those who pay did not injure, which are requirements of compensatory justice.
- Some argue in response to this criticism that discrimination has harmed all minorities and women, and all whites and males have benefited from it.

## 7.5.4: Affirmative Action as an Instrument for Increasing Utility

A second set of justifications advanced in support of affirmative action programs is based on the idea that these programs are morally legitimate instruments for achieving morally legitimate ends. For example, utilitarians have claimed that affirmative action programs are justified because such programs promote the public welfare.[102] They have argued that past discrimination has produced a high degree of correlation between race and poverty.[103] As racial minorities were systematically excluded from better-paying and more prestigious jobs, their members have become impoverished. The kinds of statistics cited earlier in this chapter provide evidence of this inequality. Impoverishment in turn has led to unmet needs, lack of self-respect, resentment, social discontent, and crime. Therefore, the public welfare is promoted if the position of these impoverished persons is improved by giving them special educational and employment opportunities. If opponents object that such affirmative action programs are unjust because they distribute benefits on the basis of an irrelevant criterion such as race, the utilitarian can answer that *need*, not race, is the criterion by which affirmative action programs distribute benefits. Race provides an inexpensive *indicator* of need because past discrimination has created a high correlation between race and need. Need, of course, is a just criterion of distribution.[104] Appealing to the reduction of need is consistent with utilitarian principles because reducing need will increase total utility.

The major difficulties encountered by these utilitarian justifications of affirmative action have concerned two areas:

1. Some have questioned whether the social costs of affirmative action programs (such as the frustrations felt by white males) outweigh their obvious benefits.[105] The utilitarian defender of affirmative action, of course, will reply that the benefits far outweigh the costs.
2. More important, opponents of the utilitarian justifications of affirmative action have questioned the assumption that race is an appropriate indicator of need. It may be inconvenient and expensive to identify the needy directly, critics argue, but the costs might be small compared with the gains that would result from having a more accurate way to identify the needy.[106] Utilitarians answer this criticism by arguing that all minorities (and women) have been impoverished and psychologically harmed by past discrimination. Consequently, race (and gender) provide accurate indicators of need.

***Quick Review 7.11***
**Utilitarian Argument for Affirmative Action**

- It claims affirmative action reduces need by benefiting minorities and women in need, and so increases utility.
- It is criticized on grounds that its costs outweigh its benefits and that other ways of reducing need will produce greater utility.

## 7.5.5: Equal Justice Argument for Affirmative Action

Although utilitarian arguments in favor of affirmative action programs are quite convincing, the most elaborate and persuasive array of arguments advanced in support of affirmative action is the equal justice argument, which proceeds in two steps. First, supporters argue that the end envisioned by affirmative action programs is equal justice. Second, they argue that affirmative action programs are morally legitimate means for achieving this end.

**ARGUMENTS CENTERING ON PREFERENTIAL TREATMENT** Is preferential treatment a morally legitimate means for attaining a more just society? Three reasons have been advanced to show that it is not.

It is often claimed that affirmative action programs are a form of "reverse discrimination" against white males.[114] Supporters of affirmative action programs, however, have pointed out that there are crucial differences between the treatment accorded to whites by affirmative action programs and unjust discrimination.[115]

To discriminate, as we indicated earlier, is to make an adverse decision against the member of a group because members of that group are considered inferior or less worthy of respect. Preferential treatment programs, however, are not based on invidious contempt for white males. On the contrary, they are based on the judgment that white

### Affirmative Action and Distributive Justice

The basic end that affirmative action programs are supposed to achieve—equal justice—is characterized by various positive goals. Three goals are described here, followed by a description of the ultimate end, a more just society.[107, 108, 109, 110, 111, 112, 113]

Interactive

**Goal 1: Distribute Society's Benefits and Burdens**

In our present society, it is argued, jobs are not distributed justly because they are not distributed according to the relevant criteria of ability, effort, contribution, or need. Statistics show that jobs are in fact still distributed according to race and gender. One end of affirmative action is to bring about a distribution of society's benefits and burdens that is consistent with the principles of distributive justice and that eliminates the important position race and gender currently have in the assignment of jobs. In our present society, women and minorities do not have the equal opportunities that white males have and that justice demands. Statistics prove this point. This lack of equal opportunity is because of subtle racist and sexist attitudes that bias the judgments of those (usually white males) who evaluate job applicants and that are so deeply entrenched that they are virtually ineradicable by good-faith measures in any reasonable period of time.

**Goal 2: Neutralize Conscious and Unconscious Bias**

**Goal 3: Neutralize Competitive Disadvantages**

**Ultimate End: Seek a More Just Society**

males are currently in an advantaged position and that others should have an equal opportunity to achieve the same advantages. Moreover, racist or sexist discrimination is aimed at destroying equal opportunity. Preferential treatment programs are aimed at restoring equal opportunity where it is absent. Thus, preferential treatment programs cannot accurately be described as "discriminatory" in the same immoral sense that racist or sexist behavior is discriminatory.

It is sometimes claimed that preferential treatment violates the principle of equality ("Individuals who are equal in all respects relevant to the kind of treatment in question should be treated equally") by allowing a nonrelevant characteristic (race and sex) to determine employment decisions.[116] Defenders of affirmative action programs have replied that sexual and racial differences are now relevant to making employment decisions. These differences are relevant because when society distributes a scarce resource (such as jobs), it may legitimately choose to allocate it to those groups that will best advance its legitimate ends.

In our present society, allocating scarce jobs to women and minorities will best achieve equality of opportunity, thus race and sex are now relevant characteristics to use for this purpose. Moreover, as we have seen, the reason that we hold that jobs should be allocated on the basis of job-related qualifications is that such an allocation will achieve a socially desirable (utilitarian) end: maximum productivity.

When this end (productivity) conflicts with another socially desirable end (a just society), it is legitimate to pursue the second end even if doing so means that the first end will not be as fully achieved.

**DOES AFFIRMATIVE ACTION DO MORE HARM THAN GOOD?** Some critics have objected that affirmative action programs actually harm women and minorities because such programs imply that women and minorities are so inferior to white males that they need special help to compete.[117] This attribution of inferiority, critics claim, is debilitating to minorities and women and ultimately inflicts harms that are so great they far outweigh the benefits provided by such programs.

In a widely read and much-acclaimed book, for example, black author Shelby Steele criticized affirmative action in business and education because, he wrote, after 20 years, it has proved to be "more bad than good."[118] Specifically, he writes, in affirmative action programs, "the quality that earns us preferential treatment is an implied inferiority." According to Steel, even when a black person does not see such implied inferiority in preferential treatment, "he knows that whites do," so "the result is virtually the same." Preferential treatment, he claims, is "the lowering of normal standards" in order to increase black representation, and such a lowering of standards leads blacks who are measured by those lower standards to suffer a "debilitating doubt" that may be "unrecognized" but nevertheless becomes a "preoccupation" that "undermines" their ability to perform, especially in integrated situations.

**ARGUMENTS FAVOR AFFIRMATIVE ACTION AS MORALLY PERMISSIBLE** Strong arguments can be made in support of affirmative action programs, and strong objections can be lodged against them. Because there are such powerful arguments on both sides of the issue, the debate over the legitimacy of affirmative action programs continues to rage without resolution. However, the review of the arguments seems to suggest that affirmative action programs are at least a morally permissible means for achieving just ends, even if they may not show that they are a morally required means for achieving those ends.

***Quick Review 7.12***
**Equal Justice Argument for Affirmative Action**

- It claims affirmative action will secure equal opportunity by a fairer distribution of jobs, by neutralizing the effects of unconscious bias that affects judgments about minorities and women, and by placing women and minorities in less disadvantaged and more competitive positions in competitions with males and whites.
- It claims affirmative action is a morally legitimate means for securing equal opportunity. It is not a form of "reverse discrimination" because it is not based on invidious judgments of male inferiority nor does it aim to destroy equal opportunity; it does not use nonrelevant characteristics, since race and sex are relevant in this limited context; and it does not harm minorities and women, and any potential harm would be less than the harm inflicted by current unconscious discrimination.

## 7.5.6: Implementing Affirmative Action and Managing Diversity

Opponents of affirmative action programs have argued that other criteria besides race and sex have to be weighed when making job decisions in an affirmative action program. Opponents have argued the following:

1. If sex and race are the only criteria used, this will result in the hiring of unqualified workers and a consequent decline in productivity.[119]
2. Many jobs have a significant impact on the lives of others or are critical to the success of the firm. Consequently, if a job has a significant impact on life or health (e.g., it affects the safety of others such as the job of flight controller or surgeon) or the entire success of the company, then criteria other than race or sex

### Views That Counter the More-Harm-Than-Good Objection

Shelby Steele's eloquently expressed view is not idiosyncratic. It is a view that many other minorities have come to hold. Yet the objection to affirmative action programs that essentially says it does more harm than good has met with several responses.[120, 121, 122]

Interactive

**1. Benefits Outweigh Costs**

Although many minorities concede that affirmative action carries some costs for minorities, they also hold that the benefits of such programs still outweigh the costs. For example, a black worker who won several jobs through affirmative action is reported as saying, "I had to deal with the grief it brought, but it was well worth it."

**2. The Law Can Counter Biased Decisions**

**3. History of Overt Racism and Discrimination is Predominant**

**4. Beneficiaries Have No Cause to Feel Inferior**

should have a prominent place and can override affirmative action.[123]

3. Affirmative action programs, if continued, will turn us into a more racially and sexually conscious nation.[124] Consequently, the programs should cease as soon as the defects they are meant to remedy are corrected.

The following guidelines have been suggested as a way to fold these sorts of considerations into an affirmative action program when minorities are underrepresented in a firm:[125]

1. Both minorities and nonminorities should be hired or promoted only if they reach certain minimum levels of competency or are capable—after training or education—of reaching such levels in a reasonable time.
2. If the qualifications of the minority candidate are equal to (or higher or only slightly less than) those of the nonminority, then the minority should be given preference.
3. If both the minority and nonminority candidates are adequately qualified for a position but the nonminority candidate is clearly more qualified, then:
   a. If performance in the job directly affects the lives and safety of people (such as a surgeon or an airline pilot) or if performance on the job has a substantial and critical effect on the entire firm's success (such as head comptroller), then

### Special Needs of Women and Minorities in the Workplace

Both women and minorities encounter special workplace problems and companies need to devise innovative means to address these needs. Despite societal changes, the balance of family and work remains more difficult for women, who physically bear children and who, in our culture, carry most of the burden of raising and caring for them.[126, 127, 128]

**Interactive**

Some people have suggested that companies could create two career tracks for women: one track for women who indicate that they plan to have and actively participate in raising their own children while pursuing their careers, and the other track for women who either plan not to have children or plan to have others (husbands or childcare providers) raise their children while they devote themselves to pursuing their careers by putting in extra hours, making sacrifices in their personal lives, traveling, transferring, and relocating to advance their careers, and taking every opportunity for professional development.

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the more qualified nonminority should be given preference.

**b.** If the position (like most positions in a firm) does not directly involve safety factors and does not have a substantial and highly critical effect on a firm's success, then the minority person should be given preference.

4. Preference should be extended to minority candidates only as long as their representation throughout the various levels of the firm is not proportional to their availability.

**THE ROLE OF BUSINESS ACCOMMODATION** The success or failure of an affirmative action program also depends in part on the accommodations a company makes to the special needs of a racially and sexually diverse workforce.

**CONSISTENT WITH MORAL PRINCIPLES, BUT DEBATE CONTINUES** The controversy over the moral propriety of affirmative action programs has not yet disappeared. The U.S. Supreme Court has ruled that such programs do not violate the Civil Rights Act of 1964. It does not follow that these programs do not violate any moral principles. If the arguments examined are correct, however, then affirmative action programs are at least consistent with moral principles. However, the arguments continue to be the subject of intense debate.

# Web Resources

Readers who want to conduct online research on the topic of discrimination might want to begin by accessing the web page of the U.S. Census Bureau for current detailed statistics on income, earnings, poverty, and other topics (*http://www.census.gov*), the Bureau of Labor Statistics (*http://www.bls.gov*), or the Equal Employment Opportunity Commission (*http://www.eeoc.gov*). The legal aspects of discrimination can be researched at the "Civil Rights Law" section of the Hieros Gamos website (*http://www.hg.org/civilrgt.html*). Patrick McCarthy's Review of Court Decisions on Workplace Discrimination provides useful summaries and links to key U.S. Supreme Court cases on job discrimination, although it is no longer regularly updated (*http://www.mtsu.edu/~pmccarth/eeocourt.htm*); EEOC Newsroom provides ongoing summaries and links to key stories on discrimination cases and developments (*https://www.eeoc.gov/eeoc/newsroom/*); the Oyez website provides useful summaries and links on current and previous U.S. Supreme Court cases on civil rights and discrimination (*https://www.oyez.org/cases/1850-1900/109us3*). For materials on affirmative action and racial discrimination in general, check out Vernellia R. Randall's website (*http://racism.org*).

## SHARED WRITING

**Background and Research on Discrimination**

1. In your judgment, was the historical shift in emphasis from intentional/isolated discrimination to unintentional/institutionalized discrimination good or bad? Justify your judgment.
2. Research your library or the Internet (e.g., the U.S. Census Bureau at *http://www.census.gov*) for statistics published during the last year that tend to support or refute the statistical picture of racism and sexism developed in Module 7.3 of this chapter. In view of your research and the materials in the text, do you agree or disagree with the statement, "Discrimination is no longer a major problem in the United States"? Explain your position fully.

A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit

**0 characters | 140 minimum**

## SHARED WRITING

**For and against Affirmative Action**

1. Compare and contrast the three main arguments against racial and gender-based job discrimination. Which of these seem to you to be the strongest? The weakest? Can you think of different kinds of arguments not discussed in the text? Are there important differences between racial discrimination and gender-based discrimination?
2. Compare and contrast the main arguments used to support affirmative action programs. Do you agree or disagree with these arguments? If you disagree with an argument, state clearly which part of the argument you think is wrong, and explain why it is wrong. (It is not enough to say, "I just don't think it is right.")

A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit

**0 characters | 140 minimum**

# Case Study 7.1: Should Kroger Pay Now for What a Ralphs' Employee Did in the Past?

The Kroger Company, a Cincinnati-based firm that operates 2,500 supermarkets in 32 states, acquired the Ralphs chain of 450 supermarkets in 1998 when it bought Fred Meyer Inc., which had acquired Ralphs the year before. Kroger had a reputation for being a well-run company, with progressive and exemplary employee policies. According to company spokesman Gary Rhodes, for example, "Kroger has had a written policy prohibiting sexual harassment since the 1980s. It includes a procedure that enables employees to point out any concerns to the company. All complaints are thoroughly investigated."[1] The company had a zero-tolerance policy for sexual harassment.

## A Verdict of Sexual Harassment

On June 1, 1998, the jury reached a two-part verdict in the case involving Roger Misiolek:

- In the first phase of the trial, the jury found the supermarket chain liable for gender harassment, failure to prevent gender harassment, and malice or oppression based on a conscious disregard of the rights or safety of others.
- In the second (penalty) phase of the trial, the jury awarded the six women $550,000 in compensatory damages and $3.325 million in punitive damages. Kroger Co., of course, would ultimately have to pay those damages.

Part of the June 1, 1998, verdict, however, was set aside almost immediately. California Judge Joan Weber, who presided over the trial, discovered that one of the jurors was a shareholder of Ralphs. Moreover, during the jury's deliberations, that juror had looked up Ralphs' net worth and shared this information with other jurors, disputing the expert testimony that had been offered in court on what Ralphs' real net worth was. The jurors had relied on information about the company's net worth to decide what punitive damages they should impose on the company during the penalty phase of the trial.

Ralphs asked that the case be retried. Judge Weber, however, ruled that the juror's misconduct affected only the penalty phase of the trial, and so only the penalty for punitive damages needed to be retried. Judge Weber's decision was upheld on appeal. The six women and their lawyers would have to return to court to retry the penalty phase of the trial.

In 1999, Misiolek had been demoted to working on a loading dock. However, he continued working for Ralphs for more than a year after Kroger took over Ralphs. In early 2000, Ralphs' management sent Misiolek a disciplinary letter, claiming that he had continued to make sex- and race-based insults against Ralphs' employees and had continued to touch women inappropriately. Fourteen months after Kroger acquired Ralphs, the company finally suspended Misiolek, and he subsequently quit. In his resignation letter to Ralphs, Misiolek continued to deny the accusations against him.

The one-month trial for the penalty phase of the case took place in 2002 and was presided over by Judge Michael Anello. This time, there was less dispute over the net worth of Ralphs because the jurors had available the exact price that Fred Meyer Inc. had paid for Ralphs in 1996 and that Krogers had subsequently paid in 1997. The penalty phase concluded on April 5, 2002, when the jury announced that it had awarded each of the six women $550,000 as compensation for emotional damage the harassment had caused them and $5 million each in punitive damages, for a total award of $33.3 million.

The award was among the largest ever for a sexual harassment case in the United States, and came as a surprise to Kroger, who had hoped it would be substantially less. The women's lawyer declared that the award was appropriate since the company "knew it was happening, but chose not to take any effective action. All they would do was transfer the victims away." After the trial, the women's lawyer told jurors that the judge had not allowed him to present evidence that Misiolek had been harassing women for 10 years before he was put in charge of the Ralphs store in Escondido. One woman who worked for Misiolek in 1985

### Kroger Acquires a Case of Sexual Harassment

Roger Misiolek, an employee of the Ralphs grocery store chain, had a proven history of harassing female employees.

Interactive

On Friday, April 5, 2002, managers of Kroger were stunned to learn that its relatively new subsidiary, Ralphs, was being told to pay compensatory and punitive damages totaling $30.6 million—the largest sexual harassment verdict ever in California, and the second-largest in the history of the United States—for the actions of Roger Misiolek, a Ralphs store manager accused of harassing six female employees at a Ralphs supermarket in Escondido, California, during 1995 and 1996. It seemed especially unfair that Kroger would have to pay for alleged injustices that had occurred before Kroger even owned Ralphs.

The harassment suit against Ralphs had been filed in 1996 by six women—Dianne Gober, Sarah Lange, Terri Finton, Peggy Noland, Suzanne Pipiro, and Tina Swann—all of whom were employees of a Ralphs store in Escondido, California. Four of the women worked as grocery cashiers, one was a bookkeeper, and one was the manager of the bakery department in the Escondido market. The trial began in April 1998 and concluded on June 1, 1998. During the trial, the women testified that Roger Misiolek, manager of the store where they worked, began to harass them immediately after he took over the store in 1995. The harassment continued through the rest of 1995 and into 1996. The women claimed that he touched them inappropriately, verbally abused them with profanity, and that on certain occasions, he shoved shopping carts at them, and threw objects at them including telephones, clipboards, and, in one instance, a 30-pound mailbag. One woman testified that Misiolek used foul language and racial slurs against her, fondled her against her will, and threw pens and a 12-pack of soda at her. A cashier testified that Misiolek suggestively touched, grabbed, hugged, and patted her. Another testified that he repeatedly asked her about her sex life. According to the four cashiers, Misiolek would come to their grocery checkout stand, squeeze into the small area with them so body-to-body touching would occur, and grab them around the waist.

1 of 3 Previous Next

allegedly said he called her a “dirty Mexican” and threw things at her, while a black woman said he had told her in 1992, “You can call me, ‘Yessuh, boss.’” One of the jurors, John Adair, declared that he felt the penalty was too small because the company should have been penalized at least 1 percent of its $3.7 billion net worth.

## The Verdict Set Aside and Reduced Damages Awarded

Nevertheless, a few months after the trial ended, the verdict of the jurors was set aside again. Judge Michael Anello issued an order on July 15, 2002, which argued that the damages awarded to the six women was “grossly excessive” and the result of the jury’s “passion and prejudice.” In his order, Judge Anello conceded that Misiolek’s behavior was “utterly despicable.” However, he continued, “there was no evidence to support the conclusion that Misiolek was a managing agent of Ralphs, and the evidence was insufficient to support the conclusion that Ralphs approved of or ratified Misiolek’s conduct.” Misiolek was not acting on behalf of Ralphs when he harassed the women, claimed the judge, nor was the harassment ordered by the company’s management. It was, instead, the isolated action of a single manager. The company as a whole should therefore not be held responsible for his actions, the judge argued. Instead, the jury should have punished the company only for the specific actions of Misiolek’s supervisors who allowed him to run the Escondido store after they had received complaints from other women about his behavior. The actions of this handful of managers did not merit a penalty of $30.6 million against the entire company. Moreover, said Judge Anello, the punitive damages (which were about 60 times the $550,000 awarded as compensatory damages by the second jury) were not reasonably related to the compensatory damages. In addition, the compensatory damages the second jury had awarded each woman ($550,000) were themselves excessive and should also be set aside.

Finally, the $30.6 million exceeded the amount needed to punish Ralphs and to deter other companies from doing the same in the future. Anello concluded by reducing the $30.6 million award to $8.25 million. According to the judge, the punitive damages each of the women should receive should be no more than 15 times the amount of compensatory damages the first jury had awarded them. This meant that Dianne Gober should receive $3 million, Tina Swann should receive $1.5 million, Finton and Lang should each receive $934,500, Noland should get $750,000, and Papiro should receive $1.125 million. The judge gave the six women 10 days to make up their minds whether to accept his reduced award, or to agree to a third trial.

On July 24, 2002, two of the women, Dianne Gober and Tina Swann, agreed to accept the judge’s reduced award equal to 15 times the compensatory damages awarded by the jury in their first trial. The other four women decided to reject the smaller awards and to return to the courtroom for yet another trial as the judge promised they could do. One of the lawyers for the women angrily stated that the reduced awards failed to punish Ralphs, would fail to deter similar activity from other companies, and failed to serve as an example to others, as punitive damages are supposed to do.

For four years the case slowly wound its way through the court system as both sides filed repeated appeals. However, the 10-year-old case reached its final conclusion on March 1, 2006, when the case came before the Court of Appeal for the Fourth District, Division 1, of California. The court of appeal, in what appeared to be a reprimand to the four remaining female victims, ruled that they were entitled to punitive damages equal to only 6 times the compensatory damages awarded by the jury in their first trial, much less than the punitive award of 15 times the compensatory damages that had been offered by the judge four years earlier on July 24, 2002! This ruling meant that instead of the $934,500 Finton and Lang had each been offered in 2002, they each would now receive only $375,000; instead of the $750,000 Noland had been offered in 2002, she would now receive only $300,000; and instead of the $1.25 million Papiro had been offered in 2002, she would now receive only $450,000. If the women’s lawyers had thought that the 2002 punitive amounts were such negligible sums to a company the size of Kroger that they neither punished the company nor served as a deterrent, then the 2006 amounts the women were given for what they had gone through while working at Ralphs perhaps did not even register as a slap on the company’s figurative wrists.

### WRITING PROMPT

**Complexities of the Case**

1. Assuming that the store and district managers of Ralphs received complaints about Misiolek’s behavior starting in 1985, but that these complaints did not reach Ralphs’ headquarters in Compton, do you believe that the judge is right in holding that the company as a whole should not be held responsible for his actions? Should the company be held responsible for policies that prevent complaints from reaching headquarters?
2. What kind of penalty do you believe would be appropriate for Ralphs? In your view, was the initial $33.3 million penalty excessive? Explain. Was the final 2006 judgment fair? Explain.
3. Should Kroger have to pay for events that happened before it took over the chain of supermarkets?
4. What can a company do to make sure that a situation like Misiolek’s does not occur? Why do you think Ralphs allowed Misiolek to continue managing stores?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

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## Case Notes

1. This case is based on the following sources: Jim McNair, “Subsidiary of Kroger Loses $30.6M Lawsuit,” *Cincinnati Enquirer*, April 9, 2002; Alexei Oreskovic, “$30M Awarded in Sex Harassment Suit,” *Recorder*, April 10, 2002; “Post-Verdict, Jury Learns of Other Allegations,” *ABCNEWS.com*, June 20, 2002; Davan Maharaj, “$3.3-Million Judgment against Ralphs Tossed Out,” *Los Angeles Times*, July 24, 1998; Onell Soto, “Ralphs to Pay $30 Million over Sexual Harassment,” *San Diego Union-Tribune*, April 7, 2002; Onell Soto, “Harassment Award against Ralphs Cut,” *San Diego Union-Tribune*, July 17, 2002; Lisa Girion, “$30.6 million Judgement against Ralphs Slashed,”

*Los Angeles Times*, July 17, 2002; Lisa Girion, "Harassment Verdict Prompts Review," *Los Angeles Times*, April 9, 2002; Davan Maharaj, "Ralphs Fights Record Award," *Los Angeles Times*, July 23, 1998; Lisa Girion, "6 Women Win Suit against Employer Ralphs," *Los Angeles Times*, April 6, 2002; Margaret Fisk, "$3.3 M Award Swells to $30 M," *National Law Journal*, April 15, 2002; Alexei Oreskovic, "$30 Million Verdict Cut," *National Law Journal*, July 22, 2002; "Harassment in the Supermarket," *ABCNEWS.Com*, June 30, 2002; and the court decisions online at https://nosexualharassment.com, including in particular Gober v. Ralphs Grocery Co. (2006) 137 Cal. App.4th.

# **Case Study 7.2:** Wal-Mart's Women

On April 26, 2010, the full 11-member Ninth Circuit U.S. Court of Appeals in San Francisco ruled in a 137-page opinion (*Betty Dukes et al. v. Wal-Mart Stores, Inc.*) that a case accusing Wal-Mart Stores, Inc. of discriminating against its U.S. female workers could proceed to trial as a class action lawsuit, thereby reaffirming most of the earlier 2007 and 2004 rulings of three members of the Ninth Circuit Court of Appeals as well as earlier district court rulings.[2] The women, according to the 2010 court of appeals opinion, "allege that women employed in [domestic] Wal-Mart stores:

1. Are paid less than men in comparable positions, despite having higher performance ratings and greater seniority; and
2. Receive fewer—and wait longer for—promotions to in-store management positions than men."

The case, the largest ever in American civil rights history, had been launched almost a decade earlier by six American women who had worked in 13 Wal-Mart stores. They were asking the company to compensate them and any other women who had worked for Wal-Mart in the United States since December 26, 1998, for the many years of injury they had suffered as a result of the company's sexual discrimination. Several analysts noted that if Wal-Mart were to lose the case, it would cost the company many billions of dollars since the allegedly injured group would include all women employees subjected to discrimination at Wal-Mart's 3,400 stores hired since December 26, 1998, a group estimated to include as many as 1.5 million to 2 million women. While the 2010 decision allowed all women who were working for Wal-Mart when the lawsuit was filed to be part of this injured group, it ruled that a lower district court would have to decide how to handle any women who worked for Wal-Mart after December 26, 1998, but who were no longer working for Wal-Mart the day the lawsuit was filed.

## About the Company

Wal-Mart Stores, Inc., the world's biggest retailer, owns more than 8,400 stores, including 800 discount stores, 2,747 Wal-Mart Supercenter combination discount and grocery stores, and 596 Sam's Club warehouse stores. It is the leading retailer in both Canada (317 stores) and Mexico (1,469), owns almost 40 percent of SEIYU, a Japanese supermarket chain, and has stores in Argentina (43), Brazil (434), China (279), Chile (252), Costa Rica (170), El Salvador (77), Guatemala (164), Honduras (53), Japan (371), Nicaragua (55), Puerto Rico (56), and the United Kingdom (371). At the end of its fiscal year, January 2010, Wal-Mart posted sales of $408.2 billion (64 percent from U.S. sales) and net profits of $14.3 billion. The company had over 2,100,000 employees worldwide.

The "Always Low Prices" company is famous for its strong and distinctive corporate culture, which it actively promotes. New employees get videos, classes, and literature on Wal-Mart's culture, such as the "Three Basic Beliefs" ("Respect for the Individual," "Service to Our Customers," and "Strive for Excellence"). Employees read founder Sam Walton's personal biography and learn how his personal values became core beliefs of the company. Weekly training on company culture is mandatory for managers and employees. Managers get continuing lessons on the company's culture and impart these lessons to subordinates. Managers are evaluated on their knowledge of the culture, and employees are rewarded when they demonstrate a strong commitment to it.[3] Some of the company's cultural traditions are male-oriented. Senior managers attend an annual corporate retreat, for example, that always includes fishing and quail hunting. Managers sometimes scheduled district meetings at Hooters restaurants, and annual sales meetings sometimes featured side trips to strip clubs.

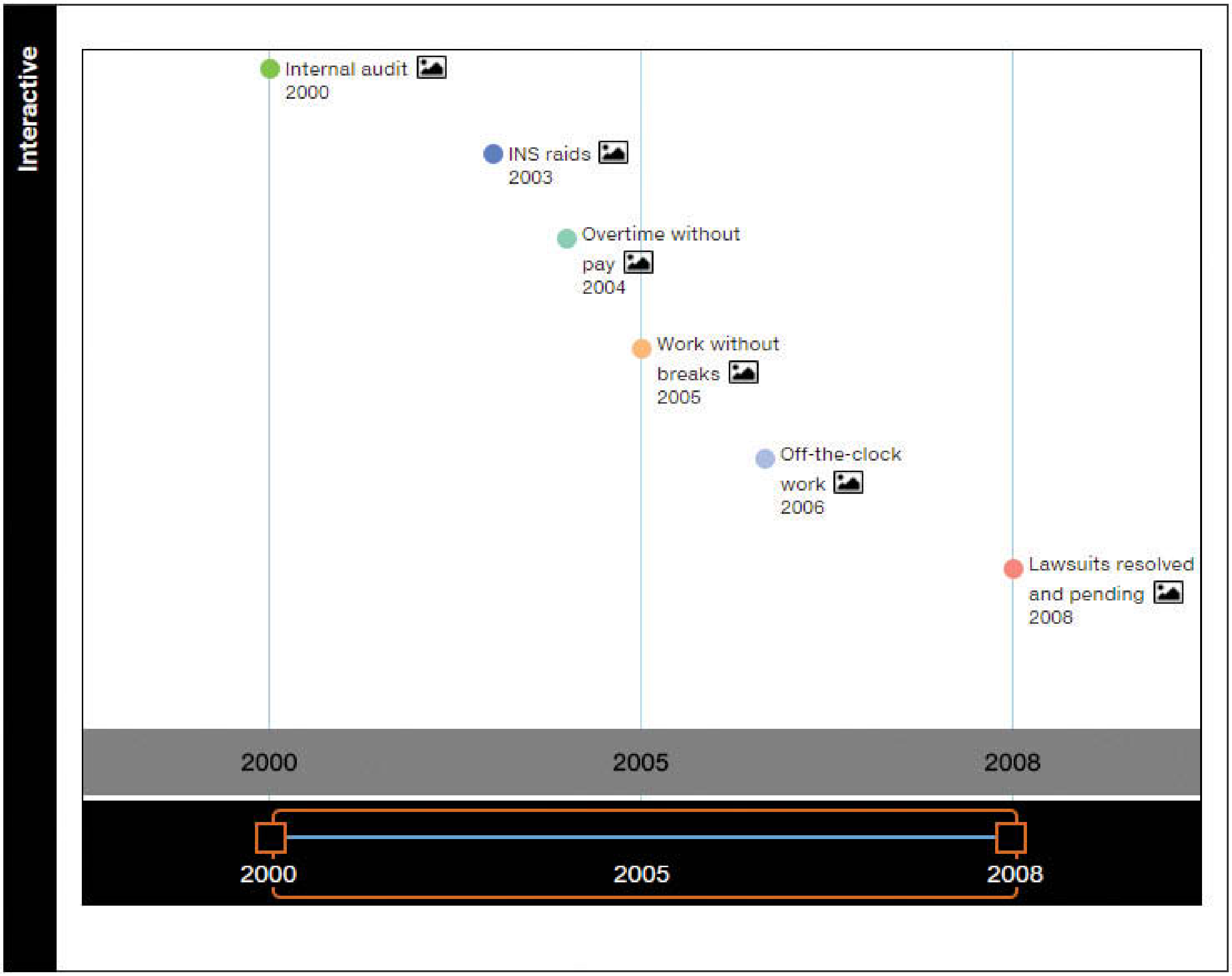
## Class Action Lawsuit

Wal-Mart's biggest employee headache, however, was the class action lawsuit *Dukes et al. v. Wal-Mart Stores, Inc*., which claimed the company discriminated against female employees in promotions, pay, management training, and job assignments. The lawsuit was launched in June 2001 by six female Wal-Mart employees. On June 22, 2004, U.S. District Court Judge Martin Jenkins ruled that the six women could sue on behalf of all female employees of Wal-Mart who worked at its U.S. stores anytime since December 26, 1998. The women asked for back pay and compensation for all 1.6 million female employees against whom Wal-Mart had discriminated. In 1995, six years before the lawsuit was filed, Wal-Mart had paid a law firm to assess its compensation practices and the law firm reported that in 1993 Wal-Mart's male department managers earned $236.80 per week while female department managers earned $223.70 per week; males in salaried jobs earned $644.20 per week while females in salaried positions earned $540.50. These and other disparities, the law firm concluded, "are statistically significant and sufficient to warrant a finding of discrimination unless the company can demonstrate at trial that the statistical disparities are caused by legitimate, nondiscriminatory factors."

The six women who filed the discrimination lawsuit in 2001 hired statistical expert Richard Drogin, a professor at California State University at Hayward, to analyze Wal-Mart's computerized records of 3,945,151 employees who had worked any time from 1996 to 2002.[4] The professor's findings supported some of the allegations of the women.

### Wal-Mart's Employment Record: Early Twenty-first Century

Although the staunchly antiunion company is known as a benevolent employer, Wal-Mart's reputation suffered during the opening decade of the twenty-first century.




Drogin reported that Wal-Mart employees are divided into two main groups: hourly employees at the lower levels and salaried management employees at the higher levels. Hourly employees include store cashiers, associates, stock people, department heads, and support managers. Salaried management employees are divided into two groups: at the lower level are those who manage a single store, and at the higher level are those who manage an entire district or region or who enter corporate management. At the store level, salaried managers include store managers and assistant managers; above them are district managers, regional vice presidents, and senior vice presidents. Since Wal-Mart promotes predominantly from within, workers typically progress from being an upper hourly employee (usually a "support manager"), to management trainee, to store manager or assistant manager, and finally to district, regional, or corporate manager.

## Summarizing the Data

Finally, Drogin performed several statistical tests to determine whether the discrepancies in promotions and pay could be the result of women not being available (not in the "feeder pools") when promotions came up or of some other factors. He found, instead, the following:

- Women received 2,891 fewer promotions into support manager positions (the step before Management Trainee) than would be expected from their representation in the feeder pools.
- Women received 2,952 fewer promotions into management trainee positions than would be expected from their representation in the feeder pools.
- Women received 346 fewer promotions into co-manager positions than would be expected from their representation in the feeder pools.
- Women received 155 fewer promotions into store manager positions than would be expected from their representation in the feeder pools.
- Total earnings paid to women ranged between 5 and 15 percent less than total earnings paid to similarly situated men in each year from 1996 to 2001, even when accounting for factors such as seniority, status, and store.

### Wal-Mart's Compensation Gaps: Data

Side-by-side comparisons of the differences in compensation between men and women give a clear picture of the case brought by Wal-Mart employees against their employer.

Interactive

| Group | % Female | Male Earnings $ | Female Earnings $ |
|---|---|---|---|
| Hourly | 70.2 | 18,609 | 17,459 |
| Salaried managers | 33.5 | 55,443 | 40,905 |

***Table 7.6: Average Annual Earnings, 2001***

As this table shows, in 2001 the average annual earnings of salaried male managers was $55,443 per year, while the average annual earnings of hourly employees was $17,459. Drogin found that 65 percent of hourly employees were women, but only 33 percent of salaried managers were. In both hourly and salaried groups, women earned less than men. Drogin found this pattern repeated in all 41 of Wal-Mart's American regions.

1 of 6 Previous Next

Drogin noted two factors that might affect women's promotion into management:

- Many store managers believed that employees going into salaried management positions had to be willing to relocate geographically, and they communicated this belief to women. In practice, however, only a small proportion of managers were required to relocate their homes, and the company had programs that allowed women to opt out of this requirement.
- While the company had a policy of posting available management positions, managers had the discretion to not post some positions and to communicate the availability of these positions by word of mouth to potential candidates they picked.

## Other Expert Consultation

Another expert hired by the six women who brought the discrimination lawsuit against Wal-Mart, Marc Bendick, a labor economist, noted that Wal-Mart's top retail competitors had no trouble promoting women into management. While 34.5 percent of Wal-Mart's in-store salaried managers were women, 56.5 percent of salaried managers at 20 comparable large retail chains were women. If Wal-Mart had achieved the same female manager-to-nonmanager ratios as comparable chains in 1999, it would have had at least 4,004 more in-store female managers, 466 more female managers at corporate headquarters, 144 more at "blue-collar" nonstore establishments, 107 more in other nonstore establishments, and 97 more in separately reporting establishments.

The six women suing Wal-Mart also hired an expert in sociology, William T. Bielby, a professor at the University of California, Santa Barbara, to analyze and report on Wal-Mart's hiring practices.[5] Based on numerous hours of testimony under oath given by Wal-Mart managers, Bielby concluded that although company guidelines stated minimum criteria for promotions, managers had no written policies to guide them in selecting among candidates who met the minimum criteria, nor did they have guidelines to guide them in setting exact salaries. He noted that "a large body of social science research demonstrates that gender stereotypes are especially likely to influence personnel decisions when they are based on subjective factors, because substantial decision-maker discretion tends to allow people to seek out and retain stereotype-confirming information and ignore or minimize information that defies stereotypes." Moreover, he added, "In such settings stereotypes can bias assessments of women's qualifications, contributions, and advancement potential, because perceptions are shaped by stereotypical beliefs about women generally, not by the actual skills and accomplishments of the person as an individual." In his report he noted:

> For example, Store Manager Arturo Mireles testified that he was aware of no written criteria to be used in making decisions about promotion to Department Manager or Support Manager. His practice was to rely on a range of unwritten criteria, including subjective factors such as teamwork, ethics, integrity, ability to get along with others, and willingness to volunteer to come in to assist in the store or at another store outside of regular work hours. While factors like these might have common sense appeal and some might in fact be appropriate to consider in making promotion decisions, assessments will be biased [by stereotypes] unless they are assessed in a systematic and valid manner, with clear criteria and careful attention to the integrity of the decision-making process. . . . The same kind of discretion is allowed in decisions about compensation for hourly employees. . . . [A]ccording to company policy the Store Manager can pay up to two dollars an hour above the stated rate, based on his or her assessment of factors such as previous pay and experience. There is no company guideline and no training on when and how to adjust pay upwards and while overall payroll is monitored, there is no monitoring of these individual adjustments . . . A Store Manager can give a raise larger than the specified amount at his or her own discretion. In addition, employees can be given merit increases for "exceptional performance.". . . However, there is no guideline for assessing "exceptional performance" and no monitoring of the number of people who receive increases and how frequently they are given to any specific employee.

Bielby also noted, however, that Wal-Mart's "managers testified consistently that they did not believe that women were less qualified than men for management positions in the company." Wal-Mart insisted, in fact, that it explicitly prohibited any form of discriminatory behavior and that its managers all believed that women were as qualified as men. Any discriminatory behavior would have to be based on an individual manager's personal decision to contravene company policy and should not be attributed to anything Wal-Mart had done. On the contrary, the company worked hard to ensure equal opportunity for all of its employees.

## Women's Experiences and Company Efforts

More than 100 female Wal-Mart employees came forward to provide sworn declarations detailing their treatment by the company.[6] These included:

- A female assistant manager in Utah was told by her store manager that retail is "tough" and "not appropriate" for women.
- A manager in Texas told a female employee that women have to be "bitches" to survive Wal-Mart management.
- A Sam's Club manager in California told a woman that to get promoted she should "doll up," dress a little better, and "blow the cobwebs off her make up."
- Male managers in several states repeatedly told numerous women employees in virtually identical words that men "need to be paid more than women because they have families to support."
- A male manager in South Carolina told a female employee that "God made Adam first, so women will always be second to men."
- A female personnel manager in Florida was told by her manager that men were paid more than women because "men are here to make a career and women aren't. Retail is for housewives who just need to earn extra money."
- A female corporate manager in Arkansas was told by a senior VP that it would be better if she "were at home raising a family" and that since she did not hunt, fish, or do other typically male activities, she would not advance any further: "you aren't a part of the boy's club, and you should raise a family and stay in the kitchen."
- A female management trainee in Texas was told by her supervisor, "I don't like college graduates, and I don't like female managers" and was told by her next manager that she should "resign and find a husband to settle down with and have children."

The company's lawyers claimed that the group of allegedly injured women was too large to handle in a single trial and that the experiences of the six women who brought the suit could not possibly be representative of the diverse and varied experiences of the millions of women that had worked for Wal-Mart. Moreover, they argued, Wal-Mart used many different systems for compensating and promoting employees, depending on the position and the particular store. Pay and promotion decisions were independently determined by individual managers at the store level and were not based on a uniform company policy. The company as a whole should not be penalized, they said, because of the independent decisions of some of its managers. The company had instituted many equal opportunity programs to ensure that everyone was treated the same regardless of race or gender.

As early as the 1990s, in fact, Wal-Mart had started a number of programs to achieve diversity. The company had a written anti-discrimination policy posted everywhere. Managers got reports on the gender composition of their hourly and salaried positions. Managers were told that women's representation should "reflect the community." Managers had to set an annual goal of increasing female representation in their areas and were supposed to be evaluated on the progress they made toward reaching the goals they set for themselves. Although this evaluation did not affect the compensation of in-store salaried managers, all higher-level managers were evaluated on the progress they made toward the diversity goals they had set themselves, and this evaluation was then averaged with their progress toward three other kinds of "people" goals. Each manager's "people average" constituted 5 percent of the final evaluation on which their compensation for the following year was based. The managers testified that they tried to set goals that were "realistic," "achievable," "made sense," and "weren't worse than the year before." A program that allowed women to enter salaried management jobs without having to relocate their homes had been begun by the late Sam Walton. After Walton's death, however, the program was not widely used nor known.

## To the Supreme Court

Although the Ninth Circuit Court of Appeals ruled in April 2010 that the women's case could finally go forward as a class action, Wal-Mart's management appealed the ruling to the U.S. Supreme Court. On December 6, 2010, the Supreme Court announced that it had decided to hear the Wal-Mart case and to make a final determination about whether the case could be tried as a class action suit that would end up involving some 1.5 million female workers. Wal-Mart management believed that if the lawsuit were to succeed, it could have a significant material financial impact on the company. Some analysts speculated that Wal-Mart might choose to reach a settlement with the women either before or after the Supreme Court decided what it would do to "put the case behind it," although even a negotiated settlement would not be cheap.

Jeff Gearhart, executive vice president and general counsel for Wal-Mart, said: "We are proud of the strides we have made to advance and support our female associates and have been recognized for our efforts to advance women through a number of awards and accolades. In 2008, Wal-Mart was named in the 'Top 40 Greatest Organizations for Women of Color to Work' by *Women of Color* magazine as well as one of the 'Top 10 Best Companies for Women' by *PINK* magazine." In May 2007, Wal-Mart announced it was named one of the "Top 50 Companies for Diversity" by *DiversityInc* magazine. "We remain committed to maintaining diversity in all aspects of our business," said a company spokesperson.

### WRITING PROMPT

**What's in Store for Wal-Mart?**

1. What are the major moral complaints of the women suing Wal-Mart? Do you believe these complaints are justified? Why or why not? Wal-Mart has said that the case should not be heard as a class action suit, but that each woman should be considered individually and that an individual determination should be made regarding whether she specifically was discriminated against by Wal-Mart because each woman's situation is different. Do you agree?
2. What financial impact do you think the lawsuit could potentially have on Wal-Mart? What if the outcome of the case cost Wal-Mart so much it had to lay off thousands of its workers and close stores?
3. What factors do you think might account for the discrepancies the Drogin report uncovered?
4. What, if anything, do you think Wal-Mart should do to correct these discrepancies? Should the company institute an affirmative action promotion program for female employees? If so, what should this program be like?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

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## Case Notes

2. Much of this case is based on the documents the plaintiffs in Dukes et al. v. Wal-Mart Stores, Inc. have made available at http://www.walmartclass.com/walmartclass_forthepress.html. In particular, the materials cited in notes 4, 5, and 6 are available at this website and can be accessed there.
3. See M. J. Schneider, "The Wal-Mart Annual Meeting: From Small-Town America to a Global Corporate Culture," *Human Organization* 57 (1998): 292–99, and "Saturday Morning Fever: Wal-Mart's Weekly Meeting," *Economist*, December 8, 2001.
4. Richard Drogin, "Statistical Analysis of Gender Patterns in Wal-Mart Workforce," February 2003, accessed August 1, 2004, http://www.walmartclass.com/staticdata/reports/r2.pdf; all information and quotations attributed to Drogin in this case are drawn from this report.
5. William T. Bielby, "Expert Report of William T. Bielby, Ph.D.," February 3, 2003, accessed August 1, 2004, on Wal-Mart Class website (see note 1); all information and quotations attributed to Bielby in this case are drawn from this report.
6. This summary of the 100 declarations is taken in part from "Women Present Evidence of Widespread Discrimination at Wal-Mart," news release, April 28, 2003; "Ask Judge to Expand Case to be Largest Ever Sex Discrimination Case," accessed August 2, 2004, on Wal-Mart Class website (see note 1); all 100 declarations are available on the Wal-Mart Class website and my summary includes some materials drawn from these declarations.

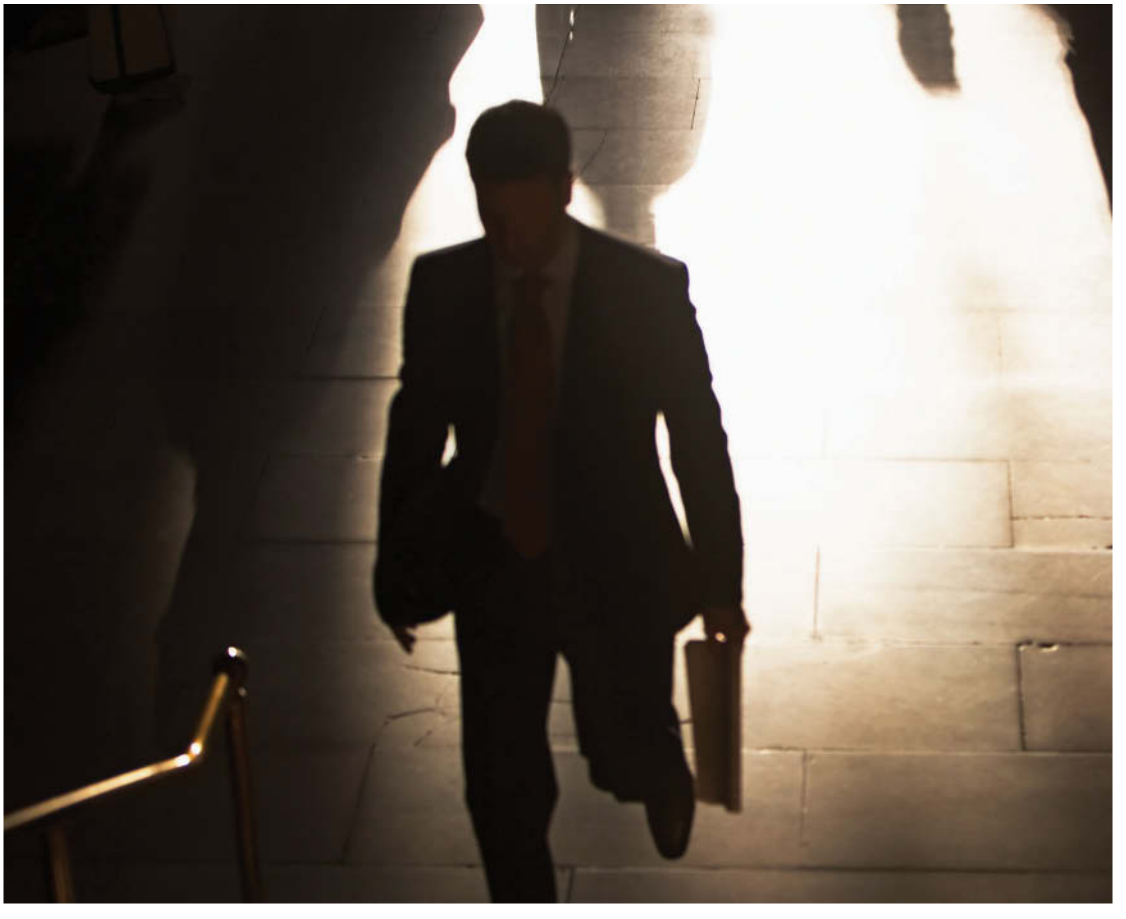
# Summary

**1.** Discrimination can be intentional or unintentional, and it can be inflicted by one individual acting alone, or it can be institutionalized such as when it is the result of people acting according to routine organizational or institutional processes and policies. The Civil Rights Act of 1964 made discrimination illegal. Nevertheless, comparing the economic fortunes of women and minorities to those of men and whites suggests that women and minorities are still subjected to discrimination. Women, for example, earn less than men with comparable educations, and minorities earn less than comparable white workers. The poverty rate of families headed by women is significantly higher than the poverty rates of families headed by men. Salaries for jobs predominantly filled by women are significantly lower than those for jobs in which men predominate. Several studies have shown that these earnings gaps are not explained by education, career choices, preferences, work history, training, or absenteeism.

**2.** Utilitarians have argued that discrimination leads to an inefficient use of human talent; rights-based arguments against discrimination have held that discrimination violates the right to be treated as a person who is equal and not inferior to others; justice-based arguments have claimed that discrimination leads to an unjust distribution of benefits and burdens and that it unjustly differentiates between people on the basis of nonrelevant characteristics.

3. A particularly heinous kind of sex-based discrimination is sexual harassment. Sexual harassment occurs when a person, because of the person's sex, is singled out for unwelcome sexual advances, requests for sexual favors, or other verbal or physical sexual interactions that affect the person's employment, interfere with the person's work, or create a hostile work environment. If an employer does not take steps to prevent sexual harassment before it happens or does not take steps to stop sexual harassment that is already happening, the employer may be held liable for the harassment.
4. Other forms of discrimination besides racial and sexual discrimination include discrimination on the basis of age, sexual orientation, transgender status, disability, and obesity. The Age Discrimination in Employment Act prohibits age discrimination, while the Americans with Disabilities Act prohibits discrimination on the basis of disability. About half of the states today have laws that prohibit discrimination based on sexual orientation; however, there is no federal law that prohibits such discrimination nor any that prohibits discrimination based on a person's transgender status. Also no federal law prohibits discriminating against a person because of his or her weight; however, if a person is morbidly obese, his or her condition may be considered a disability, and the person may then be protected by the Americans with Disabilities Act.
5. Affirmative action consists of policies designed to correct a racial or gender imbalance in an organization. It has been judged to be legal if it does not use "inflexible quotas" and is "narrowly tailored" to achieve the desired balance. While some have argued in support of affirmative action as a form of "compensation," such arguments seem to be fallacious. Utilitarian arguments in favor of affirmative action are also problematic. Arguments that support affirmative action on the grounds that it will secure equal opportunity, however, seem to be more reasonable.

# Chapter 8
# Ethics and the Employee



Every morning millions of workers hurry off to work. Psychologists tell us we define ourselves by the work we do, and that our health, both physical and emotional, depends on whether our work is fulfilling or a source of meaningless stress.

## Learning Objectives

**8.1** Describe the rational model of the business organization in terms of structure and the obligations of employee and employer

**8.2** Analyze the political model of the organization in terms of power and rights and justice

**8.3** Explain informal power relationships in organizations from an ethical perspective

**8.4** Evaluate the ethical characteristics of the caring organization

In this chapter, we explore the ethical problems raised by work life in business organizations. We begin by describing the traditional model of the organization: the organization as a rational structure. The employee's duties to the employer and the employer's duties to the employee are defined by this model. Then we turn to examining what some say is a more realistic view of the organization: the organization as a political structure. Employee rights and organizational politics are key ethical issues in this model. Finally, we present a more recent view of the organization: the organization as a network of personal relationships. The discussion of this still emerging view is briefer than that of the other views, which have a much longer history of development.

## 8.1: The Rational Organization

**OBJECTIVE: Describe the rational model of the business organization in terms of structure and the obligations of employee and employer**

Many descriptions of life in organizations by people who work in them touch on some of the problematic ethical issues business organizations create: alienated workers doing repetitive work, feelings of oppression created by the exercise of authority, heavy responsibilities heaped on the shoulders of managers, power tactics employed by managers anxious to advance their career ambitions, and pressures placed on both subordinates and superiors as they try to get their jobs done. Other ethical issues can be added to the list: health problems created by unsafe working conditions, conflicts of interest created by an employee's allegiance to other causes, absence of due process for nonunionized employees, and invasion of privacy by management's legitimate concern to know what's going on in the organization they manage. The list could go on.

For clues to the ethics of the relationship between the organization and its employees, let's look first at what is known as the rational organization. The traditional *rational model of a business organization* defines the organization as a structure of formal (explicitly defined and openly employed) relationships designed to achieve a goal with maximum efficiency.[1] E. H. Schein provides a compact definition of an organization from this perspective:

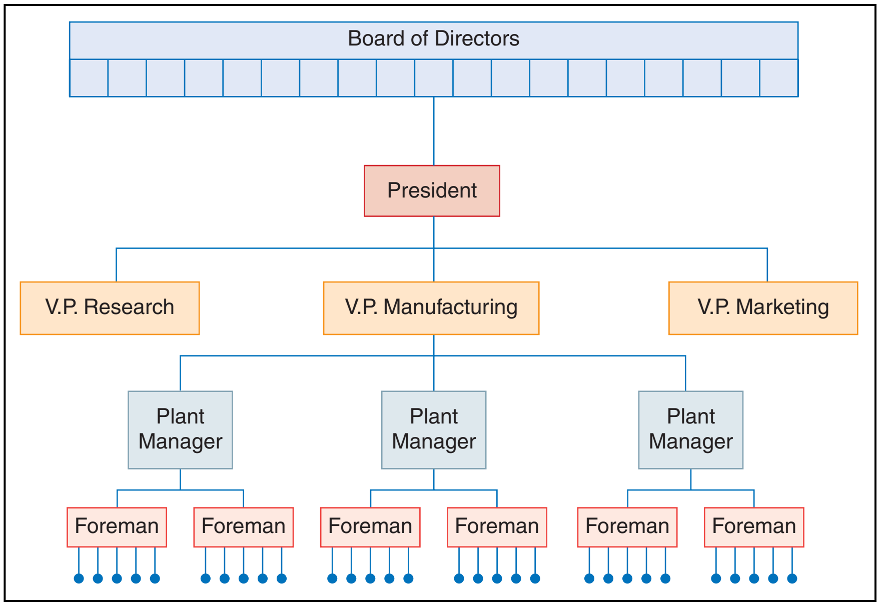
> An organization is the planned coordination of the activities of a number of people for the achievement of some common, explicit purpose or goal, through division of labor and function, and through a hierarchy of authority and responsibility.[2]

If an organization is looked at in this way, then the most fundamental elements of the organization are the **formal hierarchies of authority**. Figure 8.1 provides a simplified example.

**Figure 8.1** Organizational Chart

This structure represents the various official positions and lines of authority in an organization.

At the bottom of the organization is the **operating layer**: those employees and their immediate supervisors who directly produce the goods and services that constitute the essential outputs of the organization. Above the operating layer of laborers are ascending levels of **middle managers** who direct the units below them and who are in turn directed by those above them in ascending formal lines of authority. At the apex of the pyramid is **top management**: the board of directors, the chief executive officer (CEO), and other company officers such as the president, chief financial officer (CFO), chief technology officer (CTO), chief human resources officer (CHRO), and various vice presidents.



The rational model of the organization supposes that most information is collected from the operating layers of the organization, rises through the various formal management levels, each of which aggregates the information, until it reaches top management levels. On the basis of this information, the top managers make general policy decisions and issue general commands, which are then passed downward through the formal hierarchy, where they are amplified at each managerial level until they reach the operating layer as detailed work instructions. These decisions of the top managers are assumed to be aimed at a more or less known business goal, such as expanding market share, increasing profits, and maximizing shareholder returns. The goal is defined by those at the top of the hierarchy of authority, who are assumed to have a legitimate right to make this decision.

What is the glue that holds together the organization's many layers of employees and managers and that fixes these people onto the organization's goals and formal hierarchy? Contracts. The model conceives of the employee as an agent who freely and knowingly agrees to accept the organization's formal authority and to pursue its goals in exchange for a fair wage and just working conditions. These contractual agreements—some explicit and some left implicit—cement each employee into the organization by defining each employee's duties and scope of authority within the organization. By virtue of these contractual agreements, the employee has a moral responsibility to obey the employer in the course of pursuing the organization's goals, and the employer in turn has a moral responsibility to provide the employee with the wage and working conditions it agreed to provide. As we have already discussed at some length in previous chapters, when two persons knowingly and freely agree to exchange goods or services with each other, each party to the agreement acquires an ethical obligation to fulfill the terms of the contract. Utilitarian theory provides additional support for the view that the employee has an obligation to loyally pursue the goals of the firm: businesses will function most efficiently and productively if employees single-mindedly pursue the firm's goals. If each employee were free to use the resources of the firm to pursue personal ends, chaos would ensue and everyone's utility would decline.

The basic ethical responsibilities that emerge from these "rational" aspects of the organization focus on two reciprocal moral obligations:

1. The obligations of the employee to the employer, such as to obey organizational superiors, loyally pursue the organization's goals, and avoid any activities that might threaten those goals
2. The obligations of the employer to the employee, such as to provide the employee with a just wage and just working conditions

We will examine these two reciprocal obligations in turn.

***Quick Review 8.1***
**The Rational Model of a Business Organization**

- Formal hierarchies identified in the organizational chart are the firm's fundamental realities.
- Organizations seek to coordinate the activities of members so as to achieve their goals with maximum efficiency.
- Information rises from the bottom of the organization to the top.
- Contracts obligate the employee to loyally pursue the organization's goals and the employer to provide a just wage and just working conditions.

## 8.1.1: The Employee's Obligations to the Employer

In the rational view of the firm, the employee's main ethical duty is to work toward the goals of the firm and avoid any activities that might harm those goals. To be unethical, basically, is to deviate from these goals to serve one's own interests in ways that, if illegal, can be a form of "white-collar crime."[3]

As administrator of the company's finances, for example, the financial manager is entrusted with its funds and has the responsibility of managing those funds in a way that will minimize risk while ensuring a suitable rate of return for the company's shareholders. Financial managers have this contractual duty to the firm and its shareholders because they have contracted to provide the firm with their best judgment and to exercise their authority only in the pursuit of the goals of the firm and its stockholders and not for their own personal benefit. Financial managers fail in their contractual duty to the firm when they misappropriate funds, when they waste or squander funds, when they are negligent or fraudulent in the preparation of financial statements, when they issue false or misleading reports, and so on.

These traditional views of the employee's duties to the firm have become part of the *law of agency*—that is, the part of law that specifies the legal duties of agents (e.g., employees) toward their "principals" (e.g., their employers).[4] For example, the second edition of the "Restatement" of the law of agency states in section 385 that "an agent is subject to a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency"; and section 394 contains language that prohibits the agent from acting "for persons whose interests conflict with those of the principal in matters in which the agent is employed."[5] In short, the employee must pursue the goals of the firm and must do nothing that conflicts with those goals while working for the firm.

The employee might fail to live up to the duty to pursue the goals of the firm in several ways: the employee might act on a *conflict of interest*, the employee might steal from the firm, or the employee might use the position as leverage to force illicit benefits out of others through extortion or commercial bribery. We turn now to examine the ethical issues raised by these tactics.

**CONFLICTS OF INTEREST** **Conflicts of interest** in business arise when an employee or officer of a company

1. Is engaged in carrying out a certain task (or using personal judgment) for the employer;
2. Has an interest that provides him or her with an incentive or motive to do the task (or use personal judgment) in a way that serves that interest; and
3. Has an obligation to do the task (or use personal judgment) in a way that serves the interests of the employer, free of any incentive to serve another interest.

More simply, an employee has a conflict of interest when he or she has an interest that provides an incentive to do the job in a way that serves that interest and not necessarily the interests of the employer he or she is obligated to serve. Suppose, for example, that Mary is an employee with the job of choosing the supplier from which her company will buy raw materials. Suppose that she also owns a small firm that makes the kind of raw materials her company needs. Then, her interest in having her own firm make money gives her an incentive to choose her own firm to supply the raw materials even if it does not offer the best terms to her employer. Therefore, she has a conflict of interest.

It is important to notice that the mere *existence* of an interest that provides an incentive or motive that *could* influence an employee's actions on behalf of his or her employer is enough to give that employee a conflict of interest even if the employee does not allow the interest to influence him or her. That is, the mere existence of such an incentive or motive, even if it does not influence the employee's actions in any way, is enough to count as a conflict of interest.

Conflicts of interest do not have to be based on a financial or economic incentive; they can also be based on a personal or emotional relationship, as noted in "Ethical Application."

## Ethical Application

### Two Variations of Conflicts of Interest

Suppose that John is trying to choose the supplier from which his employer will buy raw materials. Also suppose that John honestly resolves to be completely objective when choosing suppliers, and honestly resolves that he will not choose the company he owns unless it offers the best terms to his employer. Now suppose that he is objective and ends up not choosing his own firm because it did not offer his employer the best terms. Nevertheless, John had a conflict of interest. He had a conflict of interest because he had an incentive or motive to choose his own firm, and the mere existence of that incentive or motive is a conflict of interest even if in the end it does not influence what he does for his employer; that is, even if in the end he did not act on that incentive or motive.

Suppose, once again, that Mary's job is choosing a company to supply raw materials to her employer. Also suppose that Mary's son is a salesman for one of the firms that sells those raw materials. Since Mary has an interest in seeing her son succeed in his job, she has an incentive to give him her employer's business even if other firms offer better terms for the same raw materials. So Mary has a conflict of interest; in this case she does not have a financial interest, but an interest in helping someone with whom she has a close relationship.

**OBJECTIVE AND SUBJECTIVE, ACTUAL AND POTENTIAL** A conflict of interest that is based on financial relationships is sometimes called an *objective conflict of interest*, while a conflict of interest that is based on emotional ties or other kinds of relationships is sometimes called a *subjective conflict of interest*.

Conflicts of interest can also be classified as being actual conflicts of interest, or merely potential conflicts of interest.

A *potential conflict of interest* occurs when an employee has an interest that could influence what she does for her company if the employee were performing a certain task for her company *but she has not yet been given that task to perform*. An *actual conflict of interest* occurs when an employee has an interest that could influence what he does for his employer when the employee performs a certain task for that employer *and he actually has been given that task to perform*. For example, recall the case of Mary who owns a firm that makes the kind of raw materials her own employer sometimes buys. If Mary does not yet have the job of choosing the supplier from which her company will buy the raw materials, she only has a potential conflict of interest; but her conflict of interest becomes an actual one when her company gives her the job of choosing who will supply its raw materials.

If we accept the view that agreements impose moral duties, then actual conflicts of interest are unethical because they are contrary to the implied agreement that a worker

### Examples of Conflict of Interest

Conflicts of interest can be created when the employee of one company holds another job or consulting position in another firm with which the employee's own company deals or competes.

Interactive

**Example 1: An Employee of a Bank**

An employee of one bank would have a conflict of interest if he took on a second job with a competing bank. At the very least, the employee's loyalties would be divided between serving the interests of each competing bank. Since the banks compete with each other, the employee could help one bank by giving that bank information about the other bank that hurts that other bank, yet as an employee of that other bank, he had an obligation to serve the interests of that other bank and failed to live up to that obligation.

**Example 2: An Accountant**

**Example 3: An Employee with Stock in a Construction Company**

freely makes when taking a job with a firm. The personnel of a firm are hired to do their jobs in a way that serves the interests of the firm. By accepting a position within the firm, an employee agrees that his or her judgments and actions will not be encumbered by any interests that could lead him or her to serve those interests instead of the interests of the firm. To knowingly then encumber one's judgments or actions by taking on an interest that can influence those judgments or actions will violate the duties and obligations created by the agreement and, thus, is unethical. Conflicts of interest are also unethical on utilitarian grounds. If employees were allowed to have conflicts of interest, then employees in effect would be allowed to have incentives to serve their own interests at the expense of their employer's interests. Key consequences would be as follows:

1. Employers would be harmed by the actions of their employees often.
2. The trust employers need to be able to place in employees who work on their behalf would be undermined, which would thereby decrease the utility of the employer–employee relationship.

As we have seen, a conflict of interest can be present even when the interest involved does not actually influence the employee's actions but *could* do so. It is sometimes asked whether there are any general guidelines for determining when an employee's interests are significant enough to say that they *could* influence his or her job or judgment; that is, significant enough to say that they constitute an incentive or motive even though the employee does not allow them to influence him or her. No general guidelines exist on the matter since much depends on the employee's position in the firm, the nature of the job or task, how much he or she stands to gain from the transactions involved, and the impact the employees' actions will have on others inside and outside the firm. However, to eliminate the possibility of any employee interest that might provide a conflict of interest, many companies do the following:

- specify the exact amount of stock, if any, that the company will allow employees to hold in firms with which the company does business or with which the company competes
- prohibit certain relationships with employees of competitors, buyers, or suppliers
- require key officers to disclose all their outside financial interests

**THE APPARENT CONFLICT OF INTEREST** Some ethicists have claimed that to allow even the appearance of a conflict of interest is wrong. Two situations concerning apparent conflict of interest are shown in Table 8.1.

The appearance of a conflict of interest can undermine people's trust in the fairness and impartiality of processes that people need to trust are fair and impartial (if those processes are going to be accepted and used by people). For this reason, it is often claimed that it is wrong to allow the appearance of a conflict of interest.

Employees can avoid conflicts of interest or can get rid of them when they arise in three main ways. We said earlier that a conflict of interest exists when an employee or officer of a company

1. Is engaged in carrying out a certain task for the employer;
2. Has an interest that provides him or her with an incentive or motive to do the task in a way that serves that interest; and
3. Has an obligation to do the task in a way that serves the interests of the employer, free of any incentive to serve another interest.

**Table 8.1** Apparent or Actual Conflict of Interest

An *apparent conflict of interest* exists when an employee has no actual conflict of interest, but other people looking at the employee's situation may come to believe (wrongly) that he or she has an actual conflict of interest.

Interactive

| Conflict of Interest | Situation |
|---|---|
| I have no actual conflict of interest. | Suppose that I own a construction company that submits bids for a construction job my employer wants to have done. Also suppose that I have nothing to do with choosing the construction company and have no influence whatsoever over the choice. |
| I have an apparent conflict of interest. | Suppose that my employer chooses the construction company that I own for a construction job without knowing it is my company. Also suppose that other construction companies find out that my company was chosen. Then, those other companies may come to believe that I unfairly influenced my employer, and so they may come to believe because of this conflict, the choice of my construction company was unfair. |

Check Your Understanding

Conflicts of interest can be avoided by making sure that these three conditions are not all present simultaneously; moreover, when a conflict of interest arises, it can be eliminated by eliminating one of these three conditions.

## Ethical Application

### Eliminating a Conflict of Interest

Suppose that I have a conflict of interest because I own one of the companies that submits bids for a construction contract and I am the one who chooses which company will get the contract. I can eliminate this conflict of interest in one of three ways. (1) I can get out of performing the task that creates the conflict of interest, in this case the task of choosing who gets the contract. That is, I can ask my employer to "recuse" me from the task of choosing who gets the contract or I can "recuse" myself. (2) I can eliminate the interest that might give me an incentive not to serve my employer's best interests, in this case my ownership of one of the companies that is submitting bids. I can eliminate the interest, for example, by selling or otherwise getting rid of my ownership of this company. (3) I can eliminate or change my obligation to do the task in a way that serves the interests of my company free of any incentive to serve another interest. For example, I can leave my employer and then I no longer have an obligation to serve my employer's interests. Alternatively, I can reveal the interest I have to my employer; that is, I can reveal to my employer that I own one of the companies that is submitting bids. My employer might then let me continue in the task and let me continue to have this interest, perhaps because my employer can monitor my decisions to ensure the interest does not influence my judgment or perhaps because my employer just knows and trusts me. Since my employer has explicitly allowed me to do this task (and to do it even though I have this incentive), I am no longer obligated to be free of any conflicting interest while doing this task. My employer changed my obligation by allowing me to evaluate the bids even though I own one of the companies submitting bids. However, since I still have the obligation to serve my employer's interests, I must strive to be objective when evaluating the bids and do all I can to ensure I will not be influenced by the fact that I own one of the companies submitting a bid.

**COMMERCIAL BRIBES AND GIFTS** Conflicts of interest can be created by a variety of different kinds of situations and activities.

Extorting or accepting a bribe obviously creates a conflict of interest that violates the employee's contractual agreement to use his or her unbiased judgment on behalf of the employer.

Accepting gifts may or may not be ethical. The purchasing agent, for example, who accepts small gifts from a salesperson without asking for the gifts and without making such gifts a condition of doing business may be doing nothing unethical. If the agent does not give favored treatment to the giver of a gift and is not prejudiced against those who fail to give a "gift," no actual conflict of interest is created. However, a potential conflict of interest may exist, and accepting gifts may encourage a practice that could become an actual conflict of interest or that may subtly affect the independence of a person's judgment.

**EMPLOYEE THEFT** Part of the employee's agreement with the employer is that he or she will use the resources and goods of the firm in the pursuit of the firm's legitimate aims. For the employee to use company resources for his or her own benefit is a form of theft because to do so is to take or use property that belongs to another (the employer) without the consent of its rightful owner.

Employee theft is often petty, involving the theft of small tools, office supplies, or clothing. At the managerial level, petty theft sometimes occurs through the manipulation or padding of expense accounts, although the amounts involved are sometimes substantial. Other forms of managerial theft, sometimes referred to as *white-collar crime*, are embezzlement, larceny, and fraud. The ethics of these forms of theft, however, are relatively clear.

**THEFT OF INFORMATION** Not always as clear are some particularly modern kinds of theft: thefts involving the theft of various kinds of information. For example, what is the ethics of hacking into a company's database when I do not do anything other than just look around? Or of copying a company's computer programs or its computerized data if doing so will not change the original? Unless authorized explicitly or through a company's formal or informal policies, all of these activities are forms of theft because they all involve taking or using property that belongs to someone else without the consent of its owner. The fact that I did not damage, change, or carry away what I used for my own benefit is irrelevant to the simple fact that I used property without the owner's permission to do so. The main difference between the property that is taken in these examples and most other kinds of property, of course, is that the property that is taken in these examples consists of information. Information, like the information contained in a database or the programs owned by a company are not tangible property, and the employee who examines, uses, or copies such information or programs can leave the original information or programs unchanged (the company might never even realize what the employee did). Nevertheless, unauthorized examination, use, or copying of computer information or programs constitutes theft.

Theft of information is best understood by considering the nature of property: property consists of a bundle of exclusive rights that a specific person has with respect to a specific asset. *Exclusive* here means that the right belongs

### Commercial Bribes and Extortion

Two kinds of situations and activities demand further attention: commercial bribes and extortion.

Interactive

**Commercial Bribes** | **Commercial Extortion**

**Definition**

A **commercial bribe** is something of value that is given or offered to an employee by a person outside the employee's company who intends it to lead the employee to deal favorably with that person or the person's firm. The bribe may consist of money, tangible goods, the "kickback" of part of a payment, preferential treatment, or any other kind of benefit.

**Example**

Marco is a purchasing agent. He takes a commercial bribe when he accepts money from a supplier who gives it to him in order to receive favored treatment when Marco makes his purchasing decisions.

only to the owner and excludes all others except those authorized by the owner. The most important of these exclusive rights are as follows:

- the right to use the asset
- the right to decide whether and how others may use the asset
- the right to sell, trade, or give away the asset
- the right to any income or other benefits produced by the asset
- the right to modify or change the asset[6]

(These rights, like all rights, are limited by the rights of others, such as the right not to be harmed.)

All of these rights can and do apply to any information, including digitized information, and computer programs that a company used its own resources to develop or that the company purchased with its own financial resources. Consequently, such information and programs are the property of the company, and only the company has the bundle of exclusive rights related to that property, including the right to its use or the benefits deriving from its use. To usurp any of the rights of the owner of a piece of property, including the rights pertaining to its use, is therefore theft, even when the property consists of information and even if in using the information I leave the original copy of the information unchanged.

Copying digitized information is sometimes defended on the grounds that "it doesn't hurt anyone." However, when violations of rights are concerned, it is a mistake for a person to say that he or she did nothing wrong because "It didn't hurt anyone." A person's rights can be violated and the person can be wronged, we saw, even when the person is not injured or hurt in any way. (This is one of the ways in which moral rights considerations differ from utilitarian considerations.) Using some-

### Ethics of Accepting a Gift

Vincent Barry suggests that the following factors should be considered when evaluating the ethics of accepting a gift.[7]

Interactive

**What Is the value of the gift?**

Is the gift substantial enough that it could influence one's decisions?

1 of 7    Previous    Next

one's property without his consent is a violation of the person's property rights, in particular the right to use or have others use his property only as he chooses. When a person's property rights are violated, that person has been wronged, and the one who wronged him has engaged in wrongdoing, even if the violation of the property owner's rights did not inflict any injuries on the property owner and even, in fact, if the property owner never finds out that his property rights were violated. Thus, when an employee uses the employer's property to benefit himself without the employer's consent, the employee is engaged in wrongdoing, regardless of whether the employee changed or damaged the original property and regardless of whether the employer was hurt or injured in any way. The violation of the property right is wrong by itself, and its wrongfulness does not require any additional infliction of harm.

***Quick Review 8.2***
**Theft of Information Details**

- It includes the theft of digitized programs, music, movies, and e-books, as well as trade secrets, company plans, and proprietary formulas or other data.
- It is theft even if the original is not taken or changed but only copied, examined, or used without the consent of the owner.
- It violates the owner's right to have his property used as he chooses, even if the theft does not injure the owner.
- The skills one acquires from a company are not information, and so it is not theft to take them when leaving the company, although skills are often hard to distinguish from information.

**TRADE SECRETS, OR PROPRIETARY INFORMATION** Some information is referred to as a *trade secret*. A trade secret (sometimes called *proprietary information*) consists of nonpublic information that

- concerns a company's own activities, technologies, future plans, policies, or records and that if known by competitors would materially affect the company's ability to compete commercially against those competitors
- is owned by the company (although it might not be patented or copyrighted) because it was developed by the company for its private use from resources it owns or it was legitimately purchased for its own use from others
- the company indicates through explicit directives, security measures, or contractual agreements with employees that it does not want anyone outside the company to have

For example, if a company, using its own engineering and laboratory resources, develops a secret process to manufacture computer drives that can carry more data than any other company's drives, and it takes explicit measures to ensure that process is not known to anyone else, then detailed information about that process is a trade secret. Similarly, lists of suppliers or customers, research results, formulas, computer programs, computer data, marketing and production or strategic plans, and any other information developed by a company or its employees for the company's own private use from its own resources can all constitute trade secrets.

Because employees, especially managers and those involved in company research and development, have access to trade secrets that the company must entrust to them if it is to carry on its business, they often have the opportunity to use such secrets for their own personal benefit by dealing with competitors. Such unauthorized use of trade secrets by employees is unethical because they are using the property of an owner for a purpose not sanctioned by that owner, and because they have an implied (or even, in some cases, an explicit) contract not to use company resources for purposes not sanctioned by the company.[8] For example, an engineering employee who is hired to oversee the development of a secret manufacturing process that gives her company a competitive edge over others acts wrongly if she decides to leave that company to work for a competitor that promises her a higher salary in exchange for setting up the same process she developed while working for her former employer.

Carrying away information that employees acquire while working for a company raises an important question: How does such *information* differ from the *skills* one acquires while working for a company? The distinction is important because the skills that an employee acquires by working for a company can be and usually are considered part of his or her own person and, to that extent, are not the property of the employer, while proprietary information is. Unfortunately, it is not always easy to distinguish skills from proprietary information because many high-level skills consist, in part, of know-how that can be considered a kind of information. In such cases, it may be all but impossible to separate the skill from the information.

## Ethical Application

### Moving to a Competitor

Donald Wohlgemuth was a general manager who had become dissatisfied with his salary and his working conditions while he oversaw a BFGoodrich secret technology for making spacesuits for the government.[9] Wohlgemuth subsequently negotiated a job with International Latex, a BFGoodrich competitor, at a much higher salary with greater responsibilities. At Latex, however, he was hired to manage a division that involved, among other things, the manufacture of spacesuits for the government. BFGoodrich managers objected to his working for a competitor where he might use the proprietary information that BFGoodrich had developed as it became experienced in making spacesuits. When they questioned the ethics of his decision, Wohlgemuth angrily (and perhaps thoughtlessly) replied that "loyalty and ethics have their price and International Latex has paid the price," a reply that BFGoodrich interpreted as a confession that Wohlgemuth was in effect selling its trade secrets to Latex. The Ohio Court of Appeals ruled, however, that BFGoodrich could not keep Wohlgemuth from selling his *skills* to another competitor, although the court imposed on Wohlgemuth an injunction restraining him from disclosing to Latex any of the *trade secrets* of BFGoodrich. However, the court did not explain how Wohlgemuth, BFGoodrich, or Latex were to distinguish between the "information" and the "skills" Wohlgemuth had acquired while working for BFGoodrich. In the end, Wohlgemuth continued doing what he had been doing with Latex and, from BFGoodrich's perspective, he continued making use of—and so, stealing—the proprietary information BFGoodrich had worked years to develop.

**HOW COMPANIES TRY TO LIMIT THEFT OF TRADE SECRETS** Some companies have tried to avoid the problem of having employees steal trade secrets—or acquired skills—by having employees sign contracts agreeing not to work for competitors for one or two years after leaving the company. However, the courts have generally rejected the validity of such contracts. Other companies have dealt with these problems by agreeing to provide departing employees with continuing remuneration or future retirement benefits in exchange for their not revealing proprietary information, although doing so leaves the employee free to decide what part of what he or she learned while working for the company is information and what is part of his or her skill set.

Before leaving the subject of stealing a company's trade secrets, it is worth noting that a company's property rights over proprietary information are not unlimited. In particular, these rights are limited by the rights of other agents, such as the rights of employees to know the health risks associated with their jobs. A company's right to keep information secret is not absolute, but must be balanced against the legitimate rights of other parties.

## On the Edge

### Hewlett-Packard's Secrets and Oracle's New Hire

On August 6, 2010, the board of directors of computer company Hewlett-Packard (HP) fired Mark Hurd, CEO of the company. Earlier Hurd had been accused of sexual harassment by Jodie Fisher, who had been hired to work at HP marketing events that Hurd had attended. Investigators found that Hurd did not violate the company's sexual harassment policies, but said he had falsified some expense account entries, apparently to conceal his relationship with Fisher—a relationship that Hurd, who was married, insisted was not sexual. The falsified entries violated HP's written business ethics standards, the board said, so it had to fire him, although his contract required that HP give him about $30 million as a severance package. The size of the severance was in part due to the fact that when Hurd became CEO, HP was in trouble and he not only managed to turn it around but also increased company revenues by almost 50 percent, for which stockholders were extremely grateful. Although he said he did not prepare his own expense reports, Hurd admitted: "There were instances in which I did not live up to the standards and principles of trust, respect, and integrity that I have espoused at HP and which have guided me throughout my career."

About a month after leaving the company, Hurd announced he had been hired by Oracle Corporation as president with a salary of $950,000 a year, a bonus of $10 million, and stock options for 10 million shares of Oracle. Like HP, Oracle is also a computer company and so is a major direct competitor of HP.

At Oracle, Hurd replaced former president Charles Phillips, who had been fired after a woman, YaVaughnie Wilkins, said she was his mistress and announced on a series of large billboards posted along major roads in New York, San Francisco, and Atlanta: "You are my soulmate forever." Like Hurd, Phillips was also married, although Phillips divorced shortly after the billboards appeared.

As HP's former CEO, Hurd knew HP's weaknesses and its future products, pricing, margins, customers, planned acquisitions, research discoveries, and company strategies, including how it planned to compete against Oracle. Some news reports noted that Hurd's inside knowledge of "HP's strategy and markets and its enterprise customers" was certain to help Oracle. HP's board of directors agreed and sued Hurd, arguing that he had signed a confidentiality agreement to keep all HP information secret, especially from competitors and that in his new position, he could not perform his duties for Oracle without necessarily using and relying on HP's trade secrets and confidential information. Defenders of Hurd argued that HP had so many lines of business that the agreement would have effectively barred Hurd from any employment in which he could use his executive skills, so it was unfair and invalid both legally and morally. The confidentiality agreement Hurd had signed while at HP read:

> This agreement concerns trade secrets, confidential business and technical information, and know-how not generally known to the public . . . which is acquired or produced by me in connection with my employment by HP . . . I agree to use such information only in the performance of HP duties . . . and to use all reasonable precautions to assure that such information is not disclosed to unauthorized persons or used in an unauthorized manner, both during and after my employment with HP. . . . I agree that for a period of twelve months following the termination of my employment with HP . . . I will not provide services to a competitor in any role or position (as an employee, consultant, or otherwise).

#### WRITING PROMPT

**Evaluate Consequences from an Ethical Perspective**

1. Assuming that Mark Hurd really had (intentionally or unintentionally) falsified some entries in his expense accounts, evaluate whether this act was enough of a reason for HP's board of directors to fire him, whether it was morally wrong for the board to fire him, and whether it was a wise decision.
2. Do you agree that Hurd could not perform his duties for Oracle without violating the agreement he had signed with HP? Why or why not? To what degree do you think Hurd could rely on the distinction between skills and information? Can you explain the position of Hurd's defenders in their argument that the confidentiality agreement was unfair and morally invalid?
3. Was it wrong for Hurd to accept the position of president at Oracle? Was it wrong of Oracle to hire him? Why or why not?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

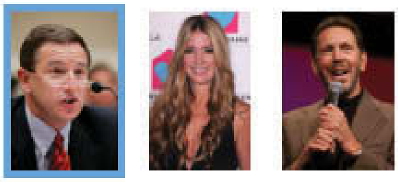
Submit

### Characters in the Hewlett-Packard/Oracle Shake Up

Mark Hurd's move to Oracle Corporation, after a case of sexual harassment and a $30 million severance package, provoked his former company to sue him for breach of confidentiality.

Interactive

Mark Hurd was formerly CEO of HP.



## INSIDER TRADING

> **As a start, we can define *insider trading* as buying or selling a company's stock on the basis of "inside" information about the company.**

*Inside* or *insider* information about a company is proprietary information about a company that is not available to the general public outside the company, but whose availability to the general public would have a material or significant impact on the price of the company's stock. For example, George, the president of a defense company, learns that the company is about to receive a multibillion-dollar contract from the government before anyone outside the company is aware of this. So George buys several shares of his company's stock, knowing that its value will rise when the news of the contract becomes public. His purchase of stock is considered to be insider trading. George might also tip off his father, who also buys the stock before the general public learns about the contract. His father's purchase is also considered to be insider trading.

Insider trading is illegal. During the past decade, a large number of stockbrokers, bankers, and managers have been prosecuted for insider trading. Insider trading is also unethical—not merely because it is illegal, but because, it is claimed, the person who trades on insider

### Arguments in Defense of Insider Trading

Three arguments present a defense of insider trading: insider trading reveals the true value of a stock, insider trading does no harm, and using inside information is no worse than using any information to make decisions.

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**Insider Trading Signals the True Value of a Stock**

It is sometimes argued that insiders and their friends bring their inside information to the stock market and, by trading on it, bid up the price of the stock (or bid it down) so that its stock market price rises (or falls) to reflect the true underlying value of the stock. Experts on the stock market tell us that the stock market functions most efficiently when the market price of each company's stock equals the true underlying value of the stock as determined by all the information available. When insiders trade stocks on their inside information and bid up (or down) the value of stocks, they in effect bring their information to the market and, by their purchases, "signal" to others the information they have about what those stocks are really worth. So insider traders perform the valuable service of making their inside information available to the stock market, thereby ensuring that the market value of stocks more accurately reflects their true underlying value and securing a more efficient market.

**Insider Trading Does No Harm**

**Using Inside Information Is No Worse Than Using Any Information**

information in effect "steals" information and thereby gains an unfair advantage over members of the general public.[10] Several people, however, have argued that insider trading is socially beneficial and, on utilitarian grounds, should not be prohibited but encouraged.[11] We need to look at those arguments.

**ARGUMENTS THAT INSIDER TRADING IS UNETHICAL** Those who claim that insider trading is unethical, however, point out that defenders of insider trading ignore several important facts about insider trading.

**INSIDER TRADING VIOLATES RIGHTS, JUSTICE, AND UTILITY** Several arguments support the view that insider trading is unethical. These arguments suggest that insider trading violates the property rights of the company's owners, that it is based on an unjust informational advantage, and that it harms society's overall utility by reducing the size of the market and increasing transaction costs. In short, insider trading violates our moral standards of rights, justice, and utility. Nevertheless, the issue continues to be greatly debated and is still not completely settled.

### Arguments Supporting Insider Trading as Unethical

Three arguments present insider trading as unethical: insider trading involves a theft of information, the insider's advantage is unfair or unjust, and insider trading does harm.[12, 13]

Interactive

**Insider Trading Involves a Theft of Information**

The information that the insider trader uses does not belong to him or her. The executives, managers, employees, and others who work inside a company and who are aware of inside events that will affect the price of the company's stock do not own the company. The resources they work with, including the information that the company makes available to them, are resources that belong collectively to the shareholders. Employees have an ethical (or "fiduciary") duty to refrain from using company information to benefit themselves or their friends. Just as all employees have an ethical duty to use company resources only for the benefit of the shareholder-owners, they also have an ethical duty to use company information only for the benefit of shareholder-owners. Therefore, an insider who takes confidential inside company information and uses it to enrich him or herself is in effect a thief stealing what is not his or hers.

**The Insider's Advantage Is Unfair or Unjust**

**Insider Trading Does Harm**

## On the Edge

### Insider Trading, or What Are Friends for?

Noah Freeman and Donald Longueuil were tight friends. When Freeman married his girlfriend, Hannah, in 2009, Longueuil was his best man. When Longueuil became engaged to his girlfriend, Mackenzie, he asked Freeman to be his best man. Freeman and Longueuil met shortly after Freeman graduated from Harvard University and Longueuil from Northeastern University. Both shared a passion for speed skating—Longueuil narrowly missed qualifying for the U.S. Olympic speed skating team. The two met when both joined the Bay State Speedskating Club in Boston. They remained close friends over the years, often skating in races together and taking ski trips together in Utah and New Hampshire. When a girlfriend of Freeman's broke up with him, he was distraught. He could not have made it through, he later said, without Longueuil's friendship. Sometimes, Freeman said, he felt so bad that he could not get out of bed, but Longueuil would come by his place and "get him going." Freeman later met his future wife, Hannah, and Longueuil met Mackenzie. Hannah and Mackenzie were also friends who attended Princeton University and were both on Princeton's rowing team, so the two couples often did things together, frequently involving sports activities.

Both Longueuil and Freeman worked for hedge fund companies where their jobs were to grow the funds by investing the fund's money in stocks. When Freeman got a position with Empire Capital, a large hedge fund company, he helped Longueuil land a position in the same company. Later, both worked for SAC Capital, a $12 billion hedge fund, and were each earning over $1 million a year. They met and became friends with Samir "Sam" Barai who also worked with hedge funds. In 2008, Barai started his own hedge fund, Barai Capital Management, with the help of a close friend, Jason Pflaum. To help them research stocks, Longueuil, Freeman, Barai, and Pflaum worked with Primary Global Research (PGR), an "expert network" firm that charges hundreds of thousands of dollars to introduce big investors to "consultants" whom PGR pays to provide expert advice about specific industries or companies. Consultants are often managers of companies in the industry about which they provide advice. Freeman, Barai, and Pflaum were introduced to Winifred Jiau, an expert on technology companies to whom they spoke by phone. Her advice cost them $200,000, but she was able to provide them with information about Marvell Technology Group. She told them what Marvell Technology's revenues, gross margins, and earnings per share would be before the company publicly announced this information. She told them that Marvell's earnings would be higher than expected so the stock was sure to increase in value. Freeman called Longueuil and gave him this information. Barai's hedge fund bought several thousand shares of Marvell stock and made $820,000; Longueuil's fund did the same and made $1.1 million. Another consultant gave Pflaum information about the earnings of two other companies: Advanced Micro Devices and Fairchild Semiconductor. Still other PGR consultants provided information about Nvidia Corporation, Actel Corporation, Cypress Semiconductor, and others. However, in 2010, the FBI approached Freeman and Pflaum, and said they would prosecute them for insider trading unless they provided evidence against their friends Longueuil and Barai. They agreed to testify. The four men are no longer friends. Don Longueuil and Mackenzie's wedding was cancelled. PGR denied knowing what its consultants told the former friends.

WRITING PROMPT

**Actions and Words**

1. Were the actions of Longueuil, Freeman, Barai, and Pflaum morally wrong? If they were wrong, then was Freeman and Pflaum's agreement with the FBI a betrayal? What would an ethic of care say about that agreement? Is insider trading something government should be spending its time prosecuting; why or why not?
2. Was PGR or Winifred Jiau in any way morally responsible for what the friends did, and if so, how?

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

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**INSIDER TRADING AND THE LAW** The law on insider trading is fairly settled, although its exact scope is unclear. The Securities and Exchange Commission (SEC) has prosecuted a large number of insider trading cases, and court decisions in these cases have tended to establish that insider trading is illegal. It has been determined that insider trading consists of trading in a security while in possession of nonpublic information that can have a material effect on the price of the security and that was acquired, or was known to have been acquired, in violation of a person's duty to keep the information confidential.[14] As this definition indicates, it is not just company employees who can be guilty of insider trading, but anyone who knowingly buys or sells stock using information that they know was acquired by a person who had a duty to keep that information confidential. Specifically, anyone is guilty who buys or sells stock knowingly using stolen nonpublic information that can affect the stock's price.

***Quick Review 8.3***
**The Ethics of Insider Trading**

- Insider trading is said to be unethical because it is theft of information that gives the insider an unfair advantage.
- Defenders argue (1) it ensures stock prices reflect the true value of the stock; (2) it harms no one; and (3) having an advantage over others in the stock market is not wrong in itself and is common with experts.
- These defenses have been criticized because (1) the information the insider uses is not his or hers and so is stolen; (2) trading on inside information has harmful effects on the stock market and increases the costs of buying and selling stocks; and (3) the advantage of the inside trader is not like the advantage of an expert because unlike the expert's, it is based on theft.

## 8.1.2: The Employer's Obligations to the Employee

The basic moral obligation that the employer has toward employees, according to the rational view of the firm, is to provide them with the compensation they have freely and knowingly agreed to receive in exchange for their services. Two main ethical issues are related to this obligation:

- the fairness of wages, a special problem in developing nations
- the fairness of employee working conditions[15]

Both wages and working conditions are aspects of the compensation employees receive for their services, and both are related to the question of whether the employee contracted to take a job freely and knowingly. If an employee was "forced" to accept a job with inadequate wages or inadequate working conditions, then the work contract would be unfair.

**FAIR WAGES** From a worker's point of view, wages are the principal (perhaps the only) means for satisfying the basic economic needs of the worker and the worker's family. From the employer's point of view, wages are a cost of production that must be kept low lest the product be priced out of the market. Therefore, every employer faces the dilemma of setting fair wages: How can a fair balance be struck between the employer's interests in minimizing costs and the workers' interest in providing a decent living for themselves and their families?

No simple formula exists for determining a "fair wage." The fairness of wages depends in part on the public supports that society provides the worker (Social Security, Medicare, unemployment compensation, public education, welfare, etc.), nonwage benefits companies traditionally provide, the freedom of labor markets, the contribution and productivity of the worker, the needs of the worker and the worker's family, and the competitive position and earnings of the firm.

**WAGES IN DEVELOPING NATIONS** Fair wages are difficult to determine even in industrialized nations where employers have access to a great deal of labor market information and workers are protected by numerous laws that regulate wages. They are much more difficult to determine in developing nations where wage regulations and protections are few and information is harder to obtain. Multinationals, of course, generally pay their workers in developing nations more than the prevailing local wage; that is, more than local companies there pay their workers. Nevertheless, the wages companies from the developed world pay their workers in developing nations are often criticized as being too low.

## Factors Determining Fair Wages

Although there is no way to determine fair salaries with mathematical exactitude, we can identify a number of factors that should be taken into account in determining wages and salaries in most countries.[16]

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**Going Wage in the Industry and the Area**

Although labor markets in an industry or an area may be manipulated or distorted (e.g., by job shortages), they generally provide at least rough indicators of fair wages if they are competitive and if we assume that competitive markets are just. In addition, the cost of living in the area must be taken into account if employees are to be provided with an income adequate to their families' needs. In developing nations, employers should ensure that wages enable employees to live reasonably and to provide for their families.

**Firm's Capabilities**

**Nature of the Job**

**Minimum Wage Laws**

**Relation to Other Salaries**

**Fairness of Wage Negotiations**

**Local Cost of Living**

## On the Edge

### Beyoncé's Gym Clothes

Beyoncé, the star singer, teamed up with fashion tycoon Sir Philip Green to develop a line of women's gym clothes called Ivy Park.[17] In an interview, Beyoncé stated that her goal with Ivy Park was "to support and inspire women who understand that beauty is more than your physical appearance . . . I know that when I feel physically strong, I am mentally strong and I wanted to create a brand that made other women feel that way."

However, on May 7, 2016, the British tabloid the *Sun* revealed that it had interviewed several young women in Sri Lanka who were making Beyoncé's Ivy Park gym wear in a factory the tabloid described as a "sweatshop" that paid low wages. According to the tabloid, one young seamstress said she earned 65 cents an hour, or $6.23 a day. Another, a 22-year-old, said she worked 9 hours and 45 minutes a day, five days a week, for a basic wage of $126 a month. This wage was above the Sri Lankan minimum wage ($92 a month), but too little for her to survive on. So she also had to work on weekends and work overtime on weekdays to earn extra money. A living wage in Sri Lanka is estimated to be about $292 a month.

The work of the seamstresses involved stitching the same clothes over and over every day. Speaking about herself and her 19-year-old sister who had recently joined her, the 22-year-old seamstress said:

> All we do is work, sleep, work, sleep . . . We don't have much spare money and what we do have we send back to our family. We had to come and work here because our father could not afford to feed us and there are no jobs there. We have no choice. I have worked here for three years now . . . The work is hard—it's just the same, same, same every day. We don't get to go home much because we work all the time. They say if you work you can go up, up, up, but that's just office workers. For us it stays the same always.

The conservative magazine the *National Review* published an article arguing that it was better for the women to have the jobs they had than to have no job at all, and that the salaries they got were "better than prevailing wages in Sri Lanka, and . . . the factory is probably a relatively modern and safe place to work." Sri Lanka was going through a necessary stage of economic development, the article suggested, and "as those workers have more choices, salaries will rise, and so will quality of life."

#### WRITING PROMPT

**Is This Job Better Than None?**

1. In your judgment, are the wages paid to the young women who make Beyoncé's line of clothing just wages? Explain why they are or are not fair wages.
2. Suppose that what the *National Review* article suggests is correct. Would that show that the wages of the young women are just? Explain.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

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**EXAMINING GLOBAL WAGE PRACTICES** What are fair wages for workers in developing nations who are employed by global companies? Some critics have said that these wages are fair: they are too low relative to the wages of employees working in the industrialized nations where global companies are headquartered, but the counterargument says that local labor markets should set the standard. It has been posited that these wages are too low relative to what global companies can afford or relative to what they earn on the products, but the counterargument states that U.S. retail prices and company earnings are not directly correlated. Finally, it is argued that these wages are too low relative to the basic needs of workers in developing nations, but the counterargument is that the number of workers in a household makes a difference to the living wage.

**WORKING CONDITIONS: HEALTH AND SAFETY** Each year more than 4,500 workers are killed and 3,000,000 are injured while on the job.[18] Ten percent of the job force suffers a job-related injury or illness each year, for a loss of over 31 million workdays annually. Delayed occupational diseases resulting from exposure to chemical and physical hazards kill off additional numbers. Annual costs of work-related deaths and injuries in the United States were $183 billion in 2008.[19]

Workplace hazards include not only the more obvious categories of mechanical injury, electrocution, and burns but also extreme heat and cold, noisy machinery, rock dust, textile fiber dust, chemical fumes, mercury, lead, beryllium, arsenic, corrosives, poisons, skin irritants, and radiation.[20] Many workplace hazards are not recognized until many years after they begin to inflict damage on workers. Asbestos, for example, takes about 20 years before the lung cancers appear that we now know it causes. Although inhaling asbestos fibers was long suspected of being a cause of lung diseases, it was not definitively discovered to be associated with cancer until 1964, long after tens of thousands of workers had been exposed to asbestos in shipyards and other construction projects.

In a similar way, until recently many workers were being exposed to manganese. We now know that manganese inhaled as a vapor or in airborne particles can cause

### Pro and Con: Is It Ethical for Global Companies to Pay Low Wages in Developing Nations?

Three criticisms have been made about the wages paid in developing nations to workers that assemble goods for companies that market those goods in the United States.

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**Criticism 1: Disproportionately Low Relative to U.S. Wages**

According to the U.S. Bureau of Labor Statistics, U.S. workers in the apparel industry were paid $15.29 an hour in 2007. The same year, according to the International Labor Organization (ILO), apparel workers in the Philippines received $0.82 an hour; in Bangladesh they received $0.31 an hour; in Mexico, $2.75 an hour; in Thailand, $1.52 an hour; in Egypt, $1.02 an hour; in China, $1.59 an hour; in India, $1.00 an hour; and in Sri Lanka, $0.38 an hour. These lower wages cannot be attributed to the "lower productivity" of workers in developing nations because the wage differences are disproportionate to the differences in productivity. According to the ILO, in an hour a U.S. worker produces about three times what a Filipino worker produces, but gets paid almost 20 times as much; a U.S. worker produces five times what a Bangladesh worker produces, but gets paid 50 times as much; a U.S. worker produces 1.5 times what a Mexican worker produces, but gets five times as much; a U.S. worker produces three times what a Thai worker produces, but gets 10 times as much; a U.S. worker produces four times what a Chinese worker produces, but gets 10 times as much; and a U.S. worker produces four times what an Indian worker produces, but gets 16 times as much. These wage differences, many activists have argued, are unjust.

**Reply to Criticism 1**

It is not clear that wages in one country (such as the United States) should be used as the basis for setting wages in other countries. Perhaps local labor markets should determine local wages.

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cognitive disorders, tremors, weakness, inability to coordinate movements, and troubled breathing. Workers who have been exposed to manganese vapors on a daily basis include welders, miners, steelworkers, some railroad workers, farm workers who have handled pesticides or fertilizers containing manganese, and plant workers involved in factory processes that use manganese. These workers face an uncertain future since many of them will become incapacitated and dependent on others for all their needs.

In 1970, the U.S. Congress passed the Occupational Safety and Health Act and created the *Occupational Safety and Health Administration (OSHA)* "to assure as far as possible every working man and woman in the nation safe and healthful working conditions."[21] Unfortunately, from the beginning, OSHA has been burdened with an inadequate number of field inspectors, and often inefficient forms of regulation. Nevertheless, the existence of OSHA has led many firms to create or improve their safety programs. One poll revealed that 36 percent of the firms surveyed had implemented safety programs as a result of OSHA, and 72 percent said that the existence of OSHA influenced them in their safety efforts.[22] This influence is reflected in occupational accident rates, which have been declining in the United States. For example, between 1995 and 2009, the rate at which workers were being killed on the job declined dramatically from 18 deaths per 100,000 workers to 3.3 deaths per 100,000. In absolute numbers, the decline was from a total of 6,275 deaths due to occupational injuries in 1995 to a total of 4,340 deaths from occupational injuries in 2009.[23] However, the absolute number of seriously injured workers (i.e., workers who were disabled or who died) increased from 2 million in 1985 to 3.2 million in 2008.[24]

**LOOKING AT RISK IN OCCUPATIONS** Risk is, of course, an unavoidable part of many occupations. A race-car driver, a circus performer, and a rodeo cowboy all accept certain hazards as part of their jobs. An employer should take reasonably adequate measures to do the following:

- become informed about and inform workers about workplace risks
- eliminate workplace risks
- fully compensate and insure workers for assuming risks that cannot be eliminated

If the above conditions are met and workers freely and knowingly accept those remaining risks in exchange for the added compensation, then we may generally conclude that the employer has acted ethically.[25]

When any of the three factors that may result in an unfair contract between employer and employee are present, that contract is no longer fair.

***Quick Review 8.4***
**Job Risks . . .**

- Are not justified when labor markets are uncompetitive and risks are unknown and uncompensated
- Are not justified when companies fail to collect information on risks and fail to inform workers of risk
- May not be justified when less risky jobs are unavailable, or when workers lack information about less risky alternatives.

### Unfair Risk in Hazardous Occupations

The basic problem concerning risk is that in many hazardous occupations, particularly in less developed nations, the conditions that minimize risk and protect and compensate workers do not exist.

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**Workers May Not Be Fully Compensated for Risks**

Wages will fail to provide a level of compensation proportional to the risks of a job when labor markets are not competitive or when markets do not register risks because the risks are not yet known. There are large areas in some developing nations, for example, where a single mining company has a monopoly on jobs. Or the health risks involved in mining or using a certain mineral, such as manganese, may not be known until many years afterward. In such cases, wages will not fully compensate for risks.

**Workers May Accept Workplace Risks Unknowingly**

**Workers May Accept Known Risks Because of Poverty or Desperation**

**THE EMPLOYER'S DUTY IN CASES OF RISK** The employer has a duty to take steps to ensure that a worker is not being unfairly manipulated into accepting a risk unknowingly, unwillingly, or without due compensation. Assuming that the employer has eliminated all workplace health and safety hazards that violate local laws and has eliminated all other hazards that can be eliminated with a reasonable investment, then

1. If any workplace health and safety risks cannot be eliminated at a reasonable cost, the employer has an obligation to fund studies of those risks, to clearly and explicitly inform workers of the risks (particularly those involving health and life), and to compensate workers for any injuries they sustain
2. Employers should offer wages that reflect the risk-premiums paid in other similar but competitive labor markets, so that workers are adequately compensated for the risks their jobs involve
3. To insure their workers against unknown hazards, the employer should provide them with suitable health insurance programs and suitable disability insurance
4. Employers have an obligation (working singly or together with other firms, perhaps through industry associations) to collect information on the health hazards that accompany a given job and make all such information available to workers

***Quick Review 8.5***
**Establishing Fair Working Conditions Requires . . .**

- Eliminating risks when cost is reasonable, studying potential risks of a job, informing workers of known risks, compensating workers for injuries
- Providing compensation for job risks similar to risk-premiums paid in other jobs
- Providing adequate medical and disability benefits
- Working singly or with other firms to collect information about job risks and then make that information available to workers

**HEALTH AND SAFETY IN DEVELOPING NATIONS** Health and safety issues are particularly problematic in developing nations where worker health and safety laws sometimes set extremely low standards or where governments do not have the resources to enforce the standards that are in place.

**The term *sweatshop* is sometimes used to describe a workplace that has numerous health and safety hazards and poor working conditions, as well as low wages.**

***Quick Review 8.6***
**An Employer Is Morally Responsible for Bad Working Conditions**

- When it knows about the conditions
- When it can and should improve them
- When it is not prevented from changing them

**WORKPLACE VIOLENCE** Another workplace safety issue that has grown in significance is workplace violence. An average of about 1.7 million workers are the victims of workplace assaults and violence each year in the United States, and about 700 of these result in death. Almost a fifth of all U.S. occupational deaths today are the result of assaults and other forms of violence in the workplace. Homicide was the third-leading category of fatal occupational injuries in the United States in 2009. According to the U.S. Bureau of Labor Statistics, out of a total of 4,340 fatal work injuries in 2009, some 788 deaths were due to workplace assaults and violence; 521 of these deaths were classified as homicides. The U.S. Department of Justice has even labeled the U.S. workplace as one of the "most dangerous places" to be in the United States. Seventy percent of all workplace killings occur during robberies of taxicab drivers (the most dangerous occupation), during store robberies (especially stores selling liquor, jewelry, or gasoline), during home deliveries, during truck deliveries, and in restaurant disputes. The other 30 percent are inflicted by angry co-workers (13 percent), customers (7 percent), acquaintances, spouses or former spouses, and relatives. Nonfatal workplace assaults occur primarily in hospitals, nursing homes, and social service agencies.

Clearly, employers have the same obligation to deal with the issue of workplace violence as they have to deal with other health and safety issues in the workplace: study the workplace in order to identify potential hazards, eliminate those hazards that can be eliminated at a reasonable cost, and educate themselves and their workers about any remaining workplace risks. Thus, employers should familiarize themselves with the issue of workplace violence and assess the potential risks for such violence in their own particular workplace. They should try to eliminate the risk of workplace violence by developing programs to deal with anger and violence among employees, and by putting physical mechanisms in place to protect employees from violent customers and clients. As well, they should train supervisors and employees to recognize the warning signs of violence and to learn how to deal with violence when it emerges.

### Sweatshops in the United States and Developing Nations

Clearly, sweatshop conditions are unethical. In the United States, sweatshops are illegal and in violation of various occupational health and safety laws. (Yet, the U.S. Department of Labor estimates that perhaps half of the remaining sewing shops in the United States qualify as sweatshops.) The existence of sweatshops in developing nations is complicated by an added factor: many sweatshops are not owned by the companies for which they produce their goods.

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**Outsourcing Creates the Situation**

Many companies in the United States and other industrialized nations now "outsource" their manufacturing to foreign factories. Nike, for example, pioneered the strategy of designing its athletic shoes in the United States and contracting with factories in Asia to make its shoes in accordance with its designs. While Nike determines the materials, design, quality, and quantity of shoes the factory will produce, the factory itself is owned and managed by someone other than Nike. Virtually all athletic shoe companies today have adopted Nike's strategy of having their shoes manufactured by foreign factories they do not own. Many of these foreign factories are sweatshops with a great many health and safety hazards (and low pay) that can take a heavy toll on their workers.

**How Can a Global Company Define Its Responsibility?**

# 8.2: The Political Organization

**OBJECTIVE: Analyze the political model of the organization in terms of power and rights and justice**

To anyone who has ever worked within a large organization, the goal-directed and efficient structure that the rational model of the organization attributes to business firms will seem somewhat incomplete, if not altogether unreal. Although much of the behavior within organizations accords with the orderly picture drawn by the rational model, a great deal of organizational behavior is neither goal-directed, efficient, or even rational. Employees within organizations often find themselves embroiled in intrigues, ongoing battles for organization resources, feuding between cliques, arbitrary treatment by superiors, scrambles for career advancement, controversies over what the organization's "real" goals are or should be, and disagreements over strategies for pursuing goals. Such behaviors do not seem to fit within the orderly pattern of the rational pursuit of organizational goals.[26] To understand these behaviors and the ethical issues they raise, we must turn to a second model of the firm—one that focuses less on its rational aspects and more on its political features: the **political model of the organization**.[27]

The political analysis of the organization that we now sketch is a more recently developed view of organizations than the rational analysis. Unlike the rational model, the political model of the organization does not look merely at the formal lines of authority and communication within an organization, nor does it presume that all organizational behavior is rationally designed to achieve an objective and a given economic goal such as profitability or productivity. Instead, the political model of the organization sees the organization as a system of competing power coalitions and formal and informal lines of influence and communication that radiate from these coalitions.[28]

## 8.2.1: Where Is the Power?

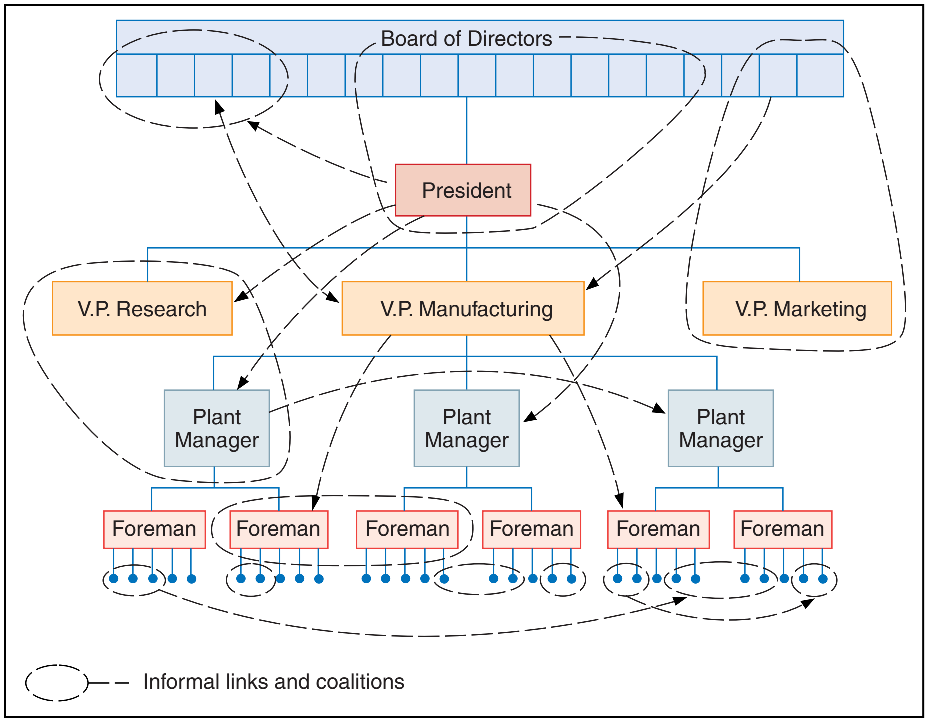
In place of the neat hierarchy of the rational model, the political model postulates a messier and more complex network of clustered power relationships and criss-crossing communication channels (see Figure 8.2).

The political model of the organization recognizes that individuals in all organizations often group together to form coalitions that then compete with each other for resources, benefits, and influence. Consequently, the goals of the organization become those established by the historically most powerful or dominant coalition.[29] Goals are not given by "rightful" authority, but are bargained for among more or less powerful coalitions. The fundamental organizational reality, according to this model, is not formal authority or contractual relationships, but power: the ability of the individual (or group of individuals) to modify the conduct of others in a desired way without having one's own conduct modified in undesired ways.[30]

Behavior within an organization may not be aimed at rational organizational goals such as efficiency or productivity, and both power and information may travel completely outside (even contrary to) formal lines of authority and communication. Nonetheless, formal managerial authority and formal communication networks provide rich sources of power. The formal authority and sanctions put in the hands of managers are a basic source of the power they wield over workers.

If we focus on power as the basic organizational reality, then the main ethical problems we will see when we look at an organization are problems connected with the acquisition and exercise of power. The central ethical issues will focus not on the contractual obligations of employers and employees (as the rational model would focus them), but on the moral constraints to which the use of power within organizations must be subjected. The ethics of organizational behavior as seen from the perspective of the political model focus on this question: What are the moral limits, if any, to the exercise of power within organizations? In the sections that follow, we discuss two aspects of this question: (1) What, if any, are the moral limits to the power owners and managers acquire and exercise over their subordinates? (2) What, if any, are the moral limits to the power employees acquire and exercise on each other?

**Figure 8.2** A Company's Political Organization



## 8.2.2: Employee Rights and the Similarity Argument

Observers of corporations have repeatedly pointed out that the power of modern corporate management is similar to that of a government.[31] This similarity is the basis of what we can call the "similarity argument" in support of employee rights. We will start with an analysis of the similarity argument and progress to an expanded discussion of employee rights.

The similarity argument is as follows. A government is defined in terms of four features:

- it is composed of a centralized decision-making body of officials;
- its officials have the power and recognized authority to enforce their decisions on subordinates (citizens);
- its officials make decisions that determine the public distribution of social resources, benefits, and burdens among their subordinates; and
- its officials have a monopoly on the power to which their subordinates are subject.

These same four features, observers have argued, also characterize the managerial hierarchies that run large corporations:

- like a city, state, or federal government, the top managers of a corporation constitute a centralized decision-making body that has considerable power;
- managers wield power and legally recognized authority over their employees—a power that is based on their ability to fire, demote, or promote employees and an authority that is based on the law of agency that stands ready to recognize and enforce managerial decisions;
- managers make decisions that determine the distribution of income, status, and freedom among the corporation's constituencies; and
- through the law of agency and contract, through their access to government agencies, and through the economic leverage they possess, managers of large corporations effectively share in the monopoly on power that political governments possess.[32]

***Quick Review 8.7***
**Similarity Argument**

- Similarities between the power of management and government imply that employees should have rights similar to citizens' rights.
- A company's management is a centralized decision-making body that exercises power, like a government's centralized decision-making body of officials.
- Managements wield power and authority over employees, like governments wield power over citizens.
- Management has the power to distribute income, status, and freedom among the corporation's constituencies, like government does with respect to citizens.
- Management shares in the monopoly on power that government possesses.
- Since management's power over employees is so similar to government's power over citizens, employees should have rights that protect them from managers' power, just as citizens' rights protect them from government power.

**ARGUMENTS SURROUNDING THE SIMILARITY COMPARISON** The major objection to the similarity argument for employee rights is that there are a number of important differences between the power of corporate managers and the power of government officials, and these differences undercut the argument that the power of managers should be limited by employee rights comparable to the civil rights that limit the power of government.

Advocates of employee rights have responded to the major objection in a number of ways:

1. Corporate assets are no longer controlled by private owners; they are now held by a dispersed and almost powerless group of stockholders. This kind of dispersed ownership implies that managers no longer function as agents of the firm's owners and, consequently, that their power no longer rests on property rights.[33]
2. Although some workers are unionized, most today are not, and these nonunionized workers have moral rights that managers do not always respect.[34]
3. Changing jobs is sometimes as difficult and traumatic as changing citizenship, especially for the employee who has acquired specialized skills that can be used only within a specific organization.[35]

***Quick Review 8.8***
**Replies and Counter-Replies to the Similarity Argument**

- The power of government is based on consent and so is unlike the power of managers, which is based on ownership of the company; supporters of the similarity argument respond that today the power of managers does not come from owners.
- Unlike government, the power of management is limited by unions; supporters of the similarity argument respond that most workers today are not unionized.
- While it is hard for citizens to escape the power of a government, it is easy for employees to escape the power of managers by changing jobs; supporters of the similarity argument respond that changing jobs is not always so easy.

### Basic Differences between Business Power and Government Power

Consent, limits, and mobility are three basic differences between the power of corporate managers and the power of government officials.[36, 37, 38]

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The power of government officials (in theory, at least) is based on consent, whereas the power of corporate managers is (in theory, again) based on ownership. Government officials rule because they have been elected or because they have been appointed by someone who has been elected; corporate managers *rule* (if that is the right word) because they own the firm for which workers freely choose to work or because they have been appointed by the owners of the firm. Consequently, because the power of government rests on the consent of the governed, that power can legitimately be limited when the governed choose to limit it. However, because the power of managers rests on ownership of the firm, managers have the right to impose whatever conditions they choose to impose on employees, who freely and knowingly contracted to work on their firm's premises.

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## 8.2.3: Employees' Right to Privacy

Recall that the **right to privacy** can be defined as the right people have to determine what, to whom, and how much information about themselves shall be disclosed to others.

These innovations have made a person's privacy more vulnerable, and they have come at a time when managers are particularly anxious to learn more about their employees. Advances in industrial psychology have demonstrated relationships between an employee's private home life or personality traits and on-the-job performance and productivity.

## On the Edge

### Sergeant Quon's Text Messages

Jeff Quon worked as a sergeant on the SWAT team of the Ontario, California Police Department.[39] The department provided him and all other officers with pagers that allowed text messaging with a monthly limit of 25,000 characters, above which the city of Ontario had to pay extra. The city issued a written "Communication Usage, Internet, and E-Mail Policy" that said "the use of these tools for personal benefit is a significant violation of City of Ontario Policy," but "some incidental

### Technology and Employee's Right to Privacy

The employee's right to privacy has become particularly vulnerable with the development of recent technologies, particularly electronic and computerized technologies.[40]

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Employees who use telephones and computers can be legally monitored by their employer, who may wish to check how fast they are working, whether they are engaged in personal or business-related activities, or simply what they are doing.

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and occasional personal use of the e-mail system, if limited to light personal communications" is permitted. In addition, the policy continued, "The City of Ontario reserves the right to monitor and log all network activity including e-mail and Internet use, with or without notice; users should have no expectation of privacy or confidentiality when using these resources." The policy reminded officers that all such "messages are also subject to 'access and disclosure' in the legal system and the media"; that is, they could be revealed if a court subpoenaed them during a trial or if reporters requested them under a freedom of information statute or a public records disclosure statute. Sergeant Quon signed an acknowledgement that he read and understood the policy. In addition, he attended a meeting where all officers were told that pager messages were considered e-mails under the policy "and could be audited." A few days later, he received a memo reminding him of that policy.

When Quon went over the 25,000-character monthly limit on his pager for the first time, he was approached by a superior, Lieutenant Steve Duke. Lieutenant Duke reminded him that his messages "could be audited." However, the lieutenant explicitly added that he would not "audit employees' text messages to see if the overage was due to work-related transmissions" as long as the employee "reimbursed the City for [the] overage." Only if Quon did not pay for the overage would it be necessary to "audit the transmission to see how many messages were work-related." Sergeant Quon paid the overage in full and when he went over the limit three or four more times, he also paid each overage in full and, as the lieutenant had said, his messages were not examined. However, when he went over the limit a fifth time, Lieutenant Duke did not ask Quon to pay for the overage but instead obtained a transcript of all his messages and read through them. He discovered that some messages were to or from Quon's wife, "while others were directed to or from his mistress" and some of these were sexually explicit. The lieutenant showed these to his superior, Chief Scharf, and pointed out that the department's policy expressly prohibited "the use of inappropriate, derogatory, obscene, suggestive, defamatory, or harassing language" in messages.

## WRITING PROMPT

**Evaluate the Sergeant's Predicament**

1. What, ethically, should Chief Scharf do? What should Lieutenant Duke do?
2. Was Lieutenant Duke's assurance that he would not examine Sergeant Quon's messages as long as Quon paid for any overage an implicit agreement, which Quon was entitled to rely on? Was it an implicit agreement that Duke was morally required to keep?
3. Did Lieutenant Duke or Chief Scharf violate Sergeant Quon's right to privacy? If they did, explain why; if they did not, then explain what additional events would have to happen for the incident to be a violation of the right to privacy and why those additions are necessary.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

**PSYCHOLOGICAL PRIVACY AND PHYSICAL PRIVACY** As we saw earlier, there are two types of privacy: psychological privacy, which is privacy regarding one's inner thoughts, plans, beliefs, values, feelings, and wants; and physical privacy, which is privacy with respect to one's physical activities, particularly those that reveal one's inner life and those that involve physical or personal functions that are culturally recognized as private.[41]

Hence, it is clear that employees, like others, have a significant interest in maintaining privacy over information about themselves, and so employees must be recognized as having a right to privacy. However, this right must be balanced against the rights and needs of others. In particular, employers sometimes have a legitimate right to inquire into the activities of employees or prospective employees. The employer is justified in wanting to know, for example, what a job candidate's past work experience has been and whether the candidate has performed satisfactorily on previous jobs. An employer may also be justified in wanting to identify the culprits when the firm finds itself the subject of pilferage or employee theft and of subjecting employees to on-the-job surveillance to discover the source of thefts. How are these rights to be balanced against the right to privacy?[42]

**THREE ELEMENTS OF PRIVACY** Three elements must be considered when collecting information that may threaten the employee's right to privacy: relevance, consent, and method.

***RELEVANCE*** The employer must limit inquiry into the employee's affairs to those areas that are directly relevant to the issue at hand. Although employers have a right to know the person whom they are employing and to know how the employee is performing, employers are not justified in inquiring into any areas of the employee's life that do not directly and significantly affect the employee's performance. To investigate an employee's political beliefs or social life, for example, is wrong because doing so is an invasion of the employee's right to privacy. For the same reason, if a firm acquires information about an employee's personal life in the course of a legitimate investigation, it is wrong to record and keep the information, especially when such data would embarrass or otherwise injure the employee if it were leaked.

The dividing lines between justified and unjustified investigations are fairly clear with respect to lower-level employees: Clearly, little justification exists for investigating the marital problems, political activities, or emotional characteristics of clerical workers, salespeople, or factory laborers. The dividing line between what is and is not relevant, however, becomes less clear as one moves higher in the firm's management hierarchy. Executives are called on to represent their company before others, and the company's reputation can be significantly damaged by an executive's private activities or emotional instability. A CEO's drinking problem or membership in a disreputable association, for example, will affect his or her ability to represent the firm. When hiring for such positions, the firm may be justified in inquiring into a candidate's personal life or psychological history because they can be relevant to what the candidate is being hired to do.

***CONSENT*** Employees must be given the opportunity to give or withhold their consent before the private aspects of their lives are investigated. Every person, as Immanuel Kant argued, has the moral right to be treated only as they have consented to be treated. The firm, therefore, is justified in inquiring into the employee's life only if the employee understands that the inquiry is being made and clearly consents to it as part of the job (or the employee can freely choose to refuse the job). The same principle holds when an employer undertakes some type of surveillance of employees for the purpose of, say, uncovering or preventing pilferage. Employees should be informed of such surveillance so they can ensure they will not inadvertently reveal their personal lives while under surveillance. Announcing such surveillance, moreover, may itself be sufficient to stop the pilferage.

### Protecting Privacy with the Protection of a Right

Each of us has a significant interest in privacy, which justifies protecting privacy by surrounding it with the protection of a right.

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**Privacy Protects Us** | **Privacy Empowers or Enables Us**

Privacy lets us protect information about ourselves that could embarrass or shame us, it protects us from having others interfere in our lives merely because they disagree with our values, it lets us protect those we love from knowledge about ourselves that might hurt them, and, more generally, it protects our reputation.

***METHODS*** The employer must distinguish between methods of investigation that are both ordinary and reasonable, as well as methods that are neither. Ordinary methods include the supervisory activities that are normally used to oversee employees' work and that employees can be presumed to know about and to consent to as part of their explicit or implicit contract with the firm. Extraordinary methods include using devices such as hidden microphones, secret cameras, wiretaps, lie detector tests, personality inventory tests, and spies. Such extraordinary methods are unreasonable and unjustified unless the circumstances are extraordinary. Extraordinary methods of investigation might be justified if a firm is suffering heavy losses from employee theft that ordinary supervision has failed to stop. Extraordinary methods, however, are not justified merely because the employer hopes to be able to pick up some interesting information about employee loyalties. In general, the use of extraordinary methods is justified only when the following conditions have been met:

- The firm has a problem that can be solved in no other manner than by employing such extraordinary means.
- The problem is serious and the firm has well-founded grounds for thinking that the use of extraordinary means will identify the culprits or put an end to the problem.
- The use of the extraordinary means is not prolonged beyond the time needed to identify the wrongdoers or after it becomes clear that the means will not work.
- All information that is uncovered but not directly relevant to the purposes for which the investigation was conducted is disregarded and destroyed.

- The failure rate of any devices employed (such as lie detectors, drug tests, or psychological tests) is taken into account, and all information derived from devices with a known failure rate is verified through independent methods that are not subject to the same failures.

***Quick Review 8.9***
**Employee Right to Privacy . . .**

- Is threatened by today's technologies
- Is justified because of the interest we have in the protective and enabling functions of privacy
- Requires that managers consider relevance, consent, and methods when collecting information about employees

## 8.2.4: Employees' Right to Freedom of Conscience

Employees sometimes discover that the corporation they work for is doing something that they believe is seriously and morally wrong. Indeed, individuals inside a corporation are usually the first to learn that the corporation is marketing unsafe products, polluting the environment, suppressing health information, or violating the law.

Responsible employees who find that their company is injuring society in some way will normally feel they have a moral obligation to get the company to stop its harmful activities and, consequently, will bring the matter to the attention of their superiors. Unfortunately, if the internal management of the company refuses to do anything about the matter, the employee has few other legal options available. If, after being rebuffed by the company, the employee has the temerity to take the matter to a government agency outside the firm or, worse, to disclose the company's activities to the public, the company has the legal right to punish the employee by firing him or her. Furthermore, if the matter is serious enough, the company can reinforce this punishment by putting the matter on the employee's record and, in extreme cases, seeing to it that the employee is blackballed by other companies in the industry.[43]

Several authors have argued that such a punitive response is in effect a violation of an individual's right to freedom of conscience.[44] It is a violation of the right to freedom of conscience because the individual is forced to cooperate with an activity that violates the individual's personal moral beliefs. What is the basis of this right? The right to freedom of conscience derives from the interest that individuals have in being able to adhere to their religious or moral convictions.[45] Individuals who have religious or moral convictions commonly see them as absolutely binding and can transgress them only at great psychological cost. The right to freedom of conscience protects this interest by requiring that individuals not be forced to cooperate in activities that they conscientiously believe are wrong.

These arguments, however, have had only a small impact on the law, which still by and large supports the employee's duty of maintaining loyalty and confidentiality toward the employer's business.[46] A few laws have been passed, however, that afford some protection to the employee who is concerned that his or her company is violating the law or is engaged in immoral activities. These laws protect the practice of what is called **whistleblowing**.[47] We will look at those laws shortly, but first we will discuss what whistleblowing itself is.

**WHISTLEBLOWING** Whistleblowing is an attempt by a member or former member of an organization to disclose wrongdoing in or by the organization including violations of the law, fraud, health or safety violations, bribery, or a potential or actual injury to the public.

### Ethical Application

#### An Inspector Is Thwarted

Mr. Mackowiak was hired as a welding inspector by University Nuclear Systems, Inc. (UNSI), a firm responsible for installing the heating, ventilating, and air-conditioning system at a nuclear power plant owned by the Washington Public Power Supply system. Mackowiak was supposed to inspect the work of UNSI employees and make sure it conformed to federal quality and safety standards—a task that was mandated by federal regulations requiring builders of nuclear power plants to give their inspectors the authority and organizational freedom they needed to fulfill their role as independent observers of the construction process. However, some UNSI employees refused to give Mackowiak access to areas in which work was being done in a manner that violated federal specifications. Mackowiak went to his superiors and told them that he believed the company was violating federal regulations, but he was illegally being prevented from inspecting the areas where the violations were taking place. When he was unable to get them to respond to his concerns, Mackowiak *blew the whistle* on the company. He met with officials of the Nuclear Regulatory Commission (NRC) at his home and disclosed to them his concerns about the safety and quality control of the work of UNSI. The NRC took his allegations seriously and conducted a full investigation of UNSI that verified the problems and forced the company to correct them. However, UNSI discovered that it was Mackowiak who had talked to the federal agents and early the following year, the company fired him because, the company said, he had a "mistrustful attitude toward management," although his "inspection qualifications/expertise is excellent and he is a good inspector."[48]

Whistleblowing can be internal or external. If the wrongdoing is reported only to higher-ups within the organization, as Mackowiak initially did, it is internal whistleblowing (see the "Ethical Application"). When the wrongdoing is reported to external individuals or bodies such as government agencies, newspapers, or public interest groups, the whistleblowing is said to be external. When Mackowiak reported his concerns to the NRC, for example, his act became external whistleblowing.

As Mr. Mackowiak's experience shows, blowing the whistle is often a brave act of conscience that can carry heavy personal costs. A study of whistleblowers found that the average whistleblower is a 47-year-old family man who has been a conscientious employee for seven years and who has a strong belief in universal moral principles.[49] The same study reported that 100 percent of the whistleblowers surveyed who worked for private businesses were fired by their employers; 20 percent could still not find work at the time of the survey; 25 percent had suffered increased financial burdens on their family; 17 percent lost their homes; 54 percent had been harassed by their peers at work; 15 percent viewed their subsequent divorce as a result of their whistleblowing; 80 percent suffered physical deterioration; 86 percent reported emotional stress, including feelings of depression, powerlessness, isolation, and anxiety; and 10 percent reported having attempted suicide. Nevertheless, most of the whistleblowers surveyed had few regrets and would do it again. Typical of the comments they made to the survey team were the following: "This has turned out to be

### Justifying External Whistleblowing

When an employee accepts a job, the argument goes, the employee implicitly agrees to keep all aspects of the business confidential and to single-mindedly pursue the best interests of the employer. The whistleblower violates this agreement and thereby violates the rights of the employer. Although part of what this argument asserts is true, the conclusion is false.

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It is true that an employee enters an agreement to act on behalf of the employer in all matters pertaining to the business and that the employee also implicitly or explicitly agrees to keep trade secrets and other proprietary information secret. However, this agreement is not unqualified, and it does not impose on the employee unlimited obligations toward the employer. As we saw in an earlier discussion, agreements and contracts are void if they require a person to do something immoral. Consequently, if an employee has a moral obligation to prevent other people from being harmed and the only way to prevent the harm is by blowing the whistle on one's employer, an employment agreement cannot require the employee to remain silent. In such a situation, the employment agreement would be void because it would require immorally failing to do what the employee is morally obligated to do. Thus, external whistleblowing is justified if it is necessary to prevent a wrong that one has a moral duty to prevent, or if it will yield a benefit that one has a moral right or duty to provide.

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the most frightening thing I have ever done. But it has also been the most satisfying. I think I did the right thing, and I have caused some changes to be made in the plant," "Do what is right. Lost income can be replaced. Lost self-esteem is more difficult to retrieve," and "Finding honesty within myself was more powerful than I expected."

**TRUE AND FALSE OF WHISTLEBLOWING** It is sometimes argued that external whistleblowing is always wrong because employees have a contractual duty to be loyal to their employer and to keep all aspects of the business confidential.

**JUSTIFICATION, OBLIGATION, AND RETALIATION** To say that external whistleblowing is *justified* is not the same as saying that it is *obligatory*. Although it may be morally permissible for a person to blow the whistle on a company, this does not mean that the person also has a moral duty or moral obligation to do so.[50] Under what conditions is it not only permissible but also obligatory for a person to engage in external whistleblowing? Whistleblowing is merely a means to an end—the end of correcting or preventing a wrong—therefore, a person has an obligation to take this means only to the extent that there is an obligation to achieve the end. Clearly, a person has a moral obligation to engage in whistleblowing only when there is a moral obligation to prevent the wrong that whistleblowing will prevent.

***Quick Review 8.10***
**The Right to Whistleblow**

- It is justified by the interest we have in remaining true to our religious and moral convictions.
- It must be balanced against the legitimate rights of the firm, its stockholders, and fellow employees.

## Whistleblowing: Obligation and Retaliation

When does a person have an obligation to prevent a wrong?[51, 52]

**Interactive**

**Obligation to Whistleblowing** | **Protection from Retaliation**

Assuming that the four conditions that morally justify external whistleblowing are met, so that whistleblowing is at least permissible, a person has an obligation to blow the whistle when:

1. that person has a moral duty to prevent the wrong, either because it is part of the person's professional responsibilities (e.g., as an accountant, environmental officer, professional engineer, lawyer) or because no one else can or will prevent the wrong in which the company is involved; and
2. the wrong involves serious harm to society's overall welfare, serious injustice against a person or group, or serious violation of the basic moral rights of one or more people. For example, when a company is involved in activities that can result in substantial health injuries to many people who have a right to be protected from such injuries, and no one else in the company is willing to bring these activities to a halt, then I have an obligation to prevent the wrong, even if it means resorting to whistleblowing.

In many companies, conscientious employees have to resort to external whistleblowing because the company has not provided a way for them to voice their concerns internally, or because they fear reprisals if they do so. To overcome these problems, many companies have set up "ethics hotlines"—toll-free telephone numbers—that employees can use to report legal or ethical violations anonymously to upper management or to an "ethics officer" who is empowered to investigate the allegations.

- It implies that whistleblowing to prevent a wrong that violates our moral convictions is *morally justified* when: (1) the wrong is clear, (2) other methods to prevent the wrong have failed, (3) it will prevent the wrong, and (4) the wrong is serious enough to justify the personal and other costs of whistleblowing.
- Whistleblowing is a *moral obligation* for a person when (1) to (4) hold, and when the person has a moral duty to prevent the wrong or is the only person who will or can prevent the wrong, and the wrong involves serious harm to society's overall welfare, serious injustice against a person or group, or serious violation of basic moral rights.

## 8.2.5: Employees' Right to Participate in Decisions That Affect Them

A democratic political tradition has long held that government should be subject to the consent of the governed because individuals have a right to liberty, and this right implies that they have a right to participate in the political decisions that affect them. Within a democracy, therefore, political decision-making usually has two characteristics:

1. Decisions that affect the group are made by a majority of its members.
2. Decisions are made after full, free, and open discussion.[53]

### Steps Toward Organizational Democracy

A number of authors have proposed that these ideals of democracy should be embodied in business organizations. Some have argued that enabling individual employees within the organization to participate in the decision-making processes of the organization is an "ethical imperative."[54, 55, 56]

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**First Step: Company Makes Decisions in Open Communication**

As a first step toward organizational democracy, some have suggested that although decisions affecting workers should not be made by workers, they should, nonetheless, be made only after full, free, and open discussion with workers. This step would entail open communication between workers and their supervisors and the establishment of an environment that encourages consultation with workers. Employees would be allowed to freely express criticism, receive accurate information about decisions that will affect them, make suggestions, and protest decisions.

**Second Step: Workers Make Decisions About What Affects Them**

**Third Step: Workers Make Policy Decisions That Affect the Company**

Either all the members of the group participate in these decision-making processes or they do so through elected representatives.

Full organizational democracy has not been particularly popular in the United States. Part of the reason, perhaps, is that employees have not shown a great deal of interest in participating in the firm's broader policy decisions. A more important reason, however, is that U.S. ideology distinguishes sharply between the power exercised in political organizations and the power exercised within economic organizations: power in political organizations, it is assumed, should be democratic, whereas power in economic organizations should be left in the private hands of managers and owners.[57] Whether this ideological distinction is valid is something the reader must decide.

**VIEWS ON BRINGING DEMOCRATIC PROCESSES INTO THE WORKPLACE** Some management thinkers have urged managers to bring democratic processes into business organizations in the guise of **participative management**. They have argued that bringing democratic leadership styles into business organizations will increase worker satisfaction and productivity. So on utilitarian grounds, more democracy should be integrated into the organization.

If democratic participative management styles make organizations more effective and productive, then, on

### Participative Management Styles

Democratic participative management styles are advocated in different ways by three theorists: Douglas McGregor, Raymond Miles, and Rensis Likert.[58, 59, 60]

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**Douglas McGregor's View** | **Raymond Miles's View** | **Rensis Likert's View**

Douglas McGregor described two "theories" managers can have about employees. In one theory, "Theory X," managers assume that employees are naturally lazy and need to be rewarded, punished, and controlled to get them to work toward organizational objectives. Managers who subscribe to Theory X tend to be more authoritarian, controlling, and so less democratic. In the other theory, "Theory Y," managers assume that employees want and can develop the capacity to accept responsibility and can be trusted to find the best means for achieving these goals on their own. Theory Y, McGregor held, is a more accurate description of modern workers, and so managers should use a participative and democratic style of management if they want to create a more effective and productive organization.

utilitarian grounds, managers should bring these elements of democracy into organizations. However, the research on whether a more democratic participative management style leads to greater worker satisfaction and a more effective and productive organization has not come to firm conclusions. In some companies (e.g., Semco, a Brazilian company),[61] participative management has been spectacularly successful, enabling entire plants to be turned from unproductive "disasters" into highly efficient "dynamos."[62] In other companies, participative management has not had substantial positive effects on performance or productivity, although it usually has positive effects on employee job satisfaction.[63] Moreover, critics of the participative approach to management have argued both that people are different and do not all want to participate in management decision-making and that organizations and organizational tasks are different and are not all suited to participatory decision-making. If this is correct, then the utilitarian argument in favor of democracy as "participative management" at most shows that managers should use participative management and its democratic processes, but only with the right people and in the right organizational contexts.[64] Organizational democracy might not be for everyone! Nevertheless, many authors have argued, given the large place that business organizations now occupy in our daily lives, democracy will touch only the peripheral areas of our lives if it is restricted to political organizations.[65]

***Quick Review 8.11***
**The Right to Participate**

- It is based on the right to freely decide how I will lead my life and to participate in decisions that affect my life.
- It can mean open discussion, consultation, or full participation in policy decisions.
- It supports the kind of participative management advocated by McGregor's Theory Y model, Miles's human resource model, and Likert's System 3 consultative and System 4 participative systems of organization.
- McGregor, Miles, and Likert supported their views with the utilitarian argument that adopting their theories made organizations more productive.

## 8.2.6: The Right to Due Process versus Employment at Will

Until recently, U.S. labor law has given a prominent position to *employment at will*, the doctrine that employers "may dismiss their employees at will . . . for good cause, for no cause, or even for causes morally wrong, without being thereby guilty of legal wrong."[66] The "Ethical Application" below presents an example of the application of this doctrine.

### Ethical Application
#### Corporate Justice

General Motors' internal investigation uncovered what it considered sufficient evidence of a secret employee scheme to defraud the company. Without consulting the employees the investigative team felt were involved, GM quickly doled out what one journalist called "an almost ruthless brand of corporate justice" in his description of the subsequent firings at GM's Tarrytown, New York, offices. Only a few days before their paid Christmas holidays were to begin, and with no previous warning, GM officials called 25 salaried employees into a series of three offices. Employees were fired in the first office, then stripped of their company cars and other benefits in the second office, and finally, in the third office, were given the cab fare they needed to get home. One employee who had worked for the company for more than 20 years later indicated that he "recalls watching in disbelief as a GM functionary with a map and a ruler measured off the distance to his home and handed him $15." Within a matter of hours, the GM officials fired virtually the entire staff that had formerly supervised all Chevrolet dealers in New York City.[67]

***Quick Review 8.12***
**Arguments Supporting Employment at Will**

- The employer owns the company, and ownership gives him or her the right to decide whether and how long an employee will work in his or her company.
- Everyone has the right to do what he or she chooses (provided that the rights of others are not violated), and so has the right to make whatever agreements he or she chooses (including an agreement with employees to hire and fire them at will).
- Businesses will operate most efficiently if employers have the freedom to hire or fire employees as they see fit.

**ARGUMENTS AGAINST EMPLOYMENT AT WILL** The doctrine of employment at will has come under considerable attack.[68]

First, opponents argue, employees often are not free to accept or reject employment without suffering considerable harm because they may have no other job available. Moreover, even when they are able to find alternative employment, workers pay the heavy costs involved in engaging in a job search and of struggling to live without an income while they are searching. Consequently, one of the fundamental assumptions on which employment at will is based—that employees "freely" accept employment and are "free" to find employment elsewhere—does not always hold.

### Arguments for the Doctrine

The doctrine of employment at will has been defended on several grounds, each of which appeals to ethical considerations.

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**Property Rights Argument**

One argument in support of the doctrine of employment at will is the property rights argument. This argument is based on the claim that because she owns the company, the employer has the right to decide who will work in the company and who will not. Just as the owner of a house has the right to decide who can come into her house to live with her and can base her decision on whatever criteria she wants, so too the owner of a business has the right to decide who will work with her in her business and can base her decision on whatever criteria she wants. Private property rights, as we have seen, include the right to decide how one's property can be used and who can use one's property. In this view, then, the employee has no right to object to or to contest the employer's decisions because as a non-owner, the employee has no right to determine how the business will be run while the employer has the right to hire or fire at will.

**Freedom of Contract Argument**

**Utilitarian Argument**

Second, critics of employment at will claim that employees generally make a conscientious effort to contribute to the firm, but do so with the understanding that the firm will treat them fairly in return. Workers surely would not freely choose to work for a firm if they believed the firm would treat them unfairly. Therefore, there is a tacit agreement that the firm makes to treat workers fairly, and workers, therefore, have a quasi-contractual right to fair treatment which excludes being fired "for no cause or even for causes morally wrong."

Third, critics argue that workers have a right to be treated with respect as free and equal persons. Part of this right is the right to nonarbitrary treatment and the right not to be forced to suffer harm unfairly or on the basis of false accusations. Because firings, reductions in pay, demotions, and reprisals harm employees—particularly when they have no other job alternatives—these violate the employee's right when they are arbitrary or based on false accusations.

Employees, therefore, have a right not to be fired arbitrarily as the doctrine of employment at will would allow. Finally, while it may be true that ownership gives the owner the right to decide how his or her property will be used, this right, like all rights, has to be balanced against, and is limited by, the rights of others. Even the owner of a house, for example, has no right to treat the occupants unfairly, and if the owner has led the occupants to believe they can rely on him for shelter, the owner has no right to arbitrarily toss them out. For all these reasons, a recent trend has developed away from the doctrine of employment at will, and the doctrine has gradually been replaced by the view that the employer's right to fire, demote, or penalize is limited by the employee's right to "due process."[69]

**THE RIGHT TO DUE PROCESS** For many people, the right to due process is the most critical right employees have.

> **In employment, *the right to due process* refers to the right to a fair process of decision-making when decision makers impose sanctions on employees.**

The right to due process is based on the idea that every human being has a right to be treated fairly and that this right includes the right to a fair and impartial application of rules, as well as the right to be allowed to explain oneself and to know that one is being sanctioned for true and legitimate reasons.

An ideal system of due process would be one in which individuals were given clear antecedent notice of the rules they were to follow, which gave a fair and impartial hearing to those who are believed to have violated the rules, which administered all rules consistently and without favoritism or discrimination, which was designed to ascertain the truth as objectively as possible, and which did not hold people responsible for matters over which they had no control.

It is obvious why the right to due process is seen by many people as the most critical right of employees: if this right is not respected, employees stand little chance of seeing their other rights respected. Due process ensures that individuals are not treated arbitrarily, capriciously, or maliciously by their superiors in the administration of the firm's rules, and it sets a moral limit on the exercise of the superior's power.[70] If the right to due process were not operative in the firm, then even if the rules of the firm protected the employee's other rights, these protections might be enforced sporadically and arbitrarily.

The most important area in which due process plays a role is in the hearing of grievances. By carefully spelling out a fair procedure for hearing and processing employee grievances, a firm can ensure that due process becomes an institutionalized reality. Trotta and Gudenberg identify the following as the essential components of a fair and effective grievance procedure:

1. Three to five steps of appeal depending on the size of the organization. Three steps usually suffice.
2. A written account of the grievance when it goes past the first level. This facilitates communication and defines the issues.
3. Alternate routes of appeal so that the employee can bypass his or her supervisor if he or she desires. The personnel department may be the most logical alternate route.
4. A time limit for each step of the appeal so that the employee has some idea of when to expect an answer.
5. Permission for the employee to have one or two co-workers accompany him or her to each interview or hearing if he chooses. This support helps overcome fear of reprisal.

***Quick Review 8.13***
**The Right to Due Process . . .**

- Is justified because without it all other employee rights are at risk
- Requires that individuals be notified of the rules they must follow, that they be given a fair and impartial hearing when accused of violating the rules, that rules be applied consistently, that processes through which sanctions are decided be designed to determine the truth objectively, and that people not be held responsible for what they could not avoid
- Is institutionalized through fair grievance procedures

## 8.2.7: The Right to Work

Article 23.1 of the United Nations' Universal Declaration of Human Rights states: "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment." The *right to work*, as the Universal Declaration of Human Rights understands the concept, is the moral right to earn one's living by working. It is not, as some state laws use the phrase, the right to refuse to join a union without losing one's job. At one time, workers in some companies had to join the company union or leave the company. Today, 26 states have laws that prohibit being forced to join a union in this way and these laws are generally called "right to work laws."[71] However, the Universal Declaration of Human Rights means something very different by the "right to work." As the United Nations states in Article 6 of another fundamental document—the International Covenant on Economic, Social, and Cultural Rights—the right to work implies "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts." The assumption here is that "to gain his living by work" is such a fundamental value for a person that it should be surrounded with the protections afforded by having the status of a right.

Why would anyone claim that for a person "to gain his living by work" is a fundamental value worthy of being granted the status of a right? For many people, work is only a necessary evil: it is an activity characterized by drudgery, exhaustion, tediousness, and difficulty, and nothing more than a necessary means to the money we need to survive. In this common view, work has only an instrumental value (something we have a duty to do), and the question is: Why would anyone claim we have a "right" to something we would rather avoid? The answer is that even in this very narrow understanding of work, it is still something of tremendous importance precisely because it is a means to our survival. So important is its **instrumental value** as a means to survival that it should be protected and guaranteed by having the status of a right.

The reason why we can be said to have a right to work, then, is clear. Work is a means to our survival, it is our main economic contribution to society, it is part of our self-identity, it allows the development of our character, and it is a source of our self-esteem and self-respect. Because work is of such critical value, it is worth protecting with the status of a right even if we often find it tedious, arduous, and difficult.

Although we can argue that everyone has a right to work, the reality is that workers are often out of a job. In 2016, for example, about 5 percent of the U.S. population was unemployed, a total of 7.5 million men and women. Among U.S. teenagers, the unemployment rate was about 16 percent; among blacks it was 8 percent; and among Hispanics it was 6 percent. Unemployment is widespread, and it can be even worse in other countries. Portugal's unemployment rate was 13 percent; Ireland's rate was 8 percent; Spain's rate was 21 percent; Bosnia and Herzegovina's rate was 42 percent; South Africa's rate was 26 percent; Mongolia's rate was 12 percent; Latvia's rate was 10 percent; Egypt's rate was 13 percent; and the Dominican Republic's rate was 14 percent. Unemployment is a persistent feature of all modern economies.[73]

**ECONOMIC ISSUES AND THE RIGHT TO WORK** Economic downturns account for much unemployment. However, economic downturns do not happen in a vacuum. A number of factors have combined to change the current U.S. economy, alter the work landscape, and threaten the right to work.

### The Intrinsic Value of Work

A broader understanding of work is built on reasoning that supports belief in the intrinsic value of work.[72]

Interactive

**Work Is the Basic Economic Contribution**

Work is the basic economic contribution that each person makes to his or her society. The work you and I do for our employer ultimately produces something that provides a benefit to society and that constitutes our main economic contribution to society. Through work we feel useful and our recognition of work as a contribution to society is demonstrated by the kind of negative effects that a lack of work has on us. Several studies have shown that when people are unemployed, they become depressed, feel ashamed and anxious, feel self-doubt, and report that they feel "worthless," or "useless." So deep are these feelings that even after a person finds work, he or she will continue to feel stigmatized by the period of unemployment, and this stigma will often accompany the person throughout his or her life. These psychological responses to unemployment are the natural reaction to the belief that through work we make a contribution to society that we no longer make when we are unemployed, and so we feel shame, worthless, and useless. Such feelings may not be appropriate in view of the fact that it is possible for us to make other, noneconomic contributions to society. They are, nevertheless, indicative of the fact that at very deep levels we recognize that our work, however menial, has value.

**Work Develops Potential**

**Work Develops Character**

**Work Is a Fundamental Source of Self-Esteem**

### Threats to the Right to Work

New technologies, increased outsourcing, free trade agreements, and layoffs and plant closings—at least in the United States—are all factors that threaten the right to work.[74, 75, 76, 77]

Interactive

**Technology**

Improvements in technology have made workers more productive, and this in turn has made it possible for U.S. companies to manufacture more goods with fewer workers.

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Changes in the economy that affect work are unavoidable in a market economy for many of the reasons we have already seen. However, much can be done to protect the right to work by helping workers who are out of a job find new jobs, or by ensuring that workers do not lose their jobs. Some studies suggest that other nations do much more to protect workers from losing their jobs than the United States does. In a major study of industrialized nations, for example, a team of scholars led by Peter J. Kuhn found that governments take two approaches to deal with layoffs:[78]

- Governments in some countries take a "palliative approach" that provides help to workers only *after* a layoff has occurred, when government may step forward to provide "retraining, mobility assistance, and income support." These countries include the United States, Canada, Great Britain, Australia, and Denmark.
- Governments in other countries do more than take these palliative measures. They also take a "preventive approach" that tries to prevent layoffs *before* they happen by requiring, for example, "extensive consultation and bargaining" between workers, business, and government in order to find a way to avoid a plant closing. Countries who follow this approach include the Netherlands, Japan, France, Germany, and Belgium. If a company cannot avoid closing one of its plants, then these countries require the company to transfer employees to other plants within the company and

to provide outplacement services for employees who cannot transfer so no one is laid off. If some layoffs are still unavoidable, then these countries try to prevent unemployment by requiring long advance-notice periods during which workers can search for another job. The experience of this second group of countries shows that much more can be done to help workers than what the United States and other nations do for them. Countries such as Sweden, Germany, and Great Britain all require longer advance notice of impending plant closings than the United States does.[79] In Germany, France, Sweden, and the Netherlands, workers have a right to participate (e.g., through their unions) in closure decisions, perhaps even by being given the opportunity to purchase the plant and operate it themselves. It is significant that these particular countries have tended to have lower unemployment rates than the United States.

***Quick Review 8.14***
**The Right to Work**

- It is justified because of the interest we have in the instrumental and intrinsic value of work.
- Work has a critical instrumental value because it is a means to our survival.
- Work has an intrinsic value because (1) it is our basic economic contribution to society and helps us feel worthwhile and useful, (2) it lets us develop our potential and identity as a particular human being, (3) it lets us

### Eight Steps to Minimize the Threats to the Right of Work

The ethical considerations surrounding the rights of workers are nicely folded together in the suggestions that William Diehl, a former senior vice president in the steel industry, makes concerning eight steps that companies can take to minimize the harmful effects of layoffs, plant closings, and involuntary job losses:[80]

**Interactive**

**1. Advance Notice**

If the company can notify workers of a closing date 12 to 18 months in advance, they would have time to prepare for it. . . . [A few] days' notice of closing is totally unjust and unacceptable.

**2. Severance Pay**

**3. Health Benefits**

**4. Early Retirement**

**5. Transfer**

**6. Job Retraining**

**7. Employee Purchase**

**8. Phasing Out of Local Taxes**

develop our character and virtues, and (4) it is a source of self-esteem and self-respect.

- The right to work is threatened by unemployment, which in the United States has many causes, including recessions, new technologies, outsourcing of jobs to low-wage countries, free trade agreements, and our shift from a manufacturing to a service economy.
- Company layoffs also threaten the right to work and have many causes, including a decline in consumer demand, product obsolescence, the pursuit of cheaper workers, mismanagement, and the need to consolidate operations.

**PROTECTING THE MORAL RIGHTS OF WORKERS** Even when shutdowns are necessary, the moral rights of workers involved should continue to be respected. Among the rights that must be respected are the workers' right to be informed about impending shutdowns that will affect them. Moreover, utilitarian principles imply that the harm caused by layoffs should be minimized. If workers have a right to work, then firms should do what they can to enable their laid-off workers to prepare themselves to find future jobs. Firms can do so by offering retraining programs, job transfers, and relocation. Finally, considerations of justice imply that workers and communities that have made substantial contributions to a plant during its operating life should be repaid by company assurances that it will not unjustly abandon worker pension plans or worker health plans.

### The Right to Unionize

The same rights of free association that justify the formation and existence of corporations also underlie the right of workers to form the worker organizations we call *unions*.[81, 82, 83, 84, 85, 86]

Interactive

**Right to Be Treated as Free and Equal Persons**

The worker's right to organize into a union also derives from the right of all people to be treated as free and equal persons. Corporate employers, especially during periods of high unemployment or in regions where only one or a few firms are located, have much more power in negotiations with individual employees than the employee does. Unions have therefore traditionally been justified as a means for balancing the power of the corporation and the power of the worker so that the worker, in solidarity with other workers, can achieve an equal footing when negotiating with the corporation. Thus, unions achieve an equality between worker and employer that the isolated worker could not secure, and they thereby secure the worker's right to be treated as a free and equal person in job negotiations.

**Right to Call a Strike**

***Quick Review 8.15***
**Protecting the Right to Work**

- The United States and other countries (e.g., Canada, Great Britain, Australia, and Denmark) protect the right to work with "palliative" policies that help workers find new jobs after they have lost their jobs; other countries (e.g., the Netherlands, Japan, France, Germany, and Belgium) also use "preventive" policies that try to ensure workers do not lose their jobs to begin with.
- Companies that have to lay off workers can respect their employees' right to work by providing advance notice, severance pay, health benefits, early retirement, job transfers, job retraining, and the possibility of employee purchase of the plant. They can also reduce the harmful effects of layoffs by phasing out their local tax contributions instead of reducing them suddenly.

## 8.2.8: Employees' Right to Organize

Just as owners have the right to freely associate with one another to establish and run a business, so too workers have the *right to organize*, which is the right of workers to associate with one another to establish and run a union.

**RIGHT TO ORGANIZE IN DEVELOPING NATIONS** Workers in many developing nations have much more restricted rights to organize into unions than U.S. workers. In fact, many U.S. companies moved to locations such as Mexico, Central America nations, Indonesia, Thailand, India, and other Asian nations because weak unions there lead to weak wage demands and low worker protections, all of which adds up to lower costs. The key ethical issue for companies that operate in countries with weak union rights is this: What obligation does a company have to respect the right to unionize for workers in its factories when these rights are either not recognized by the local government or are only weakly enforced by local government? This question is especially difficult to answer when a company contracts with a foreign company in a developing nation. As we noted earlier, U.S. apparel and shoe companies such as Nike, Adidas, Reebok, Gap, Limited, Dress Barn, Lane Bryant, Wal-Mart, Tommy Hilfiger, Calvin Klein, Levi Strauss, Abercrombie & Fitch, Talbots, and many others do not make their own products, but have them made in factories owned by foreigners in developing nations. What responsibility, if any, does a company have for the respect or lack of respect that such foreign factories show toward their workers? As we suggested earlier, questions about the responsibility of one company for the way a hired factory treats its workers depend on whether the company (1) can and should do something to change the way the factory is treating its workers, (2) knows about the way the factory is treating its workers, and (3) is not prevented from acting or pressured by external or uncontrollable forces.

***Quick Review 8.16***
**Key Points on the Right to Organize**

- This right derives from the same right owners have to join together to form a company (i.e., from the right to freely associate with others to establish and run an organization as well as the right to be treated as an equal in negotiations with organizations).
- Unions have a right to strike that derives from every worker's right to quit working as long as doing so does not violate others' rights.
- Union membership declined from 35 percent of workers in 1947 to 12 percent in 2010.
- Many developing countries do not protect the right to organize, but U.S. companies can often allow their workers there to unionize anyway.

# 8.3: Informal Power Relationships in Organizations

**OBJECTIVE: Explain informal power relationships in organizations from an ethical perspective**

The discussion so far has focused primarily on formal power relationships within organizations—that is, the ethical issues raised by the power that the formal structure of the organization allows managers to exercise over their subordinates. These power relations are sanctioned and overt: they are spelled out in the firm's organizational chart, inscribed in the contracts and job descriptions that define the employee's duties to the firm, recognized by the law (of agency), openly employed by superiors, and largely accepted as legitimate by subordinates.

The ethical constraints on the use of this formal power that we reviewed have also been approached from a largely formal perspective. The rights to privacy, due process, freedom of conscience, and consent can all be formalized within the organization (by formulating and enforcing rules, codes, and procedures) just as the power relationships they constrain are formalized.

However, as we have already seen, organizations also contain informal pockets and channels of power: sources of power that do not appear on organizational charts and uses of power that are covert and perhaps not recognized as legitimate. We turn now to look at this underbelly of the organization: organizational politics.

## 8.3.1: Organizational Politics

There is no settled definition of *organizational politics*. For our purposes, however, we can adopt the following definition: the processes in which individuals or groups within an organization use informally sanctioned power tactics to advance their own aims; we call such tactics *political tactics*.[87] A word of caution is necessary, lest the reader interpret their own aims to mean "aims in conflict with the best interests of the organization." Although the aims of a coalition in a firm may conflict with the best interests of the firm, such conflict is neither inevitable nor even, perhaps, frequent. Two factors tend to suppress such conflicts:

1. The careers of individuals often depend on the health of their organizations.
2. Long-time association with an organization tends to generate bonds of loyalty to the organization.

Often, therefore, what one person perceives as a conflict between a certain group's aims and the best interests of the organization is in fact a conflict between the beliefs of that person and the beliefs of the group concerning what the "best interests" of the organization are. The group may genuinely believe that X is in the best interests of both the organization and itself, whereas the person may genuinely believe instead that Y, which conflicts with X, is what is in the best interests of the organization.

Because organizational politics aim at advancing the interests of one individual or group (such as acquiring promotions, salary or budget increases, status, or even more power) by exerting informally sanctioned power over other individuals or groups, political individuals tend to be covert about their underlying intents or methods.[88]

See Table 8.2 for more information on different kinds of political tactics.

**Table 8.2** Different Kinds of Political Tactics

The fact that political tactics are usually covert means that they can easily become deceptive or manipulative. This point is evident if we examine some examples of the kinds of tactics used in organizational politics. In one study, managers were asked to describe the political tactics they had experienced most frequently in the organizations in which they had worked. They reported the following kinds of tactics.[89]

Interactive

| Political Tactic | Description |
|---|---|
| Blaming or attacking others | Minimizing one's association with plans or results that are failing or have failed and blaming one's rivals for the failure or "denigrating their accomplishments as unimportant, poorly timed, self-serving, or lucky." |
| Controlling information | Withholding information detrimental to one's aims or distorting information "to create an impression by selective disclosure, innuendo," or overwhelming the subject with "objective" data (graphs, formulas, tables, summations) designed to create an impression of rationality or logic and to obscure important details harmful to one's interests. |
| Developing a base of support for one's ideas | Getting others to understand and support one's ideas before a meeting is called. |
| Image building | Creating the appearance of being thoughtful, honest, sensitive, on the inside of important activities, well-liked, and confident. |
| Ingratiation | Praising superiors or those with power and making them feel that one admires them or developing good rapport with them. |
| Associating with the influential | Trying to get one's superiors or those with power to feel that one is a friend. |
| Forming power coalitions and developing strong allies | Forming or joining groups that are already formed and that can help one in pursuing one's interests. |
| Creating obligations | Making others feel obligated to oneself by performing services or favors for them. |

Check Your Understanding

## Ethical Application

### Political Tactics in Action

Virginia E. Schein gave the following illustration of a department head intent on strengthening her position in an organization:[90]

> The head of a research unit requests permission to review another research group's proposal in case she can add information to improve the project. Her covert intent is to maintain her current power, which will be endangered if the other research group carries out the project. Using her informational power base, her covert means are to introduce irrelevant information and pose further questions. If she sufficiently confuses the issues, she can discredit the research group and prevent the project from being carried out. She covers these covert intents and means with the overt ones of improving the project and reviewing its content.

Some researchers have argued that the basic source of power is the creation of dependency: A acquires power over B by making B dependent on A for something. Some authors identify the following two categories of political tactics as encompassing the main kinds of tactics by which such dependencies can be created:[91]

1. *Getting control over scarce resources desired by others.* Controlling employees, buildings, access to influential persons, equipment, and useful information.
2. *Establishing favorable relationships*. Getting others to feel obligated to oneself, making others think one is a friend, building a reputation as an expert, and encouraging others to believe that one has power and that they are dependent on that power.

## 8.3.2: The Ethical Dilemma of Organizational Politics

Organizational politics can have a significant impact on the lives of its targets. It is often used by individual managers and coalitions in internal struggles to get control of a corporation, and individuals caught up in such struggles can have their careers destroyed.

## Ethical Application

### Bendix Corporation

When the dynamic CEO of Bendix Corporation, Bill Agee, began transforming Bendix from a stodgy manufacturing company into a diversified high-tech firm, he angered managers whose organizations and budgets he cut. Many secretly complained to William Panny, the company's president, who was known to disagree with Agee's plans for Bendix, and who was rumored to be Agee's successor. That year Agee hired Mary Cunningham, a recent graduate of Harvard Business School, to be his executive assistant. Friends said she was "brilliant," "sophisticated," and "a financial genius." Cunningham used her considerable financial skills to identify and analyze acquisitions that were in line with Agee's new vision for the company, and Agee followed her advice, which was always on target. The next year Agee promoted her to vice president for Strategic Planning. The promotion upset managers who felt she had not been there long enough to deserve it. They told Panny that Agee now listened only to Cunningham and was inaccessible to others. When Cunningham later prepared a three-volume analysis of the company's auto division, Panny and other managers harshly criticized it, saying it was useless and contained nothing they did not already know. Behind her back, they derisively referred to her and her staff as "Snow White and the Seven Dwarfs." They began spreading rumors that Agee had promoted her only because the two had a romantic relationship. When Agee learned that Panny was about to ask the company's board of directors to "investigate their relationship," Agee fired him. Then the directors began receiving anonymous letters with malicious innuendos about Agee and Cunningham. Agee called a special meeting of 600 corporate staff. In a brief talk he said "I know it has been buzzing around that Mary Cunningham's rise in this company . . . has something to do with a personal relationship we have." Those rumors, he asserted, were completely false: he had no romantic involvement with Cunningham and had promoted her solely on her merits. However, after his talk someone leaked it to the local newspaper, which ran a front page story the next morning on the "romantic rumors." By evening the story was national news. Cunningham was forced to resign and Agee's standing in the company was significantly weakened. A director later confided to Cunningham that she had been used to get at Agee.[92]

Obviously, political behavior in an organization can easily become abusive. As the incident at Bendix illustrates, political tactics can be used to advance private interests at the expense of organizational and group interests, they can be manipulative and deceptive, and they can seriously injure those who have little or no power or political expertise. However, political tactics can also be put to the service of organizational and social goals, they may sometimes be necessary to protect the powerless, and they are sometimes the only defense a person has against the manipulative and deceptive tactics of others. The dilemma for the individual in an organization is knowing where the line lies that separates morally legitimate political tactics from those that are unethical.

Very few authors have discussed this dilemma.[93] This is unfortunate because although few organizations are totally pervaded by political behavior, no organization is completely free of politics. We are all political animals,

### Addressing Ethical Issues in Organizational Politics

Analyzing ethical issues in the use of political tactics can best be approached by addressing four questions that focus attention on the morally relevant features.[94]

Interactive

**The Utilitarian Question**

Are the goals one intends to achieve by using the tactics socially beneficial or socially harmful?

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even if our political campaigns are largely confined to the office. Here we only start to analyze the many complex ethical issues raised by the political maneuvering that inevitably goes on within organizations.

## 8.3.3: Ways to Look at the Ethics of Politics in Organizations

The utility of goals, moral rights and political tactics, the justice of the results, and the impact on caring are among the considerations that affect ethics in organizational politics.

**THE UTILITY OF GOALS** In terms of the utility of goals, utilitarian principles require that managers pursue those goals that will produce the greatest social benefits and the least social harm. If we assume that business organizations generally perform a socially beneficial function and that activities that harm the organization will probably diminish these social benefits, then utilitarianism implies that the individual manager should avoid harming the organization and should work to ensure that the organization carries out its beneficial social functions as efficiently as possible. For example, the basic function of most businesses is to produce goods and services for consumers. Insofar as a business organization is serving this function in a socially beneficial and nonharmful way, the employee should avoid harming the business and should strive to ensure that the business carries on its productive function with a minimum of waste.

### Examples of Political Tactics That Contradict Utilitarian Principles

Two kinds of political tactics directly contradict the utilitarian norm and are, therefore, typically judged unethical: political tactics that involve the pursuit of personal goals at the expense of the organization's productive goals, and political tactics that knowingly involve inefficiency and waste.

**Interactive**

Suppose that the director of a research unit secretly withholds critical information from other research units in the same company so that his or her own unit will look better than the others. As a result, the director's career ambitions are advanced and his or her unit gets a larger budget allocation the following year. Was the director's tactic of withholding information to gain an edge over others morally legitimate? No. The tactic was clearly inconsistent with the efficient pursuit of the company's productive functions.

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**MORAL RIGHTS AND POLITICAL TACTICS** Some political tactics are obviously deceptive, as when a person creates the impression of having an expertise that the person does not in fact have. Other tactics are manipulative. For example, it is manipulative to feign love to extract favors from a person. Deception and manipulation are both attempts to get people to do (or believe) something that they would not do (or believe) if they knew what was going on. These sorts of political tactics are unethical to the extent that they fail to respect a person's right to be treated not merely as a means, but also as an end; that is, they fail to respect a person's right to be treated only as they freely and knowingly consented to be treated.

**THE JUSTICE OF THE RESULTS** Political tactics can create injustices by distorting the equality of treatment that justice demands. An individual who controls an organization's budget or information system, for example, may covertly administer that system unjustly by showing favoritism to those persons or groups who can advance the individual's career. Such political tactics violate the basic principle of distributive justicediscussed in Chapter 2: individuals who are similar in all relevant respects should be treated similarly, and individuals who are dissimilar in relevant respects should be treated dissimilarly in proportion to their dissimilarity.

Political tactics can also create injustices among those employees who have few or no political skills. Those without political skills are easily maneuvered into accepting a smaller share of the organization's benefits than their abilities or needs may merit in comparison to others. Benefits are then no longer distributed to these people on the basis of their relevant characteristics—an injustice is committed against them.

## Rights and Manipulative Political Tactics

Many of the political tactics that take advantage of our emotional dependencies and vulnerabilities show moral disrespect. Deceptive and manipulative tactics provide others with the cheapest and most reliable levers for acquiring power over us.

Interactive

A skilled administrator can become adept at pretending friendship and concern and adept at getting others to look at him or her with affection, respect, loyalty, indebtedness, trust, gratitude, and so on. The administrator can then exploit these feelings to get subordinates to do things that they ordinarily would not do, especially if they knew the deception involved and knew the covert motives on which the administrator acted. A skillful administrator might also learn to take advantage of particular individuals' personal vulnerabilities, such as vanity, generosity, sense of responsibility, susceptibility to flattery, gullibility, naivete, or any of the other traits that can lead people to unwittingly put themselves at the mercy of others. By covertly taking advantage of these vulnerabilities, the manager can get employees to serve the manager's aims, although they would not do so if they knew the covert motives on which the manager acted. Or, as happened at Bendix, managers can use ridicule, false rumors, or deceptive innuendo to undermine another person's position.

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Not only can political tactics leave others better or worse off than they deserve, but politics can also be used to gain unjust advantages for oneself. An engineer who is competing with another engineer for promotion to department head, for example, may cultivate and flatter his or her superiors while using innuendo to discredit his or her rival. As a result, he or she may get the promotion, although the other engineer was more qualified. Using political tactics in this way to acquire advantages on the basis of non-relevant characteristics is also unjust.

**THE IMPACT ON CARING** In addition to these inequities, the prolonged prevalence of political tactics within an organization can have long-term and debilitating effects on the quality of the personal relationships that pervade the organization. Several researchers have found that the use of power in organizations tends to routinize the dehumanized treatment of less powerful individuals. David Kipnis, for example, found that individuals who exercise power find themselves increasingly tempted to (1) increase their attempts to influence the behavior of the less powerful, (2) devalue the worth of the performance of the less powerful, (3) attribute the cause of the less powerful's efforts to power controlled by themselves rather than to the less powerful's motivations to do well, (4) view the less powerful as objects of manipulation, and (5) express a preference for the maintenance of psychological distance from the less powerful.[95] Power, in short, corrupts.

Chris Argyris and others have maintained that those who are controlled by the powerful "tend to feel frustration, conflict, and feelings of failure"; that such people "adapt" by leaving the organization, trying to climb the organization's ladder, retreating to aggression, daydreaming, regression, or simple apathy; and that the organization becomes characterized by competition, rivalry, and hostility.[96] Therefore, in deciding whether to use political tactics, one should seriously consider the long-range consequences that the exercise of power implied by these tactics can have on oneself and one's relationships with those in the organization.

***Quick Review 8.17***
**Approaches to the Ethics of Political Tactics**

- Utilitarian: Are the goals one intends to achieve by using the tactics socially beneficial or socially harmful?
- Rights: Do the tactics employed treat others in a way that is consistent with their moral rights?
- Justice: Will the tactics lead to an equitable distribution of benefits and burdens?
- Caring: What impact will the tactics have on the web of relationships within the organization?

# 8.4: The Caring Organization

**OBJECTIVE:** **Evaluate the ethical characteristics of the caring organization**

So far we have looked at organizations as having two aspects. First, we have considered organizations as hierarchical collections of individuals who are connected to one another and to the organization by contractual agreements and formally defined hierarchies of authority. We have called this aspect of the organization the rational organization. Overlying the rational organization's formal lines of authority is a second system, which we have called the political organization: the network of power relationships, coalitions, and informal lines of communication through which individuals seek to achieve their goals and what they see as the goals of the organization.

It is possible to conceive of organizations as consisting of yet a third, quite different kind of system. Recent thinkers have suggested that organizations can and should be thought of as networks of relationships in which "connected selves" form webs of ongoing personal relationships with other "connected selves." In this model of the organization, the focus of employees is not on the pursuit of power, profit or personal goals, but on the caring interpersonal relationships that exist among the individuals within the organization and those external individuals with whom the organization interacts. We encounter this aspect of the organization when we become mutual friends with the people with whom we work, come to care for them, look out for their well-being, and seek to deepen and preserve these caring relationships. Employers, too, may grow close to their employees, deepening their relationships with employees and coming to seek ways of caring for the particular needs of these particular individuals and of developing their potential. When a fire destroyed the main plant of Malden Mills, for example, CEO Aaron Feuerstein refused to lay off the idled workers, but continued to pay them from his own pocket even though they were not working. He said that they were "part of the enterprise, not a cost center to be cut. They've been with me for a long time. We've been good to each other, and there's a deep realization of that." The members of an organization may befriend even their clients and customers, truly caring for them and genuinely seeking the well-being of those particular clients with whom they deal. Such caring for the well-being of clients can be most evident in organizations of professionals that provide services for their clients, such as hospitals, schools, law firms, and consulting firms that have ongoing relationships with the people they serve.

This aspect of organizational life is not adequately described by the contractual relationships that underlie the rational model of the organization, nor by the power relationships that underlie the political model. Perhaps, this aspect of the organization is best described as the **caring model of the organization**, because its dominant realities are those that are emphasized by an ethic of care: interpersonal relationships.

## 8.4.1: Characteristics of the Caring Organization

Jeanne M. Liedtka described the caring organization as an organization, or part of an organization, as an entity in which the following qualities appear.

1. Focus is not on how best to improve profits or quality, but on caring for the persons that make up the organization.
2. Caring is not something done as an instrumental means to enhance quality or profits but as an end undertaken for its own sake.
3. Caring is directed at particular individuals at a subjective level and is something in which each becomes engrossed.
4. Caring aims at enhancing the growth of those who are cared for by moving them to develop and use their full capacities to fulfill the needs and aspirations that they have defined for themselves.[97]

Although organizations such as W. L. Gore are rare, still most organizations, to a greater or lesser extent, have aspects of the caring organization. In some organizations, such as W. L. Gore, the caring organization dominates the rational and political aspects of the organization. In most others, however, the contractual and political aspects are more prominent. Yet, in many there are at least some employees and managers who respond to the demands of caring by nurturing the relationships they have with one another and by attending to the concrete and particular needs of fellow employees and of their customers.

### Benefits of Maintaining Caring Business Relationships

Arguments in favor of the caring organization include the prospect of increased profit and value for both sides of the business–customer relationship.[98, 99, 100, 101]

Interactive

**Better Economic Performance** | **Creation of Customer Value**

It has been argued that business organizations in which caring relationships flourish will exhibit better economic performance than the organization that restricts itself to the contractual and power relationships of the rational and political organization. In the caring organization, trust flourishes because "one needs to be trusting if one sees oneself as interdependent and connected." Because trust flourishes in the caring organization, the organization does not have to invest resources in monitoring its employees and trying to make sure that they do not violate their contractual agreements. Thus, caring lowers the costs of running an organization and reduces the "costs of disciplinary actions, theft, absenteeism, poor morale and motivation." In the genuinely caring organization, caring is not motivated by the desire to reduce such costs, but is pursued for its own sake.

## Ethical Application

### W. L. Gore & Associates

There may be few, perhaps even no, organizations that perfectly embody the caring organization, but some well-known firms come close. W. L. Gore & Associates, Inc., for example, the extremely successful company that invented and now manufactures the GORE-TEX line of fabrics, is an organization that has no managers, no titles, and no hierarchy.[102] Instead, every employee is trusted to such an extent that he or she is left free to decide what job each will voluntarily commit to do according to where each feels he or she can make the best contribution. Leaders emerge when employees are willing to follow them because they are convinced the leader has a worthwhile idea or project. Every employee has one or more "sponsors" who work closely as coaches to help the employee develop to full potential and who serve as the employee's "advocates" when a "compensation team" (consisting of fellow employees) reviews the contribution the employee has made to decide what compensation the employee should receive the following year. Company units are kept small (under 200 people) so that people can get to know one another and so that all communications are open, direct, and person to person. In such an unstructured and unmanaged organization, all work done within the organization must ultimately rely on the relationships that employees form with one another. Over time, employees come to care for one another and for the customers for whom they are trying to create value.

***Quick Review 8.18***
**The Caring Model of the Organization**

- Caring is focused entirely on persons, not on “profit” or “quality.”
- Caring is undertaken as an end in itself, not as a means to productivity.
- Caring is essentially personal.
- Caring is growth enhancing for those who receive care.

## 8.4.2: Key Ethical Issues of the Caring Organization

In the contractual model, the key ethical issues arise from the potential for violations of the contractual relation. In the political model, the key ethical issues arise from the potential for the misuse of power.

How should these kinds of moral issues be resolved? Unfortunately, at this time the answers are not clear. Research and thinking on the caring organization and caring in organizations is so recent that no clear consensus has emerged on how issues such as these should be resolved. We have come here to the very edges of current thinking about ethics and organizations.

***Quick Review 8.19***
**Problems of the Caring Organization**

- Caring too much for others can lead to “burnout” when the needs of others are given too much weight compared with the needs of the self.
- Not caring enough for others may be due to fatigue, self-interest, or disinterest that leads us to ignore others’ needs. At the organizational level, the organization may systematically drive out caring with layoffs, bureaucracy, managerial styles that see employees as disposable, or rewards that encourage competitiveness and discourage caring.

### Too Much Caring—or Not Enough

The key ethical issues from the perspective of the caring organization are the potential for caring too much and the potential for not caring enough.[103, 104, 105, 106]

**Interactive**

**The Moral Problem of Caring Too Much**

The needs of those for whom we care can demand a response from us that can overwhelm us, leading eventually to “burnout.” Here the conflict is between the needs of others and the needs of the self. Several writers have argued that the ethic of care requires achievement of a mature balance between caring for the needs of others and caring for one’s own needs. Others have argued that “burnout” occurs not because people are overwhelmed by the needs of others, but because organizations place bureaucratic burdens on caregivers and limit their autonomy and influence in decision making. In addition to conflicts between the needs of the self and the needs of others, the demands of caring can lead to a different kind of conflict: the needs of those for whom we care can demand a response that conflicts with what we may feel we owe others. This is the problem of balancing partiality toward those for whom we care with the impartial demands of other moral considerations, such as the impartial demands of fairness or of moral rights. For example, a person may be torn between caring for a friend who is violating company policy and fairness toward the company that requires that such violations be reported. Which demand should be satisfied: the demands of caring partiality or the demands of impartial morality?

**The Moral Problem of Not Caring Enough**

## Web Resources

Readers who want to conduct online research on the topic of ethical issues related to employees and organizational life might want to start with Occupational Safety and Health Association (*http://www.osha.gov*); the National Institute for Occupational Safety and Health (*http://www.cdc.gov/niosh*); the labor and employment law content at HG.org (*http://www.hg.org/employ.html*); and the 'Lectric Law Library (*http://www.lectlaw.com/temp.html*). Information on unions is provided by the American Federation of Labor—Congress of Industrial Organizations (*http://www.aflcio.org*). The Campaign for Labor Rights of the Alliance for Global Justice provides information on labor issues (*http://afgj.org/campaign-for-labor-rights*). Information on sweatshops around the world can be found at several websites, including the following: *http://www.greenamerica.org/programs/sweatshops*, *http://www.globalexchange.org/fairtrade/sweatfree/faq*, *http://usas.org*, *http://www.labourbehindthelabel.org*, and *http://www.maquilasolidarity.org*.

### SHARED WRITING

**Relate Employee Rights to Basic Rights and Justice**

1. Relate the employee's obligations to the employer discussed in this chapter to what you know about contractual rights and duties. Are there any inconsistencies between them? Why or why not?
2. Relate the seven factors for determining fair wages in this chapter to the standard of distributive justice (see Chapter 2. Are the seven factors consistent with the standard of distributive justice? Does the standard of distributive justice imply or suggest that any other factors should be considered in setting fair wages? Explain your answer.
3. Relate the discussion of employee rights to the discussion of moral rights. Are these two discussions consistent? Does your review of the discussion of moral rights suggest to you that there are other important employee rights that are not discussed in this chapter? If so, what are they?

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit **0 characters | 140 minimum**

### SHARED WRITING

**Organizational Models and the Similarity Argument**

1. Compare and contrast the rational model of the organization with the political model and the caring model. Would you agree with the following statement: "The rational model of the organization assumes that the corporation is based on consent, while the political model assumes that the corporation is based on power, and the caring model assumes that the corporation is based on interpersonal relationships"? Why or why not? Which of the three models do you think provides the more adequate view of organizations you are familiar with, such as the university or college you attend or companies you have worked for? Explain your answers.
2. Do you agree or disagree with the claim that corporate managements are so similar to governments that employees should be recognized as having the same "civil rights" as citizens? Explain the reasons for your answer.

▶ A minimum number of characters is required to post and earn points. After posting, your response can be viewed by your class and instructor, and you can participate in the class discussion.

Submit **0 characters | 140 minimum**

## Case Study 8.1: Death at Massey Energy Company

It happened around 3:00 P.M. on Monday, April 5, in the Upper Big Branch coal mine at Montcoal, West Virginia, one of several mines owned by the Massey Energy Company. The morning shift of miners was still in the process of changing places with the afternoon shift. Members of each group were being shuttled in and out of the entrance in transport vehicles called "mantrips." Nine of the morning shift miners had just come out of one of the mantrips, and were walking out of the mine when they suddenly felt a blast of air blow past them, so strong it almost pushed them over. They all knew what it meant. Turning around, several hurried back into the mine, and shortly came upon seven of their fellow miners, dead, next to the mantrip that had just brought them up from below. Two others were alive but injured.

### Company Background

From the first day after the explosion, newspapers had been reporting that Massey Energy mines in general, and the Upper Big Branch mine in particular, had been cited thousands of times for safety violations by the U.S. Mine Safety and Health Administration (MSHA), an agency of the federal government charged with overseeing employee safety in the mining industry. In fact, the Upper Big Branch mine had been cited more than 50 times for safety violations during the previous month alone, and many of Massey Energy's other coal mines had equally poor safety records.[1]

Massey Energy Company was founded in 1920 in Richmond, Virginia, as a coal-brokering business. The company acquired its first coal mine in 1945. In 1981, the company was acquired by Fluor Corporation, and with its backing, the mining business rapidly grew. In 1992, Don Blankenship, who had joined the company in 1982, was appointed chair and CEO of Massey Energy. In 2000, he oversaw Massey Energy's transformation into an independent company when it split off from Fluor Corporation's non–coal-related businesses. Over the next several years, the company continued to grow and by 2010, it was annually producing about 40 million tons of low-sulfur bituminous coal in 42 underground mines and 14 surface mines scattered throughout West Virginia, Kentucky, and Virginia. Massey Energy processed and distributed the coal through 22 processing and shipping centers. The company had 5,851 employees, and in 2009 it had net profits of $104 million on total revenues of $2.7 billion.[2]

Under the leadership of CEO Don Blankenship, the company's operations had aroused considerable controversy, much of it related to their impact on the environment. In 1984, when Blankenship was president of Rawl, a subsidiary of Massey Energy, he was faced with the problem of disposing of the millions of gallons of coal slurry the mines were producing. Coal slurry is a watery mud that runs off as coal is washed to remove its impurities. The slurry carries with it several toxic substances commonly found in coal, such as arsenic, lead, and cadmium. Blankenship came up with the idea of disposing of the slurry by piping it deep into abandoned coal mines. However, there were cracks running through the walls and floors of the mines, and apparently the toxics in the slurry leaked through the cracks and ended up contaminating the underground aquifer that fed the wells from which the surrounding communities drew their drinking water. The company was forced to pay $3.5 million in fines for the environmental disaster it had created. Then, in 2000 the dam of a small lake filled with coal slurry collapsed, sending 250 million gallons of toxic slurry flooding through Kentucky's rivers, leaving behind over 100 miles of contaminated waterways and destroying the drinking water sources of surrounding towns. That same year, two of its other coal mines had to pay fines for contaminating West Virginia's waterways. In 2006, the company paid additional fines of $1.4 million to settle five environmental lawsuits and 14 environmental enforcement actions. In 2008, the company paid another $20 million to settle a government lawsuit charging the company with 4,000 violations of the Clean Water Act.[3]

In 2010, most of the criticisms leveled against Massey Energy focused on the company's lack of attention to employee safety. In the days following the Upper Big Branch mine explosion, in fact, Massey Energy was repeatedly accused of having the worst safety record in the industry. The average number of worker injuries in U.S. mines is 4.03 injuries per 200,000 miners. Yet, 10 of Massey Energy's underground coal mines, including the Upper Big Branch coal mine, had accident injury rates ranging between 4.49 and 9.78 injuries per 200,000 workers. Not only did these mines have more injuries than the national average, but at least four had more than twice the national average.[4]

## Explosion in Massey Energy's Coal Mine

A deadly explosion had ripped through the underground coal mine, killing or trapping an unknown number of the miners inside. At the time of the explosion, a total of 61 miners were working underground.[5, 6, 7]

**Interactive**

Stanley Stewart, one of the miners, later described what the explosion had been like:

> On April 5th, I was sitting on a mantrip at about 3 pm with several other miners approximately 300 feet underground. We were getting ready to head to the section when I felt a breeze coming from inside the mine. The intensity picked up quickly and I realized that something bad was happening so I left the mantrip and started making my way toward the outside. Before I could get out the air velocity increased to what I felt was "hurricane strength" and I felt my feet wanting to leave the ground. The air was full of dust debris and I couldn't see. Although I didn't have far to go I panicked, afraid that I might not make it out to safety.

1 of 4 Previous Next

Rick Melberth, director of OMB Watch, a regulatory watchdog group, pointed out that Massey Energy and its Upper Big Branch mine were unusually lax in the area of worker safety. "There are huge mines out there that produce a lot more coal, have a lot more hours worked and can operate without violations," he said.[8]

The explosion in the mine was not the first time that Massey Energy's safety problems were said to have led to the loss of lives. In January 2006, a fire had erupted in a Massey Energy coal mine in Logan County, West Virginia, and two miners were killed. A state investigation concluded that the deadly fire was due to several safety violations that the company had failed to correct. Safety violations included the failure to fix a conveyor belt that caught fire, allowing the accumulation of combustible materials that had fed the fire, the absence of carbon monoxide monitors that could have alerted the miners to the fire, the absence of required fire extinguishers, and improper ventilation controls. A few months before the 2006 fire, CEO Blankenship had written a memo suggesting that managers should concentrate on producing coal and not waste time responding to requests to fix things: "If any of you have been asked by your group presidents, your supervisors, engineers, or anyone else to do anything other than run coal . . . you need to ignore them and run coal. This memo is necessary only because we seem not to understand that the coal pays the bills." In 2009, the company paid $4.2 million in criminal and civil penalties to settle federal charges that the company had willfully violated federal safety standards and that those violations were responsible for the two miners' deaths.[9]

## Safety at Upper Big Branch Mine

Safety violations had plagued the Upper Big Branch mine for some time.

At the center of the storm of criticism that engulfed the company after the mine explosion was CEO Blankenship. The families of several miners accused him of putting profits ahead of safety. Born in 1950, Blankenship grew up in Stopover, Kentucky, a poor village made up mostly of shacks and trailer homes. His mother divorced his father shortly after he was born, and Blankenship ended up being raised by his mother. A childhood friend of his said, "He was a very competitive kid—he didn't like to fail . . . He was always trying to figure out what he could get away

### Safety Violations at Upper Big Branch Mine

A year before the 2010 explosion, the mine had been cited eight times for "substantial" violations related to its methane monitors.[10, 11]

Interactive

Regulations required that the mine have methane monitors to warn of any dangerous buildup of methane gas. Methane gas is an odorless gas that gathers in the seams of coal deposits, and it is common for the gas to leak out and accumulate in coal mines, creating a deadly risk since methane is highly flammable and explosive.

The mine's operator was supposed to calibrate the methane monitors in the tunnels at least once a month to ensure they were in working order and capable of accurately sensing when the gas had reached dangerous levels. Yet, twice, federal inspectors had found that Massey Energy was calibrating its methane monitors only once every three months, creating a risk that the monitors might not be able to properly detect dangerous levels of methane.

Federal regulators also found that the company was not ventilating the mine properly. Ventilation prevents accumulations of methane gas, as well as of coal dust which, like methane, is combustible and can add to an explosion. The inspectors had forced the company to temporarily stop work in some sections of the mine until the ventilation problems had been corrected. While it was not clear exactly what had ignited the explosion of April 5, it was almost certain that it was caused by accumulations of methane and coal dust.

1 of 2 Previous Next

with." In high school, Blankenship played baseball and was elected president of his class. When he graduated, he enrolled in Marshall University in Huntington, where he majored in accounting and managed to graduate within three years. Afterward, he worked as an accountant for the Keebler Company, married, and had two children. Then, in 1982, the Massey Energy Company contacted Blankenship and offered him a job in one of its subsidiaries, named Rawl. He accepted the offer and, two years later, he was named president of Rawl. Blankenship continued his rise up the company's ranks until, in 1992, he was named CEO and chair of the entire company.

Families of the dead miners accused Blankenship of "always cutting corners on safety, pushing for more coal."[12] Blankenship vehemently denied this accusation:

> From the day I became a member of Massey's leadership team 20 years ago, I have made safety my number one priority. . . . The result has been a 90 percent reduction in our lost time accident rate, which has been better—often dramatically better—than the industry average for 17 of the last 19 years. So let me state for the record—Massey does not place profits over safety. We never have, and we never will.[13]

While Blankenship acknowledged that Massey Energy had received a large number of safety citations, this was not unusual, he said, for a coal company:

> Violations are unfortunately a normal part of the mining process. . . . There are violations at every coal mine in America, and Upper Big Branch was a mine that had violations. . . . I think the fact that MSHA, the state, and our fire bosses and the best engineers that you can find were all in and around this mine, and all believed it to be safe in the circumstances it was in, speaks for itself as far as any suspicion that the mine was improperly operated.[14]

In a startling move, Blankenship also suggested that MSHA itself might have been responsible for the deaths of the 29 miners:

> Against the advice of our own experts, MSHA required several changes since September 2009 that made the ventilation plan significantly more complex. This change in ventilation significantly reduced the volume of fresh air to the face of the longwall mining operation during this period. . . . We opposed the changes because our own engineers believed they made the mine less safe, not because they were more costly or because they interfered with production.[15]

Testimonials of Survivors and Deceased Miners' Families[16, 17, 18]

**Interactive**

**Stanley Stewart: Survivor**

My name is Stanley Stewart. Most people know me as "Goose." I have worked in coal mines for 34 years and at the Upper Big Branch mine for 15 of those years. I worked at the Upper Big Branch mine until the day of the accident and was 300 feet underground the day the explosion occurred. . . . The area of the mine we were working was liberating [releasing] a lot of methane. Mine management never fully addressed the air problem when it would be shut down by inspectors. They would fix it just good enough to get us to load coal again, but then it would be back to business as usual. . . . My experience in the mines showed me that the ventilation system they had didn't work. And with so much methane being liberated, and no air moving it gave me the feeling that area was a ticking time bomb. I was told prior to the April 5th explosion that they had experienced at least 2 fireballs [small flare-ups of methane] on the drum of the shearer. This leads me to believe the methane was indeed building in that area, showing lack of air and ventilation problems. . . . No one felt they could go to management and express their fears or the lack of air on our sections. We knew that we'd be marked men and the management would look for ways to fire us. Maybe not that day, or that week, but somewhere down the line, we'd disappear. We'd seen it happen and I told my wife, I felt like I was working for the Gestapo at times.

**Alice Peters: Relative of a Deceased Miner**

**Leo Long: Relative of a Deceased Miner**

## Testimony of Miners and Families

During congressional hearings, however, survivors of the explosion and relatives of those who had died testified that conditions in the mine were not always up to standards, and that the miners felt too threatened to raise objections.

## Criticisms of a Federal Agency

While many people blamed the company for the deaths of the miners, some critics also faulted MSHA, the federal agency that is supposed to protect miners. For one thing, the agency was understaffed and its inspectors were overworked. In addition, a government audit of the agency released the week before the mine explosion said that more than half of the agency's inspectors failed to attend required training courses and the agency neither kept track of their attendance nor did it sanction them.

Critics also pointed out that regulations passed in 2007 hampered MSHA's ability to sanction mining companies. Mining companies, Massey Energy in particular, regularly challenged the citations of MSHA inspectors, a process that required MSHA to submit the challenge to a panel of judges called the Federal Mine Safety and Health Review Commission (MSHRC). However, because MSHRC did not have enough judges to review the challenges in a timely fashion, years often passed before companies were forced to address the citations.[19]

Although MSHA had the authority to close down a mine if the mine had a substantial number of citations, it had not been able to close the Upper Big Branch mine.[20] On December 6, 2007, MSHA had sent a letter to Rick Hodge, superintendent of the Upper Big Branch mine, stating that the mine had accumulated so many violations that it would be closed down if it received any more "Significant and Substantial" violations. The letter read:

> In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 and 30CFR Part 104, the Mine Safety and Health Administration has conducted a pattern of violation (POV) screening of compliance records for the Upper Big Branch Mine . . . for the 24 months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial be issued as closure orders with all persons withdrawn from the affected area, except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no Significant and Substantial violations. This letter is your notification that a potential pattern of violation exists at the Upper Big Branch Mine.[21]

After receiving the letter, however, officials of Massey Energy challenged several of the citations on which it was based. They also corrected enough of the significant and substantial violations the mine had received during the previous 24 months to allow its total violations to fall below the level needed to force its closure. Consequently, although MSHA had frequently closed down sections of the mine when it demanded the company remedy a particular ventilation problem, it never forced the entire mine to shut down and make significant changes.

In October 2009, MSHA had again reviewed the citations the Upper Big Branch mine had received. However, regulators later discovered that the computer program that processed the review had an error in it. According to Secretary of Labor Hilda L. Solis, "Had the error in the computer program been corrected, the mine could have been placed into potential pattern of violation status in October of 2009." However, the error was not corrected until after the 29 miners were killed in the explosion.[22]

## The Union Weighs In

Cecil Roberts, president of the United Mine Workers of America (UMWA), the largest miners' union in the United States, focused the union's criticisms on Massey Energy and connected its lack of union representation with its poor record of mine safety. A union, he felt, would have fought for better enforcement of safety regulations to protect the miners. However, CEO Blankenship was aggressively anti-union. In 1996, he had convinced the company to leave the collective bargaining agreements with the UMWA that all the other major coal companies had accepted. That same year, Blankenship testified in a federal lawsuit during which he said, "No [coal] operator in their right mind would go union."[23] At his urging, the company gradually phased out and closed down any mines that had earlier been unionized. By 2009, only 76 out of the company's 5,851 workers were still unionized. The company had fought particularly hard to make sure that the Upper Big Branch mine was not unionized. When the UMWA mounted a drive to unionize the workers at the mine, the company threatened to close the mine if its workers unionized, and in 1997 they narrowly voted down the union. During the congressional hearings on the mine disaster, several miners testified on the difference a union might have made:

> My name is Gary Quarles. I am the father of Gary Wayne Quarles who was killed as a result of the explosion at the Upper Big Branch mine on April 5, 2010. Gary Wayne was my only son and my best friend. . . . . I also am a coal miner. . . . I worked in union mines for 23 years and have worked in non-union mines the rest of the time. . . . Safety inspections were much different in the union mines I've worked at versus the non-union Massey mines. When an MSHA inspector comes onto a Massey mine property, the code words go out "we've got a man on the property." Those words are radioed from the guard gates and relayed to all working operations in the mine. . . . When the word goes out, all effort is made to correct any deficiencies or direct the inspector's attention away from any deficiencies. . . . When I worked at union mines, workers at the mine would accompany the MSHA inspectors during their inspections . . . . When the MSHA inspector comes to a Massey mine, the only people accompanying him are Massey company people. No coal miner at the mine can point out areas of concern to the MSHA inspector. . . . The Upper Big Branch mine was clearly not safe and as a result 29 miners died, including my son. Someone needs to be held responsible for these deaths.[24]

Other miners pointed out that in unionized mines, miners do not have to enter areas that are unsafe:

> My name is Eddie Cook. I'm Adam Morgan's uncle. Adam was 21 [when] the explosion took him away from us. I worked at Cleveland Cliffs Pinnacle mine [which is] union. . . . As a union person, we have the right to refuse to do work we think is unsafe. Non-union mines, you don't have that. You don't have the right to refuse. If you refuse, they tell you to "get your bucket and go home," you know. "If you don't want to work here, we've

got people out on the street wanting your jobs. And if you don't like the way we run it, you can go home."[25]

Stanley Stewart made a similar point:

I worked close to 20 years in the union and 15 years non-union so I've been on both sides of the fence long enough to know the difference in how miners feel in both types of working environments. In the union if you had safety concerns you had the right to refuse to work in unsafe conditions without fear of your job. You felt at ease and comforted by your rights. Working at a non-union mine you do not feel that comfort. You know you have to operate with a lack of air or in unsafe conditions.[26]

## Discovering the Cause and Experiencing the Aftermath

On June 15, 2010, investigative teams exploring the mine discovered a large crack in the floor of the mine. Speaking for his company, Blankenship said that the crack may have allowed methane to leak into the tunnel before the explosion on April 5, which would then have been an unforeseeable and unpreventable event. Blankenship also released a letter that MSHA had written to the company on July 15, 2004, in which MSHA noted that the mine had been subject to several methane "outbursts." He claimed that the memo showed that the mine should have had a ventilation system that provided more air than normal to compensate for the periodic increases of methane, yet, he also claimed, MSHA had mandated a ventilation system that provided less air than normal.[27] On July 22, 2010, investigators announced that an examination of data from the mine's primary ventilation exhaust fan had found that on the day of the accident a sudden and large surge of methane gas had occurred within the mine. The mysterious release of gas was so large, experts said, that it could have rapidly filled a large part of the mine's interior.[28] Investigators also found near the bodies of some of the miners who had been killed a portable handheld methane monitor that showed methane levels in the area had gone from zero to 5 percent in 3 minutes. Methane gas is not explosive until it reaches concentrations of 5 percent to 15 percent.[29] It was unclear whether there was any connection between the crack in the mine's floor and the surge of methane gas, and between either of these and the explosion on April 5.

On Friday, December 3, 2010, Massey Energy announced that at the end of the year, Blankenship would step down from his position as CEO and chair of the company. It was not clear whether the company's board of directors had asked him to resign or he had decided to do so on his own. In a statement, Blankenship said only, "After almost three decades at Massey, it's time for me to move on." However, his resignation did not end his involvement with Massey Energy. On November 13, 2014, a federal grand jury indicted him for conspiring to violate federal mine safety and health standards, conspiracy to impede federal mine safety officials, and securities fraud. Although conviction of all the charges could have resulted in 30 years in prison, a jury in December 2015 found him guilty of only conspiring to commit mine safety violations, a misdemeanor that carried a maximum prison sentence of one year in jail. On April 6, 2016, a federal judge sentenced Blankenship to a year in prison plus a $250,000 fine.

## WRITING PROMPT

**Apply an Ethical Framework to Massey Energy**

1. In your judgment, and given only the facts described in this case, should the management of Massey Energy Company be held morally responsible for the deaths of the 29 miners? Explain your answer.
2. Suppose that nothing more is learned about the explosion other than what is described in this case. Do you think Don Blankenship should be held morally responsible for the deaths of the 29 miners?
3. Given only the facts described in this case, should the MSHA be held morally responsible (at least in part) for the deaths of the 29 miners?
4. List all of the ethical obligations that you believe the management of Massey Energy did NOT fulfill. Explain the ethical basis of each of the obligations on your list.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

## Case Notes


1. Phil Mattera, "Massey Energy," *Crocodyl, Collaborative Research on Corporations*, April 12, 2010, accessed January 17, 2011, http://www.crocodyl.org/wiki/massey_energy.
2. Ibid.
3. Ibid.
4. "NPR News Investigations: Massey Energy's Other High-Injury Mines," National Public Radio, April 12, 2010, accessed November 22, 2016, http://www.npr.org/templates/story/story.php?storyId=125864564.
5. Michael A. Fuoco, "A Timeline of Events at the Upper Big Branch Mine," *Pittsburgh Post-Gazette*, April 7, 2010.
6. *The Upper Big Branch Mine Tragedy, Field Hearing Before the Committee on Education and Labor, U.S. House of Representatives*, 111th Cong., 2nd Session (May 24, 2010), Serial No. 111–65, p. 34.
7. Michelle James, "A Timeline Look at the Upper Big Branch Mine Disaster," *Register Herald*, April 11, 2010.
8. Peter Overby, "Documents Reveal Extensive Violations at Mine," National Public Radio, April 9, 2010, accessed January 20, 2011, http://www.npr.org/templates/story/story.php?storyId=125788709&ps=rs.
9. Christopher Maag, "Unacceptable Risk: The Real Price of Coal Mining," *Popular Mechanics*, August 23, 2010.
10. Steven Mufson, Jerry Markon, and Ed O'Keefe, "West Virginia Mine Has Been Cited for Myriad Safety Violations," *Washington Post*, April 7, 2010.
11. Steven Mufson, "Massey Energy Has Litany of Critics, Violations," *Washington Post*, April 6, 2010.
12. Jeff Goodell, "The Dark Lord of Coal Country," *Rolling Stone*, November 29, 2010.
13. Don L. Blankenship, chair and CEO, Massey Energy, Testimony before the Subcommittee on Labor, Health and Human Services and Education and Related Agencies, Committee on Appropriations, United States Senate, May 20, 2010.
14. Ian Urbina and Michael Cooper, "Deaths at West Virginia Mine Raise Issues about Safety," *New York Times*, April 6, 2010.
15. Don L. Blankenship, Chair and CEO, Massey Energy, Testimony.

16. *The Upper Big Branch Mine Tragedy*, Field Hearing, pp. 34–35.
17. Ibid., p. 28.
18. Ibid., p. 66.
19. Ed O'Keefe, "U.S. Mine Safety and Health Administration Faces Training and Oversight Problems," *Washington Post*, April 7, 2010.
20. Mufson, Markon, and O'Keefe, "West Virginia Mine."
21. Letter accessed January 25, 2011, http://www.msha.gov/MEDIA/PRESS/2007/POV12072007/Performance Coal Company.pdf.
22. Statement of U.S. Secretary of Labor Hilda L. Solis on Upper Big Branch Mine and pattern of violation status, January 18, 2011, accessed January 30, 2011, http://www.msha.gov/Media/PRESS/2010/NR100413.asp.
23. *Charleston Gazette*, April 20, 1996.
24. *The Upper Big Branch Mine Tragedy, Field Hearing*, p. 23.
25. Ibid., p. 27.
26. Ibid., p. 36.
27. CNN Wire Staff, "Crack Found in Floor of West Virginia Mine Where 29 Men Died," *CNN*, June 15, 2010.
28. CNN Wire Staff, "Investigators: W.V. Mine Filled Suddenly with Methane," *CNN*, July 22, 2010.
29. Tim Huber, "MSHA: Methane Monitor Showing Explosive Level Found at UBB," *Register-Herald*, August 27, 2010.

## **Case Study 8.2**: Who Should Pay?

The stakes were high for Gene Elliot, whose on-the-job injuries were estimated to be serious enough to merit at least a $2.4 million settlement.[30] Yet who should pay for his injuries: Turner Construction or B&C Steel? Or should Elliot be forced to pay for at least part of his injuries because of his own carelessness?

### Lawsuit and Reverberations

Elliot sued Turner Construction and B&C Steel for negligence resulting in economic losses of $28,000, noneconomic injuries of $1,200,000, and permanent impairment of $1,200,000. These

### Background for a Complicated On-the-Job Injury Case

Interactive

Gene Elliot worked for Mabey Bridge and Shore, a small business that rented temporary steel pedestrian foot bridges to other companies. The temporary bridges had to be put together by the renter, and Elliot's job was to go to the site where the steel bridge was going to be installed, show the renter how to bolt the bridge sections together and how to install the bridge over a river or waterway, and inspect the bridge to make sure it was done properly and according to Mabey Bridge's high standards. Elliot was a devoted hard worker who strove to do everything possible to ensure that a bridge installation was successful and according to Mabey Bridge's standards.

1 of 4 Previous Next

### Arguments by Turner Construction, B&C Steel, and Gene Elliot

Interactive

Turner Construction | B&C Steel | Gene Elliot

Turner Construction denied its responsibility in relation to the event. It claimed that Turner was Elliot's temporary employer and workers' compensation law required employers to pay only the economic losses, here only $28,000, suffered by their employees. Turner Construction pointed to the law, which stated: "Any company leasing or contracting out any part of the work to any lessee or subcontractor, shall be construed to be an employer and shall be liable to pay [only] compensation for injury resulting therefrom to said lessees and subcontractors and their employees." Turner Construction claimed that Mabey Bridge was a subcontractor to Turner to the extent that it provided the services of Elliot to Turner, so Turner should be construed to be Elliot's temporary employer. Moreover, Colorado's workers' compensation law, which was designed to ensure that employers always paid for worker injuries, "grants an injured employee compensation from the employer without regard to negligence and, in return, the responsible employer is granted immunity from common law negligence liability."

figures were established by a qualified expert in the field of worker injuries and were not seriously contested.

#### WRITING PROMPT

**Determine Responsibility**

1. In your judgment, and from an ethical point of view, should Turner Construction and/or B&C Steel pay for all or part of the $2,428,000 damages to Gene Elliot (if part, indicate which part)? Explain your view.
2. In your judgment, and from an ethical point of view, should Elliot be held wholly or partially responsible for his injuries and left to shoulder all or part of the $2,428,000 cost of his injuries (if part, indicate which part)? Explain your view.
3. In your judgment, is the Colorado worker's compensation law to which Turner Construction appealed fair? Explain your view.

▶ The response entered here will appear in the performance dashboard and can be viewed by your instructor.

Submit

### Case Notes

30. This case is based entirely on Eugene Elliot v. Turner Construction Company and B&C Steel, United States Court of Appeals, Tenth Circuit, August 24, 2004, Case No. 03-1209.

## Summary

1. This chapter considers employee issues related to three models of the organization: the rational organization, the political organization, and the caring organization.
2. A rational organization comprises formal hierarchies of authority and relies on contracts that obligate both the employee to loyally pursue the organization's goals and the employer to provide a just wage and just

working conditions. Conflicts of interest, accepting gifts designed to sway the recipient's judgment, stealing information that belongs to the company, and insider trading all violate the employee's contractual duty of loyalty. The employer violates his or her contractual duties toward employees by failing to pay workers a fair wage—an important issue when it involves wages paid to workers in developing nations—and by imposing unjustified workplace risks on employees or failing to inform employees of such risks.

3. A political organization comprises the competing power coalitions that develop within organizations and the formal and informal sources of organizational power that managers can use to pursue their own ends. Many argue that we should recognize that employees have rights that protect them from being harmed by managers who may use their power against employees. The "similarity argument" holds that corporations are similar to a government. Therefore, just as citizens of nations have rights that protect them from the power of government, so too employees of corporations have rights that protect them from the power of the corporation and its managers. Critics argue, however, that corporations are not really similar to governments. Others have argued that employees have certain interests that are so important that they justify rights that protect them, including the right to privacy, the right to freedom of conscience, the right to participate in decisions that affect one's life, the right to due process (which is opposed by arguments supporting employment at will), the right to work, and the right to organize. Organizational politics consists of the processes by which individuals or groups in organizations use power tactics to advance their own aims. Political tactics are justified only if they advance socially beneficial goals, do not violate the rights of others, have just outcomes, and do not undermine valuable caring interpersonal relationships.

4. A caring organization includes those aspects of the organization that are related to the caring interpersonal relationships employees form with other organizational members. In organizations that are focused on such caring, caring is treated as an end in itself and not just as a means to improving productivity.

# Glossary

**a trust** An alliance of previously competitive oligopolists formed to take advantage of monopoly powers.

**absolute advantage** A situation where the production costs (costs in terms of the resources consumed in producing the good) of making a commodity are lower for one country than for another.

**acid rain** Occurs when sulfur oxides and nitrogen oxides are combined with water vapor in clouds to form nitric acid and sulfuric acid. These acids are then carried down in rainfall.

**actual conflict of interest** When an employee has an interest that could influence the judgments the employee makes for the employer if the employee were to perform a certain task for the employer and he or she has actually been given that task to perform.

**Americans with Disabilities Act** Bars discrimination on the basis of disability and requires that employers make reasonable accommodation for their disabled employees and customers; enacted in 1990.

**apparent conflict of interest** A situation in which an employee has no actual conflict of interest, but in which other people looking at the situation may come to believe (wrongly) that there is an actual conflict of interest.

**bid rigging** A prior agreement that a specific party will get a contract even though all parties will submit bids for the contract.

**business ethics** A specialized study of moral right and wrong that concentrates on moral standards as they apply to business institutions, organizations, and behavior.

**caring model of the organization** A view of the organization in which the dominant moral concepts are those that arise from an ethic of care.

**categorical imperative** In Kantian ethics, a moral principle that obligates everyone (regardless of their desires) and that is based on the idea that everyone should be treated as a free person equal to everyone else.

**caveat emptor** Let the buyer beware.

**caveat vendor** Let the seller beware.

**commercial advertising** Communication between a seller and potential buyers that is publicly addressed to a mass audience and is intended to induce members of this audience to buy the seller's products.

**commercial bribe** A consideration given or offered to an employee by a person outside the firm with the understanding that, when the employee transacts business for the firm, the employee will deal favorably with that person or that person's firm.

**commercial extortion** When an employee demands a consideration from persons outside the firm as a condition for dealing favorably with those persons when the employee transacts business for the firm.

**communitarian ethic** An ethic that sees concrete communities and communal relationships as having a fundamental value that should be preserved and maintained.

**comparative advantage** A situation where the opportunity costs (costs in terms of other goods given up) of making a commodity are lower for one nation than for another nation.

**compensatory justice** Requires restoring to a person what the person lost when he or she was wronged by someone.

**conflict of interest** When an employee has an interest that provides an incentive to do his or her job in a way that serves that interest and not necessarily the interests of the employer he or she is obligated to serve.

**conservation** The saving or rationing of natural resources for later uses.

**contractual view of the business firm's duties to its customers** The view that the relationship between a business firm and its customers is essentially a contractual relationship, and the firm's moral duties to the customer are those created by this contractual relationship.

**cost–benefit analysis** A type of analysis used to determine the desirability of investing in a project by calculating whether its present and future economic benefits outweigh its present and future economic costs.

**cyberspace** A term used to denote the existence of information on an electronic network of linked computer systems.

**demand curve** A line on a graph indicating the quantity of a product buyers would purchase at each price at which it might be selling; the supply curve also can be understood as showing the highest price buyers on average would be willing to pay for a given amount of a product.

**descriptive study** An investigation that attempts to describe or explain the world without reaching any conclusions about whether the world is as it should be.

**difference principle** The claim that a productive society will incorporate inequalities, but takes steps to improve the position of the neediest members of society.

**discrimination** The wrongful act of distinguishing illicitly among people not on the basis of individual merit, but on the basis of prejudice or some other *invidious* or morally reprehensible attitude.

**distributive justice** Requires distributing society's benefits and burdens fairly.

**due-care theory of the manufacturer's duties to consumers** The view that because the manufacturer is in a more advantaged position and consumers must rely on its expertise, it has a duty to take special care to ensure that consumers' interests are not harmed by the products it offers.

**ecofeminism** The belief that the root of our ecological crisis lies in a pattern of domination of nature that is tightly linked to the social practices and institutions through which women have been subordinated to men.

**ecological ethics** The ethical view that nonhuman parts of the environment deserve to be preserved for their own sake, regardless of whether this benefits human beings.

**ecological system** An interrelated and interdependent set of organisms and environments.

**economic equality** Equality of income, wealth, and opportunity.

**efficiency** Operating in such a way that one produces a desired output with the lowest resource input.

**employment at will** The doctrine that employers "may dismiss their employees at will . . . for good cause, for no cause, or even for causes morally wrong, without being thereby guilty of legal wrong," unless employees are protected by an explicit contract (such as union employees).

**environmental injustice** The bearing of external costs of pollution largely by those who do not enjoy a net benefit from the activity that produces the pollution.

**environmental sustainability** The capacity of the natural environment to continue to meet the needs of present generations without compromising the ability of future generations to meet their needs from that environment.

**Equal Employment Opportunity Commission** A federal agency that investigates claims of on-the-job discrimination.

**equilibrium point** In a market, the point at which the quantity buyers want to buy equals the quantity sellers want to sell, and at which the highest price buyers are willing to pay equals the lowest price sellers are willing to take.

**ethic of care** An ethic that requires caring for the concrete well-being of those particular persons with whom we have valuable close relationships, particularly those dependent on us.

**ethic of virtue** An ethic based on evaluations of the moral character of persons or groups.

**ethical culture** In an organization, the kind of behavior an organization encourages or discourages by repeated use of examples of appropriate behavior, incentives for ethical behavior, clear rules and ethics policies, rewards for exemplary conduct, stories of notable ethical actions, and so on.

**ethical relativism** The theory that there are no ethical standards that are absolutely true and that apply or should be applied to the companies and people of all societies.

**ethics** The discipline that examines one's moral standards or the moral standards of a society to evaluate their reasonableness and their implications for one's life.

**exclusive dealing arrangements** When a firm sells to a retailer on condition that the retailer will not purchase any products from other companies and/or will not sell outside of a certain geographical area.

**formal hierarchies of authority** The positions and relationships identified in the organizational chart that represents the various official positions and lines of authority in the organization.

**free markets** Markets in which each individual is able to voluntarily exchange goods with others and to decide what will be done with what he or she owns without interference from government.

**genetic engineering** A large variety of new techniques that allows change in the genes of the cells of humans, animals, and plants.

**glass ceiling** An invisible, but impenetrable, barrier to further promotion sometimes encountered by women or minorities.

**global warming** The increase in temperatures around the globe due to rising levels of greenhouse gases.

**globalization** The worldwide process by which the economic and social systems of nations have become connected facilitating between them the flow of goods, money, culture, and people.

**greenhouse gases** Carbon dioxide, nitrous oxide, methane, and chlorofluorocarbons (CFCs)—gases that absorb and hold heat from the Sun, preventing it from escaping back into space, much like a greenhouse absorbs and holds the Sun's heat.

**highly concentrated markets** Oligopoly markets that are dominated by a few (e.g., three to eight) large firms.

**horizontal merger** The unification of two or more companies that were formerly competing in the same line of business.

**imperfectly competitive markets** Markets that lie somewhere on the spectrum between the two extremes of the perfectly competitive market with numerous sellers and the monopoly market with one dominant seller.

**information technology** The use of extremely powerful and compact computers, the Internet, wireless communications, digitalization, and numerous other technologies that have enabled us to capture, manipulate, and move information in new and creative ways.

**insider trading** The act of buying and selling a company's stock on the basis of "inside" information about the company.

**instrumental goods** Things that are considered valuable because they lead to other good things.

**intellectual property** Nonphysical property that consists of knowledge or information such as formulas, plans, music, stories, texts, software, etc.

**internalization of the costs of pollution** Absorption of external costs by the producer, who then takes them into account when determining the price of goods.

**intrinsic goods** Things that are desirable independent of any other benefits they may produce.

**invisible hand** According to Adam Smith, the market competition that drives self-interested individuals to act in ways that serve society.

**justice** The condition of distributing benefits and burdens fairly among people.

**Keynesian economics** The theory of John Maynard Keynes that free markets alone are not necessarily the most efficient means for coordinating the use of society's resources.

**law of agency** A law that specifies the duties of persons who agree to act on behalf of another party and who are authorized by an agreement so to act.

**law of agency** That part of the law that specifies the legal duties of "agents" (e.g., employees) toward their "principals" (e.g., employers).

**legal right** An entitlement that derives from a legal system that permits or empowers a person to act in a specified way or that requires others to act in certain ways toward that person.

**libertarian philosophers** Those who believe that freedom from human constraint is necessarily good and that all constraints imposed by others are necessarily evil except when needed to prevent the imposition of greater human constraints.

**Lockean rights** The right to life, liberty, and property.

**maintainability** The ease with which the product can be repaired and kept in operating condition.

**manipulation of supply** When firms in an oligopoly industry agree to limit their production so that prices rise to levels higher than those that would result from free competition.

**manufacturing economy** An economy in which a large portion of employees are engaged in work that is aimed at producing manufactured products, such as automobiles, televisions, and steel.

**market allocation** When companies in an oligopoly divide up the market among themselves and agree to sell only to customers in their part of the market.

**market** A forum in which people come together to exchange ownership of goods; a place where goods or services are bought and sold.

**maxim** The reason a person in a certain situation has for doing something he or she plans to do.

**middle managers** Managers who direct the units below them and are in turn directed by those above them in ascending formal lines of authority.

**mixed economy** An economy that retains a market and private property system but relies heavily on government policies to remedy their deficiencies.

**moral reasoning** The reasoning process by which human behaviors, institutions, or policies are judged to be in accordance with or in violation of moral standards.

**moral rights** or **human rights** Rights that all human beings everywhere possess to an equal extent simply by virtue of being human beings.

**Moral seduction** Subtle pressures that can gradually lead an ethical person into decisions to do what he or she knows is wrong.

**moral standards** The norms about the kinds of actions believed to be morally right and wrong as well as the values placed on what we believe to be morally good and morally bad.

**moral virtue** An acquired disposition that is valued as part of the character of a morally good human being and that is exhibited in the person's habitual behavior.

**morality** The standards that an individual or a group has about what is right and wrong or good and evil.

**multinational corporation** A company that maintains manufacturing, marketing, service, or administrative operations in several host countries.

**nanotechnology** A new field that encompasses the development of tiny artificial structures only nanometers (billionths of a meter) in size.

**natural rights** According to John Locke, free markets are supposed to protect the right to freedom and the right to private property.

**naturalistic fallacy** The assumption that what happens naturally is always what is good.

**negative rights** Duties others have to not interfere in certain activities of the person who holds the right.

**noneconomic goods** Goods, such as life, love, freedom, equality, health, beauty, whose value is such that it cannot be measured in economic terms.

**nonmoral standards** The standards by which we judge what is good or bad and right or wrong in a nonmoral way.

**normative study** An investigation that attempts to reach conclusions about what things are good or bad or about what actions are right or wrong.

**objective conflict of interest** A conflict of interest that is based on financial relationships.

**Occupational Safety and Health Administration (OSHA)** A federal agency created by the U.S. Congress in 1970 "to assure as far as possible every working man and woman in the nation safe and healthful working conditions."

**oligopoly** A market shared by a relatively small number of large firms that together can exercise some influence on prices and the supply of products.

**operating layer** Those employees and their immediate supervisors who directly produce the goods and services that constitute the essential outputs of the organization.

**organic wastes** Largely untreated human waste, sewage, and industrial waste from processing various food products, from the pulp and paper industry, and from animal feedlots.

**organizational politics** The processes in which individuals or groups within an organization use nonformally sanctioned power tactics to advance their own aims.

**original position** An imaginary meeting of rational self-interested persons who must choose the principles of justice by which their society will be governed.

**ozone depletion** The gradual breakdown of ozone gas in the stratosphere above us caused by the release of chlorofluorocarbons (CFCs) into the air.

**participative management** A management style that emphasizes inclusion of employees in evaluation and decision-making processes.

**perfect competition** A free market in which no buyer or seller has the power to significantly affect the prices at which goods are being exchanged.

**physical privacy** Privacy with respect to a person's physical activities.

**point of equilibrium** The point on a graph at which the supply and demand curves meet, so the quantity buyers want to buy equals the quantity sellers want to sell and the price buyers are willing to pay equals the price sellers are willing to take.

**political equality** Equal participation in, and treatment by, the political system.

**political model of the organization** A view of the organization as a system of competing power coalitions and formal and informal lines of influence and communication that radiate from these coalitions; main ethical issues are related to the moral constraints on the use of power in the organization.

**pollution** The undesirable and unintended contamination of the environment by human activity such as manufacturing, waste disposal, and burning fossil fuels.

**positive rights** Duties of other agents (it is not always clear who) to provide the holder of the right with whatever he or she needs to freely pursue his or her interests.

**potential conflict of interest** When an employee has an interest that could influence what the employee does for the employer if the employee were to perform a certain task for the employer but he or she has not yet been given that task to perform.

**precautionary principle** The principle that if a practice carries an unknown risk of catastrophic and irreversible consequences, but it is uncertain how large that risk is, then the practice should be rejected until it is certain the risk is nonexistent or insignificant.

**predatory price discrimination** Price discrimination aimed at running a competitor out of business.

**price discrimination** To charge different prices to different buyers for identical goods or services.

**price leader** The firm recognized as the industry leader in oligopoly industries for the purpose of setting prices based on levels announced by that firm.

**price-fixing** An agreement between firms to set their prices at artificially high levels.

**principle of diminishing marginal utility** The principle that generally each additional unit of a good a person consumes is less satisfying than each of the earlier units the person consumed.

**principle of equal liberty** The claim that each citizen's liberties must be protected from invasion by others and must be equal to those of others.

**principle of equality** Individuals who are equal in all respects relevant to the kind of treatment in question should be treated equally even if they are dissimilar in other, nonrelevant respects.

**principle of fair equality of opportunity** The claim that everyone should be given an equal opportunity to qualify for the more privileged positions in society's institutions.

**principle of increasing marginal costs** The principle that after a certain point, each additional unit a seller produces costs more to produce than earlier units.

**private cost** The cost an individual or company must pay out of its own pocket to engage in a particular economic activity.

**product safety** The degree of risk associated with using a product.

**production costs** The costs of the resources consumed in producing or improving a product.

**productivity** The amount an individual produces or that a group produces per person.

**psychological privacy** Privacy with respect to a person's inner life.

**pure monopoly** A market in which a single firm is the only seller in the market and which new sellers are barred from entering.

**Puritan ethic** The view that every individual has a religious obligation to work hard at his or her *calling* (the career to which god summons each individual).

**rational model of a business organization** A view of the organization that sees it as a structure of formal (explicitly defined and openly employed) relationships designed to achieve some technical or economic goal with maximum efficiency.

**rational utility maximizer** A person who has a well-defined and consistent set of preferences, and who knows how personal choices will affect those preferences.

**relations of production** The social controls used in producing goods (i.e., the social controls by which society organizes and controls its workers).

**reliability** The probability that a product will function as the consumer is led to expect that it will function.

**resource depletion** The consumption of finite or scarce resources.

**retail price maintenance agreements** When a manufacturer sells to retailers only on condition that they agree to charge the same set retail prices for its goods.

**retributive justice** Requires fairness when blaming or punishing persons for doing wrong.

**right to due process** The right to a fair decision-making process when decision makers impose sanctions on employees.

**right to organize** The right of workers to associate with one another to establish and run a union.

**right to privacy** The right of persons to determine what, to whom, and how much information about themselves will be disclosed to other parties.

**right to work** The right to earn one's living by working.

**right** An individual's entitlement to something.

**rights** Individual entitlements to freedom of choice and well-being.

**rule-utilitarianism** A form of utilitarianism that limits utilitarian analysis to evaluations of moral rules.

**selling costs** The additional costs of resources that do not go into changing the product, but are invested instead in getting people to buy the product.

**service economy** An economy in which most employees are engaged in so-called service industries where work consists largely of providing services to others, such as the banking, restaurant, legal, educational, software design, fashion design, and medical industries.

**service life** The period of time during which the product will function as effectively as the consumer is led to expect it to function.

**sexual harassment** Under certain conditions, unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature.

**Sherman Antitrust Act** Federal law passed in 1890 that prohibits competitors from getting together to reduce competition or using monopoly power to keep or expand a monopoly.

**social audit** A report of the social costs and social benefits of the firm's activities.

**social cost** The private internal costs plus the external costs of engaging in a particular economic activity.

**social costs view of the manufacturer's duties to consumers** The view that a manufacturer should pay the costs of any injuries caused by defects in its products, even if the manufacturer exercised all due care in designing, making, and marketing them, and even if an injury could not have been foreseen.

**social Darwinism** The belief that economic competition produces human progress.

**social ecology** The view that the environmental crises we face are rooted in the social systems of hierarchy and domination that characterize our society.

**socialism** An economic system in which justice is based on needs and abilities; as defined broadly.

**socialist** A description of the economic system in which justice is based on needs and abilities; as defined broadly.

**stakeholder** Anyone who can harm, benefit, or influence the corporation, as well as anyone the corporation can harm, benefit, or influence.

**strict liability** A legal doctrine that holds that manufacturers must bear the costs of injuries resulting from product defects, regardless of fault.

**subjective conflict of interest** A conflict of interest that is based on emotional ties or relationships.

**supply curve** A line on a graph indicating the quantity of a product sellers would provide for each price at which it might be selling; the supply curve also can be understood as showing the price sellers must charge to cover the average costs of supplying a given amount of a product.

**survival of the fittest** Charles Darwin's term for the process of natural selection.

**affirmative action program** Any program designed to ensure that minorities, women, or members of some other group are adequately represented within an organization and its various levels by taking positive steps to increase their number when underrepresented; what counts as "adequate representation" depends on the objectives of the program: some aim at having the same proportion of women or minorities as exists in the pool from which new members are drawn, others aim at achieving the diversity needed to meet organizational objectives.

**sustainability** The capacity something has to continue to function into the future.

**sweatshop** A workplace that has numerous health and safety hazards and poor working conditions, as well as low wages.

**top management** The board of directors, the chief executive officer (CEO), and the CEO's staff.

**tying arrangements** When a firm sells a buyer a certain good only on condition that the buyer agrees to purchase certain other goods from the firm.

**utilitarian** A description of utilitarianism, the view that actions and policies should be evaluated based on the benefits and costs they produce for everyone in society.

**utilitarianism** A general term for any view that holds that actions and policies should be evaluated on the basis of the benefits and costs they will impose on society.

**utility** The inclusive term used to refer to any net benefits produced by an action.

**veil of ignorance** The requirement that persons in the original position must not know particulars about themselves which might bias their choices such as their sex, race, religion, income, social status, etc.

**virtue theory** The theory that the aim of the moral life is to develop those general dispositions called *moral virtues*, and to exercise and exhibit them in the many situations that human life sets before us.

**whistleblowing** An attempt by a member or former member of an organization to disclose wrongdoing in or by the organization.

**work ethic** The view that values individual effort and believes that hard work does and should lead to success.

# Notes

## Chapter 1

1. To see Merck's reports of its performance in the area of social responsibility, see its website at http://www.msdresponsibility.com.
2. P. Roy Vagelos, "Social Benefits of a Successful Biomedical Research Company: Merck," *Proceedings of the American Philosophical Society* 145, no. 4 (December 2001), p. 577. Additional materials on Merck's history of dealing with river blindness can be found on its website at http://www.merck.com/corporate-responsibility/access/access–developing-emerging/mectizan-donation-riverblindness/home.html and at http://www.mectizan.org.
3. P. Roy Vagelos and Louis Galambos, *The Moral Corporation: Merck Experiences* (New York: Cambridge University Press, 2006), p. 2.
4. *Wall Street Journal*, "Merck to Donate Drug for River Blindness," October 22, 1987, p. 42.
5. David Bollier, *Merck & Company* (Stanford, CA: The Business Enterprise Trust, 1991), p. 5.
6. Ibid., p. 16. See also Vagelos and Galambos, *The Moral Corporation*.
7. Thomas J. Peters and Robert H. Waterman Jr., for example, made this point in their popular book *In Search of Excellence* (New York: Harper and Row, 1982).
8. "Ethic," *Webster's Third New International Dictionary*, Unabridged (Springfield, MA: Merriam-Webster Inc., 1986), p. 780. Similar definitions can be found in any recent dictionary.
9. Kermit Vandivier, "Why Should My Conscience Bother Me?" in *In the Name of Profit*, ed. Robert Heilbroner (Garden City, NY: Doubleday & Co., Inc., 1972), p. 6; another version of this article is Kermit Vandivier, "The Aircraft Brake Scandal," *Harpers Magazine*, April 1972, pp. 43–52.
10. Vandivier, "Why Should My Conscience Bother Me?," pp. 5 and 6.
11. U.S. Congress, *Air Force A–7D Brake Problem: Hearing before the Subcommittee on Economy in Government of the Joint Economic Committee, 91st Congress*, 1st session, August 13, 1969, p. 2.
12. Vandivier, "Why Should My Conscience Bother Me?," p. 4.
13. U.S. Congress, *Air Force A–7D Brake Problem*, pp. 5 and 6.
14. E. Turiel, *The Development of Social Knowledge: Morality and Convention* (Cambridge: Cambridge University Press, 1983); E. Turiel, M. Killen, and C. Helwig, "Morality: Its Structure, Functions, and Vagaries," in *The Emergence of Morality in Young Children*, ed. J. Kagan and S. Lamb (Chicago: University of Chicago Press, 1987); J. Dunn and P. Munn, "Development of Justification in Disputes with Mother and Sibling," *Developmental Psychology* 23 (1987): 791–98; J. Smetana, "Preschool Children's Conceptions of Transgressions: Effects of Varying Moral and Conventional Domain–Related Attributes," *Developmental Psychology* 21 (1985): 18–29; J. Smetana, "Toddler's Social Interactions in the Context of Moral and Conventional Transgressions in the Home," *Developmental Psychology* 25 (1989): 499–508; J. Smetana and J. Braeges, "The Development of Toddlers' Moral and Conventional Judgments, *Merrill–Palmer Quarterly* 36 (1990): 329–46; L. Nucci, "Children's Conceptions of Morality, Social Conventions, and Religious Prescription," in *Moral Dilemmas: Philosophical and Psychological Reconsiderations of the Development of Moral Reasoning*, ed. C. Harding (Chicago: Precedent Press, 1986).
15. Smetana and Braeges, "The Development of Toddlers'"; Dunn and Munn, "Development of Justification"; Smetana, "Toddler's Social Interactions."
16. M. Hollos, P. Leis, and E. Tureil, "Social Reasoning in Ijo Children and Adolescents in Nigerian Communities," *Journal of Cross–Cultural Psychology* 17 (1986): 352–74; L. Nucci, E. Turiel, and G. Encarnacion–Gawrych, "Children's Social Interactions and Social Concepts: Analyses of Morality and Convention in the Virgin Islands," *Journal of Cross–Cultural Psychology* 14 (1983): 469–87; M. Song, J. Smetana, and S. Kim, "Korean Children's Conceptions of Moral and Conventional Transgressions," *Developmental Psychology* 23 (1987): 577–82.
17. H. L. A. Hart, *The Concept of Law* (London: Oxford University Press, 1961), pp. 84–85. See also Charles Fried, *An Anatomy of Values* (Cambridge: Harvard University Press, 1970), pp. 91–142.
18. The point is made in Thomas E. Hill, "Reasonable Self–Interest," *Social Philosophy and Policy* 14, no. 1 (1997).
19. The classic source of this observation is Immanuel Kant, see his *Groundwork of the Metaphysics of Morals* [1785], trans. Mary Gregor (Cambridge, UK: Cambridge University Press, 1997). More recently, the idea that moral norms must be universal has been fundamental to the work of several philosophers, including Richard M. Hare, *The Language of Morals* (Oxford: Clarendon Press, 1952), and *Freedom and Reason* (Oxford: Clarendon Press, 1963); Marcus G. Singer, *Generalization in Ethics* (London: Eyre and Spottiswoode, 1963); Alan Gewirth, "Categorical Consistency in Ethics," *Philosophical Quarterly* 17, no. 69 (1967): 289–99; Philip Pettit, "Non–Consequentialism and Universalizability," *Philosophical Quarterly* 50 (2000): 175–90; Jurgen Habermas, *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Shierry Weber Nicholsen (Cambridge, MA: The MIT Press, 1990).
20. See, for example, James Rachels, *The Elements of Moral Philosophy* (n.p.: McGraw–Hill Education, 2011), pp. 9–10.
21. Kurt Baier, *Moral Point of View* (New York: Random House, 1965), p. 107.
22. The point is made in Peter Singer, *Practical Ethics*, 2nd ed. (New York: Cambridge University Press, 1993), pp. 10–11.
23. Richard B. Brandt, *A Theory of the Good and the Right* (New York: Oxford University Press, 1979), pp. 166–69.
24. Jack Anderson, "Enron Blame Game Missing Real Target," *Laredo Morning Times*, March 26, 2002, p. 4A [incorrectly printed date on page is "March 25"]; and Jack Anderson, "The Country's Corporations Can't Be Jailed," *Laredo Morning Times*, June 23, 2002, p. 2D.
25. See, for example, the decision of the Supreme Court of the state of Wisconsin, *Milwaukee Toy Co. vs. Industrial Comm'n of Wis.*, 203 Wis. 493, 234 N.W. 748 (1931), where the court said that the corporate fiction could be set aside when "applying the corporate fiction would accomplish some fraudulent purpose, operate as a constructive fraud, or defeat some strong equitable claim."
26. Angelo Capuano, "The Realist's Guide to Piercing the Corporate Veil: Lessons from Hong Kong and Singapore," *Australian Journal of Corporate Law* 23 (2009): 1–38.
27. For the first view, see Peter A. French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984); Kenneth E. Goodpaster and John B. Matthews Jr., "Can a Corporation Have a Conscience?" *Harvard Business Review*, January 1982, pp. 132–41; Thomas Donaldson, "Moral Agency and Corporations," *Philosophy in Context* 10 (1980): 51–70; David T. Ozar, "The Moral Responsibility of Corporations," in *Ethical Issues in*

*Business*, ed. Thomas Donaldson and Patricia Werhane (Englewood Cliffs, NJ: Prentice Hall, 1979), pp. 294–300. For the second, see John Ladd, "Morality and the Ideal of Rationality in Formal Organizations," Monist 54, no. 4 (1970): 488–516, and "Corporate Mythology and Individual Responsibility," *International Journal of Applied Philosophy* 2, no. 1 (Spring 1984): 1–21; Patricia H. Werhane, "Formal Organizations, Economic Freedom and Moral Agency," *Journal of Value Inquiry* 14 (1980): 43–50. The author's own views are more fully developed in Manuel Velasquez, "Why Corporations Are Not Morally Responsible for Anything They Do," *Business & Professional Ethics Journal* 2, no. 3 (Spring 1983): 1–18, and "Debunking Corporate Moral Responsibility," *Business Ethics Quarterly* 13, no. 4 (October 2003). Also similar to the author's views are those in Michael Keeley, "Organizations as Non–Persons," *Journal of Value Inquiry* 15 (1981): 149–55.

28. See, for example, the long discussion of these issues in LaRue Tone Hosmer, *The Ethics of Management*, 3rd ed. (Homewood, IL: McGraw–Hill/Irwin, 1995), pp. 34–55.

29. For these and other criticisms, see Alan H. Goldman, "Business Ethics: Profits, Utilities, and Moral Rights," *Philosophy and Public Affairs* 9, no. 3 (Spring 1980): 260–86.

30. See Alex C. Michales, *A Pragmatic Approach to Business Ethics* (Thousand Oaks, CA: Sage Publications, 1995), p. 45.

31. Kati Cornell Smith, "Worldcon Gets 5; Testimony Wins Stoolie Sullivan Easy Jail Time," *New York Post*, August 12, 2005.

32. John Lehmann, "Two Former WorldCom Execs Admit They Cooked the Books," *New York Post*, October 11, 2002.

33. See Phillip I. Blumberg, "Corporate Responsibility and the Employee's Duty of Loyalty and Obedience: A Preliminary Inquiry," in *The Corporate Dilemma: Traditional Values Versus Contemporary Problems*, ed. Dow Votaw and S. Prakash Sethi (Englewood Cliffs, NJ: Prentice Hall, 1973), pp. 82–113.

34. Quoted in Blumberg, "Corporate Responsibility," p. 86.

35. Richard Wachman, "Greek Deal Puts Goldman Sachs in the Firing Line-Again," *Observer*, February 28, 2010.

36. See John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), pp. 295–350; John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pp. 108–14; Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), pp. 108–11.

37. For a similar version of this argument, see Alex C. Michalos, *A Pragmatic Approach to Business Ethics* (Thousand Oaks, CA: Sage Publications Inc., 1995), pp. 54–57.

38. These are some of the more well–known companies cited over several years in the annual list of "World's Most Ethical Companies," published by Ethisphere at http://www.ethisphere.com; or the annual list of "100 Best Corporate Citizens" issued by *Corporate Responsibility Magazine* at http://www.thecro.com.

39. Much of this research is summarized and reviewed in Manuel Velasquez, "Why Ethics Matters," *Business Ethics Quarterly* 6, no. 2 (1996): 201–22.

40. John M. Darley, "Morality in the Law: The Psychological Foundations of Citizens' Desires to Punish Transgressions," *Annual Review of Law and Social Science* 5 (2009): 1–23. See also D. T. Miller, "Disrespect and the Experience of Injustice," *Annual Review of Psychology* 52 (2001): 527–53.

41. In addition to Velasquez, "Why Ethics Matters," which reviews the literature and research in this area, consult Blair H. Sheppard, Roy J. Lewicki, and John W. Minton, *Organizational Justice* (New York: Lexington Books, 1992), pp. 101–3. On the higher wages workers demand to work for a firm they see as socially responsible in comparison to one they see as socially irresponsible, see R. H. Frank, "Can Socially Responsible Firms Survive in a Competitive Environment?" in *Research on Negotiations in Organizations*, ed. D. M. Messick and A. E. Tenbrunsel (Greenwich, CT: JAI Press, 1997).

42. J. Brockner, T. Tyler, and R. Schneider, "The Higher They Are, the Harder They Fall: The Effect of Prior Commitment and Procedural Injustice on Subsequent Commitment to Social Institutions" (paper presented at the annual Academy of Management Meeting, Miami Beach, FL, August 1991).

43. R. Folger and M. A. Konovsky, "Effects of Procedural and Distributive Justice on Reactions to Pay Raise Decisions," *Academy of Management Journal* 32 (1989): 115–30; S. Alexander and M. Ruderman, "The Role of Procedural and Distributive Justice in Organizational Behavior," *Social Justice Research* 1 (1987): 177–98. See also T. R. Tyler, "Justice and Leadership Endorsement," in *Political Cognition*, ed. R. R. Lau and D. O. Sears (Hillsdale, NJ: Erlbaum, 1986): 257–78.

44. T. R. Tyler and E. A. Lind, "A Relational Model of Authority in Groups," in *Advances in Experimental Social Psychology*, vol. 25, ed. M. Zanna (New York: Academic Press, 1992); J. Greenberg, "Cultivating an Image of Justice: Looking Fair on the Job," *Academy of Management Executive* 2 (1988): 155–58; D. W. Organ, *Organizational Citizenship Behavior: The Good Soldier Syndrome* (Lexington, MA: Lexington Books, 1988).

45. Jean B. McGuire, Alison Sundgren, and Thomas Schneewels, "Corporate Social Responsibility and Firm Financial Performance," *Academy of Management Journal* (December 1988): 869.

46. For a review of these studies and a new study that found no correlation one way or another, see Kenneth E. Alpperle, Archie B. Carroll, and John D. Hatfield, "An Empirical Examination of the Relationship between Corporate Social Responsibility and Profitability," *Academy of Management Journal* (June 1985): 460–61.

47. Qian Wang, Junsheng Dou, and Shenghua Jia, "A Meta–Analytic Review of Corporate Social Responsibility and Corporate Financial Performance: The Moderating Effect of Contextual Factors," *Business & Society* 54, no. 1 (May 2015): 1–39.

48. "Responsible Investing in a Changing World," *Business Ethics*, November/December, 1995, p. 48.

49. R. Edward Freeman and David L. Reed, "Stockholders and Stakeholders: A New Perspective on Corporate Governance," *California Management Review* 25, no. 3 (Spring 1983), p. 91.

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

51. Robert Phillips, *Shareholder Theory and Organizational Ethics* (San Francisco: Berrett–Koelher Publishers, Inc., 2003).

52. Archie Carroll, "Corporate Social Responsibility: Evolution of a Definitional Construct," *Business & Society* 38, no. 3 (1999): 283.

53. Business ethics in the international arena is a topic that is still not well developed in the literature on business ethics. See my discussion of the problems with current approaches in Manuel Velasquez, "International Business Ethics," *Business Ethics Quarterly* 5, no. 4 (October 1995): 865–82, and Manuel Velasquez, "International Business, Morality, and the Common Good," *Business Ethics Quarterly* 2, no. 1 (January 1992): 27–40.

54. Shaohua Chen and Martin Ravallion, "The Developing World Is Poorer Than We Thought, but No Less Successful in the Fight against Poverty" (Policy Research Working Paper 4703, World Bank, Development Research Group, September 2009) accessed May 29, 2010, at http://go.worldbank.org/HAG6SG9G30.

55. Branko Milanovic, "Global Inequality Recalculated" (Policy Research Working Paper 5061, World Bank, Development Research Group: Poverty and Inequality Team, August 2008) accessed May 29, 2010, at http://go.worldbank.org/HR1M8IEX50.

56. The importance of singling out issues of development is a point made by Thomas Donaldson in *The Ethics of International Business* (New York: Oxford University Press, 1991), pp. 102–3.

57. Arnold Berleant, "Multinationals and the Problem of Ethical Consistency," *Journal of Business Ethics* 3 (August 1982): 185–95.
58. William Ashford, "Genital Mutilators Protest Scandinavian Efforts to Crack Down on Trade," *Scrape TV*, September 27, 2009, http://scrapetv.com/News/News%20Pages/Business/pages–3/Genital–mutilators–protest–Scandanavian–efforts–to–crack–down–on–trade–Scrape–TV–The–World–on–your–side.html; Amit R. Paley, "For Kurdish Girls, a Painful Ancient Ritual," *Washington Post*, December 29, 2008.
59. Norman Bowie, "Business Ethics and Cultural Relativism," in *Business Ethics: International and Environmental Business Ethics*, ed. Alan R. Malachowski (New York: Routledge, 2001), pp. 135–46.
60. James Rachels, "Can Ethics Provide Answers?" in *Can Ethics Provide Answers? and Other Essays in Moral Philosophy* (n.p.: Rowman and Littlefield, 1997), pp. 33–39.
61. The arguments for and against ethical relativism are surveyed in Manuel Velasquez, "Ethical Relativism and the International Business Manager," in *Studies in Economic Ethics and Philosophy* (Berlin: Springer–Verlag, 1997). An outstanding book–length argument against ethical relativism is John W. Cook, *Morality and Cultural Differences* (New York: Oxford University Press, 1999).
62. Thomas Donaldson and Thomas Dunfee, *Ties that Bind: A Social Contracts Approach to Business Ethics* (Cambridge, MA: Harvard University Press, 1999).
63. Rong Ma, "Marriages and Spouse Selection in Tibet," *Development and Society* 30, no. 1 (June 2001): 79–117.
64. See Donald R. C. Reed, *Following Kohlberg: Liberalism and the Practice of Democratic Community* (Notre Dame, IN: University of Notre Dame Press, 1997), which provides a useful summary and critical analysis of Kohlberg's theory, how that theory developed over the years, and the kinds of criticisms to which it has been subjected. Another useful critical summary from a group of researchers who are basically sympathetic to Kohlberg is James Rest et al., *Postconventional Moral Thinking: A Neo–Kohlbergian Approach* (Mahwah, NJ: Lawrence Erlbaum Associates, Publishers, 1999).
65. This summary is based on Lawrence Kohlberg, "Moral Stages and Moralization: The Cognitive–Developmental Approach," in *Moral Development and Behavior: Theory, Research, and Social Issues*, ed. Thomas Lickona (New York: Holt, Rinehart and Winston, 1976), pp. 31–53.
66. See Reed, *Following Kohlberg*, for a comprehensive overview of the criticisms that have been lodged against Kohlberg's theory and research.
67. See Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, 1982).
68. For reviews of the literature surrounding Kohlberg and the Gilligan critique, see Norman Sprinthall and Richard Sprinthall, *Educational Psychology*, 4th ed. (New York: Random House, 1987), pp. 157–77; and Nancy Eisenberg, Richard Fabes, and Cindy Shea, "Gender Differences in Empathy and Prosocial Moral Reasoning: Empirical Investigations," in *Who Cares? Theory, Research, and Educational Implications of the Ethic of Care*, ed. Mary M. Brabeck (New York: Praeger, 1989).
69. Among the studies that have failed to find significant gender differences in moral reasoning are Robbin Derry, "Moral Reasoning in Work Related Conflicts," in *Research in Corporate Social Performance and Policy*, vol. 9, ed. William Frederick (Greenwich, CT: JAI, 1987), pp. 25–49; William J. Friedman, Amy B. Robinson, and Britt L. Friedman, "Sex Differences in Moral Judgment? A Test of Gilligan's Theory," *Psychology of Women Quarterly* 37 (1987): 37.
70. William Damon, "Self–Understanding and Moral Development from Childhood to Adolescence" in *Morality, Moral Behavior, and Moral Development*, ed. W. M. Kurtines and J. L. Gewirtz (New York: Wiley, 1984), p. 116.
71. Anne Colby and William Damon, *Some Do Care: Contemporary Lives of Moral Commitment* (New York: The Free Press, 1992), p. 300. See also Anne Colby and William Damon, "The Uniting of Self and Morality in the Development of Extraordinary Moral Commitment," in *The Moral Self*, ed. G. G. Noam and T. E. Wren (Cambridge, MA: MIT Press, 1994).
72. Augusto Blasi, "The Moral Personality: Reflections for Social Science and Education," in *Moral Education: Theory and Application*, ed. W. M. M. W. Berkowitz and F. Oser (Hillsdale, NJ: Lawrence Erbaum Associates, 1985), p. 438.
73. Augusto Blasi, "Emotions and Moral Motivation," *Journal for the Theory of Social Behavior* 29 (1999): 11.
74. Susan Thurston, "Fired St. Petersburg Worker Target of J.C. Penney Dispute," *Tampa Bay Times*, April 14, 2014; Jennifer Reingold, "Whistleblower Files Claim against JC Penney," Fortune, March 23, 2015; Kim Bhasin, "This J.C. Penney Worker Was Fired for Telling the Truth about Its 'Fake' Prices," *Huffington Post*, March 19, 2014.
75. Nancy Eisenberg, "Emotion, Regulation, and Moral Development," *Annual Reviews of Psychology* 51 (2000): 665–97.
76. Joshua Greene and Jonathan Haidt, "How (and Where) Does Moral Judgment Work?," *Trends in Cognitive Science* 6, no. 12 (2002): 517–23. See also Antonio Damasio, Descartes' *Error: Emotion, Reason, and the Human Brain* (New York: Penguin, 2005).
77. Damasio, Descartes' *Error*, p. 8.
78. This passage is an updated and paraphrased version of a similar passage in Edward J. Stevens, *Making Moral Decisions* (New York: Paulist Press, 1969), pp. 123–25.
79. For a fuller discussion of this approach, see Stephen Toulmin, Richard Rieke, and Allan Janik, *An Introduction to Reasoning* (New York: Macmillan Inc., 1979), pp. 309–37.
80. See Richard M. Hare, *Freedom and Reason* (New York: Oxford University Press, 1965), pp. 30–50, 86–111.
81. The difficulties are discussed in John R. Searle, *Speech Acts* (New York: Cambridge University Press, 1969), pp. 182–88.
82. An excellent and compact account of these features may be found in Lawrence Habermehl, "The Susceptibility of Moral Claims to Reasoned Assessment," in *Morality in the Modern World*, ed. Lawrence Habermehl (Belmont, CA: Dickenson Publishing Co., Inc., 1976), pp. 18–32.
83. See Marcus G. Singer, *Generalization in Ethics* (New York: Alfred A. Knopf, Inc., 1961), p. 5; Hare, Freedom and Reason, p. 15.
84. James Rest, *Moral Development: Advances in Research and Theory* (New York: Praeger, 1986).
85. T. M. Jones, "Ethical Decision Making by Individuals in Organizations: An Issue–Contingent Model," *Academy of Management Review* 16 (1991): 366–95.
86. Albert Bandura, G. V. Caprara, and L. Zsolnai, "Corporate Transgressions through Moral Disengagement," *Journal of Human Values* 6 (2000): 57–63. See also Albert Bandura, "Moral Disengagement in the Perpetration of Inhumanities," *Personality and Social Psychology Review* 3, no. 3 (1999): 193–209; Albert Bandura, "Selective Moral Disengagement in the Exercise of Moral Agency," *Journal of Moral Education* 31, no. 2 (2002): 101–19.
87. B. Victor and J. B. Cullen, "The Organizational Bases of Ethical Work Climates," *Administrative Science Quarterly* 33 (1988): 101–25; L. Trevino, K. Butterfield, and D. McCabe, "The Ethical Context in Organizations: Influences on Employee Attitudes and Behaviors," *Business Ethics Quarterly* 8, no. 3 (1998): 447–76.
88. Jeff Donn and Seth Borenstein, "AP Investigation: Blowout Preventers Known to Fail," *ABC News*, May 8, 2010, http://abcnews.go.com/Business/wireStory?id=10591505.

89. Richard Mauer and Anna M. Tinsley, "Gulf Oil Spill: BP Has a Long Record of Legal, Ethical Violations," *Miami Herald*, May 8, 2010, http://www.miamiherald.com/2010/05/08/1620292/gulf–oil–spill–bp–has–a–long–record.html.

90. Don Moore, Philip Tetlock, Lloyd Tanlu, and Max Bazerman, "Conflicts of Interest and the Case of Auditor Independence: Moral Seduction and Strategic Issue Cycling," *Academy of Management Review* 31, no. 1 (2006): 10–29.

91. Ibid., p. 17.

92. Aristotle, *Nichomachean Ethics*, Martin Ostwald, trans. (New York: The Bobbs–Merrill Company, 1962), bk. 7, chaps. 1–10.

93. Richard Holton, "How Is Strength of Will Possible?" in *Weakness of Will and Practical Rationality*, ed. S. Stroud and C. Tappolet (Oxford: Oxford University Press, 2003), pp. 39–67.

94. Stanley Milgram, "Behavioral Study of Obedience," *Journal of Abnormal and Social Psychology* 67 (1963).

95. A person can also be morally responsible for good acts. However, because we are concerned with determining when a person is excused from doing wrong, we discuss moral responsibility only as it relates to wrongdoing and to being excused therefrom.

96. "Job Safety Becomes a Murder Issue," *Business Week*, August 6, 1984; "3 Executives Convicted of Murder for Unsafe Workplace Conditions," *New York Times*, June 15, 1985; "Working Them to Death," *Time*, July 15, 1985; "Murder Case a Corporate Landmark," part I, *Los Angeles Times*, September 15, 1985; "Trial Makes History," part II, *Los Angeles Times*, September 16, 1985. Their conviction was later overturned.

97. This agreement goes back to Aristotle, *Nicomachean Ethics*, bk. 3, chap. 1. Recent discussions of moral responsibility have questioned this agreement, but this recent discussion raises issues that are too complex to examine here. Readers interested in the issue may want to consult the essays collected in John Martin Fischer and Mark Ravizza, eds., *Perspectives on Moral Responsibility* (Ithaca, NY: Cornell University Press, 1993), especially the editors' "Introduction" and their essay "Responsibility for Consequences." The theory of moral responsibility I adopt draws heavily from John Martin Fischer and Mark Ravizza, *Responsibility and Control: A Theory of Moral Responsibility* (New York: Cambridge University Press, 1998), particularly my characterization of acting "of one's own free will," which is intended to be equivalent to their notion of "acting from one's own reasons–responsive mechanism" (see pp. 28–91).

98. Jim Jubak, "They Are the First," *Environmental Action*, February 1983; Jeff Coplon, "Left in the Dust," *Voice*, March 1, 1983; George Miller, "The Asbestos Cover–Up," *Congressional Record*, May 17, 1979.

99. See the discussion of this in Hare, *Freedom and Reason*, pp. 50–60.

100. "Overdriven Execs: Some Middle Managers Cut Corners to Achieve High Corporate Goals," *Wall Street Journal*, November 8, 1979.

101. Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), pp. 154–57, 206–7.

102. Singer, *Practical Ethics*, p. 152.

103. See W. L. LaCroix, *Principles for Ethics in Business* (Washington, DC: University Press of America, 1976), pp. 106–7; Thomas M. Garrett, *Business Ethics*, 2nd ed. (Englewood Cliffs, NJ: Prentice Hall, 1986), pp. 12–13; Henry J. Wirtenberger, S. J., *Morality and Business* (Chicago: Loyola University Press, 1962), pp. 109–14; Heribert Jone, *Moral Theology*, Urban Adelman, trans. (Westminster, MD: The Newman Press, 1961), p. 236.

104. Peter A. French, "Corporate Moral Agency," in *Ethical Theory and Business*, ed. Tom L. Beauchamp and Norman E. Bowie (Englewood Cliffs, NJ: Prentice Hall, 1979), pp. 175–86. See also Christopher D. Stone, *Where the Law Ends* (New York: Harper & Row, Publishers, Inc., 1975), pp. 58–69, for the legal basis of this view.

105. See Manuel Velasquez, "Debunking Corporate Moral Responsibility," *Business Ethics Quarterly* 13, no. 4 (October 2003): 531–62; and "Why Corporations Are Not Morally Responsible for Anything They Do," *Business & Professional Ethics Journal* 2, no. 3 (Spring 1983): 1–18. See also the two commentaries on this article appearing in the same journal by Kenneth E. Goodpaster, pp. 100–103; and Thomas A. Klein, "Commentary," *Business & Professional Ethics Journal* 3, no. 2 (1984): 70–71.

106. David Sylvester, "National Semi May Lose Defense Jobs," *San Jose Mercury News*, May 31, 1984.

107. Erica Goode, "Rifle Used in Killings, America's Most Popular, Highlights Regulation Debate," *New York Times*, December 16, 2012; Abbie VanSickle, "3 Lawsuits Attempt to Hold Gun Makers, Sellers Liable for Shootings," *Revealnews*.org, The Center for Investigative Reporting, February 18, 2015; *Donna L. Soto et al. vs. Bushmaster Firearms International, LLC, et al.*, Superior Court, Judicial District of Fairfield at Bridgeport, December 13, 2014.


## Chapter 2


1. A. Pasztor and S. Kravetz, "Unocal Is Shifting Strategy to International Operations," *Wall Street Journal*, November 20, 1996, p. B4.

2. Unocal, "Background: The Yadana Project & The Activist Lawsuits," December 2, 2003, accessed May 26, 2003, http://www.unocal.com/myanmar/suit.htm.

3. *Doe vs. Unocal*, 110 F. Supp. 2d 1294 (2000), accessed February 22, 2003, http://www.earthrights.org/unocal/index.shtml; *also available as 2000 U.S. Dist. Lexis 13327.*

4. Benedict Rogers, "The General Must Not Be Disturbed," *Democratic Voice of Burma*, April 12, 2010, http://www.dvb.no/analysis/the-general-must-not-be-disturbed/8617.

5. Ibid.

6. Francis Sejersted, "The Nobel Peace Prize 1991—Presentation Speech," *Nobelprize.org;* accessed October 13, 2016, http://www.nobelprize.org/nobel_prizes/peace/laureates/1991/presentation-speech.html.

7. Rogers, "The General."

8. U.S. State Department, *Country Reports on Human Rights Practices for 1991* (Washington, DC: U.S. Government Printing Office, 1992), p. 786, https://ia802307.us.archive.org/35/items/countryreportson1991unit/countryreportson1991unit.pdf.

9. Amnesty International, "Myanmar (Burma): Continuing Killings and Ill-treatment of Minority Peoples," August 1991, accessed May 20, 2004, http://www.web.amnesty.org/library/index/engasa160051991.

10. *Doe v. Unocal*.

11. Unocal, "Background: The Yadana Project & The Activists Lawsuits," December 2, 2003, accessed June 5, 2004, http://www.unocal.com/myanmar/suit.htm.

12. U.S. Department of Labor, Bureau of International Labor Affairs, "Report on Labor Practices in Burma," accessed April 20, 2004, http://purl.access.gpo.gov/GPO/LPS5259.

13. Ibid.

14. Unocal, "Background: The Yadana Project."

15. Luc Zandvliet and Doug Fraser, *Corporate Engagement Project, Field Visit Report, Third Visit, Yadana Gas Transportation Project* (Cambridge, MA: Collaborative for Development Action, February 2004), p. 5, accessed June 20, 2004, http://www.cdainc.com/cep/publications.php.

16. Ibid., p. 13.

17. U.S. Department of State, *2004 Country Reports on Human Rights Practices*, accessed October 13, 2016, http://www.state.gov/j/drl/rls/hrrpt/2004/41637.htm.

18. The details of this well-known case are derived from the findings of fact stated by the court in *Grimshaw v. Ford Motor Co.*, App., 174 Cal. Rptr. 348. Grimshaw was a young teenager when he was traumatically seared over much of his body and face in a Pinto fire that resulted from a rear-end collision in San Bernardino, California. Details of the cost-benefit study are based on Ralph Drayton, "One Manufacturer's Approach to Automobile Safety Standards," *CTLA News*, February 1968, vol. VIII, no. 2, p. 11; and Mark Dowie, "Pinto Madness," *Mother Jones*, September/October 1977, p. 28. A book-length treatment of the case is Lee P. Strobel, *Reckless Homicide? Ford's Pinto Trial* (South Bend, IN: And Books, 1980).

19. Thomas A. Klein, *Social Costs and Benefits of Business* (Englewood Cliffs, NJ: Prentice Hall, 1977).

20. Among the more well-known utilitarian moralists are Peter Singer, *Practical Ethics*, 2nd ed. (Cambridge: Cambridge University Press, 1993); and Richard B. Brandt, *A Theory of the Good and the Right* (New York: Oxford University Press, 1979).

21. Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 1789); Henry Sidgwick, *Outlines of the History of Ethics*, 5th ed. (London: Macmillan, 1902) traces the history of utilitarian thought to Bentham's predecessors.

22. John Stuart Mill, *Utilitarianism* (1863), chap. 2.

23. Henry Sidgwick, *Methods of Ethics*, 7th ed. (Chicago: University of Chicago Press, 1962), p. 413.

24. John Stuart Mill, *Utilitarianism, Liberty, and Representative Government* (London: J. M. Dent & Sons, Ltd., 1910), p. 16.

25. "Let Them Eat Pollution," *Economist*, February 8, 1992.

26. Richard Brandt, *Ethical Theory* (Englewood Cliffs, NJ: Prentice Hall, 1959), p. 386. See also Dan W. Brock, "Utilitarianism," in *And Justice for All*, ed. Tom Regan and Donald Van DeVeer (Totowa, NJ: Rowman and Littlefield, 1982), pp. 217–40.

27. For example, William Stanley Javons, *Theory of Political Economy* (1871); Alfred Marshall, *Principles of Economics* (1890); Cecil Arthur Pigou, *Wealth and Welfare* (1912); for a contemporary defense of utilitarianism in economics, see J. A. Mirrlees, "The Economic Uses of Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), pp. 63–84.

28. See Paul Samuelson, *Foundations of Economic Analysis* (Cambridge, MA: Harvard University Press, 1947). A system is "Pareto optimal" if no one in the system can be made better off without making some other person worse off; an "indifference curve" indicates the quantities of one good a person would willingly trade for greater or lesser quantities of another good.

29. E. J. Mishan, *Economics for Social Decisions: Elements of Cost-Benefit Analysis* (New York: Praeger Publishers, Inc., 1973), pp. 14–17. See also E. J. Mishan, ed., *Cost-Benefit Analysis*, 3rd ed. (Cambridge: Cambridge University Press, 1982).

30. For example, "Bentham's Felicific Calculus," in Wesley C. Mitchell, *The Backward Art of Spending Money and Other Essays* (New York: Augustus M. Kelley, Inc., 1950), pp. 177–202; but see the replies to these measurement objections in Paul Weirch, "Interpersonal Utility in Principles of Social Choice," *Erkenntnis* 21 (November 1984): 295–318.

31. For a discussion of this problem, see Michael D. Bayles, "The Price of Life," *Ethics* 89, no. 1 (October 1978): 20–34; Jonathan Glover, *Causing Death and Saving Lives* (New York: Penguin Books, 1977); Peter S. Albin, "Economic Values and the Value of Human Life," in *Human Values and Economic Policy*, ed. Sidney Hook (New York: New York University Press, 1967).

32. G. E. Moore, *Principia Ethica*, 5th ed. (Cambridge: Cambridge University Press, 1956), p. 149.

33. Alasdair MacIntyre, "Utilitarianism and Cost-Benefit Analysis: An Essay on the Relevance of Moral Philosophy to Bureaucratic Theory," in *Values in the Electric Power Industry*, ed. Kenneth Syre (Notre Dame, IN: University of Notre Dame Press, 1977).

34. Mill, *Utilitarianism* (1863), chap. 2.

35. Bentham, *An Introduction*.

36. For example, Mark Sagoff, "Some Problems with Environmental Ethics," and Steven Kelman, "Cost-Benefit Analysis: An Ethical Critique," both in Christine Pierce and Donald VanDeVeer, eds., *People, Penguins, and Plastic Trees*, 2nd ed. (Belmont, CA: Wadsworth, 1995).

37. Raymond A. Bauer and Dan H. Fenn Jr., *The Corporate Social Audit* (New York: Sage Publications, Inc., 1972), pp. 3–14; John J. Corson and George A. Steiner, *Measuring Business's Social Performance: The Corporate Social Audit* (New York: Committee for Economic Development, 1974), p. 41; Thomas C. Taylor, "The Illusions of Social Accounting," *CPA Journal* 46 (January 1976): 24–28; Manuel A. Tipgos, "A Case against the Social Audit," *Management Accounting*, August 1976, pp. 23–26.

38. E. Bruce Frederickson, "Noneconomic Criteria and the Decision Process," *Decision Sciences* 2, no. 1 (January 1971): 25–52.

39. Norman E. Bowie, *Towards a New Theory of Distributive Justice* (n.p.: University of Massachusetts Press, 1971), pp. 20–24.

40. See J. O. Ormson, "The Interpretation of the Philosophy of J. S. Mill," *Philosophical Quarterly* 3 (1953): 33–40; D. W. Haslett, *Equal Consideration: A Theory of Moral Justification* (Newark, DE: University of Delaware Press, 1987).

41. David Lyons, *Forms and Limits of Utilitarianism* (Oxford: Oxford University Press, 1965). Some ethicians hold, however, that act utilitarianism and rule-utilitarianism are not really equivalent; see Thomas M. Lennon, "Rules and Relevance: The Act Utilitarianism–Rule Utilitarianism Equivalence Issue," *Idealistic Studies: An International Philosophical Journal* 14 (May 1984): 148–58.

42. "Disney in Child Labor Storm," *China.org.cn*, accessed May 17, 2009, http://www.china.org.cn/china/news/2009-05/17/content_17787852.htm.

43. Congressional-Executive Commission on China, *2003 Annual Report* (Washington, DC: U.S. Government Printing Office, 2003).

44. U.S. State Department, *Country Reports on Human Rights Practices for 2002* (Washington, DC: U.S. Government Printing Office, 2003).

45. See Peter DeSimone, "2004 Company Report—C1, Walt Disney Human Rights in China," February 9, 2004, © 2004 by the Investor Responsibility Research Center; and Carolyn Mathiasen, "2004 Background Report—C1 Human Rights in China," February 9, 2004, © 2004 Investor Responsibility Research Center (both at http://www.irrc.org).

46. "Disney Toys Made in 'Sweatshops,'" *Sunday Times*, December 23, 2007, http://www.timesonline.co.uk/tol/news/world/asia/article3087300.ece.

47. David Barboza, "U.S. Group Accuses Chinese Toy Factories of Labor Abuses," *New York Times*, August 22, 2007; David Barboza, "In Chinese Factories, Lost Fingers and Low Pay," *New York Times*, January 5, 2008.

48. National Labor Committee, "Toys of Misery Made in Abusive Chinese Sweatshops," *Institute for Global Labour and Human Rights*, December 11, 2008, http://www.globallabourrights.org/reports/toys-of-misery-made-in-abusive-chinese-sweatshops.

49. United Nations, "Universal Declaration of Human Rights," December 10, 1948, http://www.un.org/en/universal-declaration-human-rights/.

50. Laurie P. Cohen, "Stuck for Money," *Wall Street Journal*, November 14, 1996, p. 1.

51. H. J. McCloskey, "Rights," *Philosophical Quarterly* 15 (1965): 115–27; several book-length discussions of rights are available,

including Alan R. White, *Rights* (Oxford: Clarendon Press, 1984); Samuel Stoljar, *An Analysis of Rights* (New York: St. Martin's Press, 1984); and Henry Shue, *Basic Rights* (Princeton, NJ: Princeton University Press, 1981); for a review of the literature on rights, see Jeremy Waldron, "Rights," in *A Companion to Contemporary Political Philosophy*, ed. Robert E. Goodin and Philip Pettit (Oxford: Blackwell, 1995); an outstanding historical account of the evolution of the concept of a right is Richard Tuck, *Natural Rights Theories, Their Origin and Development* (New York: Cambridge University Press, 1979).

52. There are different ways of characterizing the relationship between rights and duties, not all of them equally sound. For example, some authors claim that a person is granted rights only if the person accepts certain duties toward the community that grants those rights. Other authors claim that all my rights can be defined wholly in terms of the duties of others. Both of these claims are probably mistaken, but neither claim is being advanced in this paragraph. The view of this paragraph is that moral rights of the kind identified in the previous paragraph always can be defined at least in part in terms of duties others have toward the bearer of the right. To have a moral right of this kind always implies that others have certain moral duties toward me; but it does not follow that if others have those duties, then I have the corresponding right. Thus, the claim is that the imposition of certain correlative moral duties on others is a necessary, but not sufficient condition for one's possession of a moral right.
53. See Richard Wasserstrom, "Rights, Human Rights, and Racial Discrimination," *Journal of Philosophy* 61 (October 1964): 628–41.
54. Ibid., p. 629.
55. Joel Feinberg, *Social Philosophy* (Upper Saddle River, NJ: Pearson, 1973), pp. 59–61.
56. Ibid.
57. See, for example, Milton Friedman, *Capitalism and Freedom* (Chicago, IL: The University of Chicago Press, 1962), pp. 22–36; Friedrich Hayek, *The Road to Serfdom* (Chicago, IL: The University of Chicago Press, 1944), pp. 25–26.
58. Peter Singer, "Rights and the Market," in *Justice and Economic Distribution*, ed. John Arthur and William Shaw (Englewood Cliffs, NJ: Prentice Hall, 1978), pp. 207–21.
59. H. L. A. Hart, "Are There Any Natural Rights?," *Philosophical Review* 64 (April 1955): 185.
60. J. R. Searle, *Speech Acts* (Cambridge: The University Press, 1969), pp. 57–62.
61. Thomas M. Garrett, *Business Ethics*, 2nd ed. (Englewood Cliffs, NJ: Prentice Hall, 1986), pp. 88–91.
62. Ibid., p. 75. See also John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, The Belknap Press, 1971), pp. 342–50.
63. For a Kantian approach to business ethics see Norman E. Bowie, *Business Ethics: A Kantian Perspective* (London: Blackwell Publishers, 1999); a fine and balanced explanation of Kant's moral theory appears in Roger J. Sullivan, *Immanuel Kant's Moral Theory* (New York: Cambridge University Press, 1989); Onora O'Neill has recently articulated a refreshingly clear interpretation of Kant in a series of essays in Onora O'Neill, *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989); for an accessible overview of Kant's philosophy, see Paul Guyer, ed., *The Cambridge Companion to Kant* (New York: Cambridge University Press, 1992).
64. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, H. J. Paton, trans. (New York: Harper & Row, Publishers, Inc., 1964), p. 70.
65. Ibid., p. 91.
66. Ibid., p. 96.
67. See Fred Feldman, *Introductory Ethics* (Englewood Cliffs, NJ: Prentice Hall, 1978), pp. 119–28; and Rawls, *A Theory of Justice*, pp. 179–80.
68. Kant, *Groundwork*, p. 105. On the equivalence of the two versions of the categorical imperative, see Sullivan, *Immanuel Kant's Moral Theory*, pp. 193–94.
69. Gregory Vlastos, "Justice and Equality," in *Equality: Selected Readings*, ed. Louis P. Pojman and Robert Westmoreland (Oxford: Oxford University Press, 1997), p. 93; Richard Brandt, ed., *Social Justice* (Englewood Cliffs, NJ: Prentice Hall, 1962), pp. 31–72. See, for example, A. K. Bierman, *Life and Morals: An Introduction to Ethics* (New York: Harcourt Brace Jovanovich, Inc., 1980), pp. 300–301; Charles Fried, *Right and Wrong* (Cambridge, MA: Harvard University Press, 1978), p. 129; Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978), p. 198; Thomas E. Hill Jr., "Servility and Self-Respect," *Monist* 57, no. 21 (January 1973): 87–104; Feinberg, *Social Philosophy.*
70. See John Stuart Mill, *On Liberty* (1860), chap. 2.
71. For a similar argument based on Kant's first formulation of the categorical imperative, see Marcus Singer, *Generalization in Ethics* (New York: Alfred A. Knopf, Inc., 1961), pp. 267–74; for one based on Kant's second formulation, see Alan Donagan, *The Theory of Morality* (Chicago: The University of Chicago Press, 1977), p. 85; also see I. Kant, *Metaphysical Elements of Justice* (New York: Bobbs-Merrill Co., Inc., 1965), pp. 91–99.
72. See Alan Gewirth, *Reason and Morality* (Chicago: The University of Chicago Press, 1978), who argues for these rights (p. 256) on the basis of a principle that, although different from Kant's first formulation in some important respects, is nonetheless very much like it: "Every agent must claim that he has rights to freedom and well-being for the reason that he is a prospective purposive agent . . . it follows, by the principle of universalizability, that all prospective purposive agents have rights to freedom and well-being" (p. 133); Donagan, *The Theory of Morality*, pp. 81–90, argues for these on the basis of Kant's second formulation.
73. See Singer, *Generalization in Ethics*, pp. 255–57, for a discussion of how Kant's first formulation provides a basis for the obligation to keep one's promises and for truthfulness in the making of promises; see Donagan, *The Theory of Morality*, pp. 90–94, for a discussion of the same subject in terms of the second formulation.
74. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, Inc., Publishers, 1974), p. ix.
75. See Jonathan Harrison, "Kant's Examples of the First Formulation of the Categorical Imperative," in *Kant, A Collection of Critical Essays*, ed. Robert Paul Wolff (Garden City, NY: Doubleday & Co., Inc., 1967), pp. 228–45. See also in the same work the reply by J. Kemp and the counterreply by J. Harrison, both of which focus on the meaning of "is willing."
76. Feldman, *Introductory Ethics*, pp. 123–28; Robert Paul Wolff, *The Autonomy of Reason* (New York: Harper Torch Books, 1973), p. 175.
77. For example, J. B. Mabbott, *The State and the Citizen* (London: Arrow, 1958), pp. 57–58.
78. Feldman, *Introductory Ethics*, pp. 116–17.
79. For example, Richard M. Hare, *Freedom and Reason* (New York: Oxford University Press, 1965), who uses Kant's first formulation (p. 34), defends himself against the example of the "fanatic" in this way.
80. Ibid., pp. 30–31.
81. Ibid., p. 160; see also pp. 160–62.
82. Kant, *Metaphysical Elements of Justice*, p. 93.
83. Steven Greenhouse, "Hundreds of Fast-Food Workers Striking for Higher Wages are Arrested," *New York Times*, September 4, 2014.

84. Paul Korn, "Fast Food Workers Seek Justice, Respect, and a Living Wage to Lift Them Out of Poverty," *Huffington Post*, September 9, 2013, http://www.huffingtonpost.com/pearl-korn/fast-food-workers-seek-ju_b_3876009.html.

85. Josh Sanburn, "Fast Food Strikes: Unable to Unionize, Workers Borrow Tactics from 'Occupy,'" July 30, 2013.

86. Catherine Ruetschlin, *Fast Food Failure: How CEO-to-Worker Pay Disparity Undermines the Industry and the Overall Economy* (New York: Demos, 2014).

87. Jordan Weissmann, "More Than a Quarter of Fast-Food Workers Are Raising a Child," *Atlantic*, August 6, 2013.

88. Sylvia Allegretto, Marc Doussard, Dave Graham-Squire, Ken Jacobs, Dan Thompson, and Jeremy Thompson, "Fast Food, Poverty Wages: The Public Cost of Low-Wage Jobs in the Fast-Food Industry," UC Berkeley Labor Center, October 15, 2013, accessed August 3, 2015, http://laborcenter.berkeley.edu/fast-food-poverty-wages-the-public-cost-of-low-wage-jobs-in-the-fast-food-industry/.

89. Kevin Conlon, "McDonald's on Employee Resources Site: Not Lovin' it," *CNN*, December 26, 2013, http://www.cnn.com/2013/12/25/living/mcdonalds-employee-site.

90. Ibid.

91. R. Ghiselli and J. Ma, "The Minimum Wage, A Competitive Wage and the Price of a Burger: Can Competitive Wages Be Offered in Limited-Service Restaurants?," *Journal of Food Service Business Research*, 19(2).

92. William Finnegan, "Fast-Food Workers and a New Form of Labor Activism," *New Yorker*, September 15, 2014.

93. Ibid.

94. Gilda Valdez, "LA's Fast Food Workers Demanding Justice," *LA Progressive*, n.d., accessed August 1, 2014, http://www.laprogressive.com/fast-food-workers-demanding-justice.

95. Susan Brooks Thistlewaite, "Demand Justice for Fast Food Workers," *OnFaith*, September 2013, https://www.onfaith.co/onfaith/2014/09/01/labor-day-strikes-by-fast-food-workers-would-you-like-some-justice-with-those-fries/11523.

96. "Fast Food Workers Striking across America," *Jobs with Justice*, December 5, 2013, http://www.jwj.org/fast-food-workers-striking-across-america.

97. Ruetschlin, *Fast Food Failure*.

98. "Unequal Wages Are an Injustice," *Brownsville Herald*, July 25, 2014.

99. John Rawls, "Justice as Fairness," *Philosophical Review* 67 (1958): 164–94; R. M. Hare, "Justice and Equality," in *Justice and Economic Distribution*, ed. John Arthur and Willian H. Shaw (n.p.: Prentice Hall, 1991), p. 119.

100. Rawls, *A Theory of Justice*, pp. 3–4.

101. See, for example, Rawls, *A Theory of Justice*, p. 542, and Joel Feinberg, "Rawls and Intuitionism," pp. 114–16 in *Reading Rawls*, ed. Norman Daniels (New York: Basic Books, Inc., Publishers, n.d.), pp. 108–24; and T. M. Scanlon, "Rawls' Theory of Justice," *University of Pennsylvania Law Review* 121 (1973): 1010–69.

102. See, for example, Vlastos, "Justice and Equality."

103. Rawls, *A Theory of Justice*, pp. 126–30.

104. William K. Frankena, "The Concept of Social Justice," in *Social Justice*, ed. Brandt, pp. 1–29; C. Perelman, *The Idea of Justice and the Problem of Argument* (New York: Humanities Press, Inc., 1963), p. 16.

105. Feinberg, *Social Philosophy*, pp. 100–102; Perelman, *The Idea of Justice*, p. 16.

106. Christopher Ake, "Justice as Equality," *Philosophy and Public Affairs* 5, no. 1 (Fall 1975): 69–89.

107. Morton Deutsch, "Egalitarianism in the Laboratory and at Work," in *Social Justice in Human Relations*, vol. 1, ed. Melvin J. Lerner and Riel Vermunt (New York: Plenum Publishing Corporation, 1991); Morton Deutsch, "Equity, Equality, and Need: What Determines Which Value Will Be Used as the Basis of Distributive Justice?" *Journal of Social Issues* 31 (1975): 221–79.

108. K. Leung and M. H. Bond, "How Chinese and Americans Reward Task-Related Contributions: A Preliminary Study," *Psychologia* 25 (1982): 32–39; K. Leung and M. H. Bond, "The Impact of Cultural Collectivism on Reward Allocation," *Journal of Personality and Social Psychology* 47 (1984): 793–804; Kwok Leung and Saburo Iwawaki, "Cultural Collectivism and Distributive Behavior," *Journal of Cross-Cultural Psychology* 19, no. 1 (March 1988): 35–49.

109. Bernard Williams, "The Idea of Equality," in *Philosophy and Society*, 2nd ser., ed. Laslett and Runciman (London: Blackwell, 1962), pp. 110–31.

110. Feinberg, *Social Philosophy*, pp. 109–11.

111. However, the evidence does not seem to support this view. See Lane Kenworthy, *In Search of National Economic Success* (Thousand Oaks, CA: Sage Publications, 1995), who shows that societies with greater degrees of equality seem to be more productive than others. See also Deutsch, "Egalitarianism in the Laboratory" for evidence that even in small work groups equality does not seem to result in lowered productivity.

112. See Bowie, *Towards a New Theory*, pp. 60–64.

113. See D. D. Raphael, "Equality and Equity," *Philosophy* 21 (1946): 118–32. See also Bowie, *Towards a New Theory*, pp. 64–65.

114. See Francis X. Sutton, Seymour E. Harris, Carl Kaysen, and James Tobin, *The American Business Creed* (Cambridge, MA: Harvard University Press, 1956), pp. 276–78; the classic source is Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. Talcott Parsons (London: Unwin Hyman, 1930). See also Perry Miller, *The New England Mind: From Colony to Province* (Cambridge, MA: Harvard University Press, 1953), pp. 40–52.

115. See A. Whitner Griswold, "Three Puritans on Prosperity," *New England Quarterly* 7 (September 1934): 475–88. See also Daniel T. Rodgers, *The Work Ethic in Industrial America* (Chicago: The University of Chicago Press, 1978).

116. John A. Ryan, *Distributive Justice*, 3rd ed. (New York: The Macmillan Co., 1941), pp. 182–83; Nicholas Rescher, *Distributive Justice* (New York: The Bobbs-Merrill Co., Inc., 1966), pp. 77–78.

117. Rescher, *Distributive Justice*, pp. 78–79; Ryan, *Distributive Justice*, pp. 183–85.

118. Rescher, *Distributive Justice*, pp. 80–81; Ryan, *Distributive Justice*, pp. 186–87.

119. See Manuel Velasquez, "Why Ethics Matters," *Business Ethics Quarterly* 6, no. 2 (April 1996): 211.

120. Ibid.

121. See Leung and Bond, "How Chinese and Americans" and Leung and Iwawaki, "The Impact of Cultural Collectivism."

122. Business and Human Rights Resource Center, "US Senate investigates irregular payments from ExxonMobil, Amerada Hess & Marathon Oil to president of Equatorial Guinea & his relatives, https://business-humanrights.org/en/us-senate-investigates-irregular-payments-from-exxonmobil-amerada-hess-marathon-oil-to-president-of-equatorial-guinea-his-relatives; Timothy L. O'Brien, "U.S. Investigates Payments to Equatorial Guinea," *New York Times*, August 6, 2004.

123. Karl Marx, *Critique of the Gotha Program* (London: Lawrence and Wishart, Ltd., 1938), pp. 14 and 107; Louis Blanc, *L'Organization du Travail* (Paris: Au bureau de la Socieété de l'industrie fraternelle, 1850), cited in D. O. Wagner, *Social Reformers* (New York: The

Macmillan Co., 1946), p. 218; Nikolai Lenin, "Marxism on the State," pp. 76–77; on the question of whether Marx had a theory of distributive justice, see Ziyad I. Husami, "Marx on Distributive Justice," in *Marx, Justice, and History*, ed. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton, NJ: Princeton University Press, 1980), pp. 42–79.

124. Marx, *Critique of the Gotha Program*. See also John McMurtry, *The Structure of Marx's World View* (Princeton, NJ: Princeton University Press, 1978), chap. I.

125. Bowie, *Towards a New Theory*, pp. 92–93. See also Norman Daniels, "Meritocracy," in Arthur and Shaw, eds., *Justice and Economic Distribution*, pp. 167–78. For an interesting examination of international data that suggest that equality does not undermine work incentive, see Kenworthy, *In Search of National Economic Success*, pp. 48–49.

126. Bowie, *Towards a New Theory*, pp. 96–98.

127. Nozick, *Anarchy, State, and Utopia*, p. 160.

128. Rawls, *A Theory of Justice*, pp. 65–75.

129. Ibid., pp. 577–87.

130. Ibid., pp. 298–303.

131. Ibid., p. 61.

132. Ibid., pp. 108–14 and 342–50.

133. Ibid., pp. 75–83 and 274–84.

134. Ibid., pp. 83–90.

135. Ibid., pp. 17–22.

136. Ibid., pp. 136–42.

137. Ibid., pp. 46–53.

138. The core of the argument is at Rawls, *A Theory of Justice*, pp. 175–83, but parts may also be found at pp. 205–9, 325–32, 333–50, 541–48.

139. See the articles collected in Daniels, ed. *Reading Rawls*. See also Brian Barry, *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1973); and Robert Paul Wolff, *Understanding Rawls* (Princeton, NJ: Princeton University Press, 1977).

140. Rawls, *A Theory of Justice*, pp. 105–8.

141. Ibid., p. 276.

142. On the relation between justice and due process, see David Resnick, "Due Process and Procedural Justice," in *Due Process*, ed. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1977), pp. 302–10.

143. On the relation between justice and consistency in the application of rules, see Perelman, *The Idea of Justice* , pp. 36–45; proportionality in punishment is discussed in John Kleinig, *Punishment and Desert* (The Hague: Martinus Nijoff, 1973), pp. 110–133; and C. W. K. Mundle, "Punishment and Desert," *Philosophical Quarterly* 4 (1954): 216–28.

144. N. Lyons, "Two Perspectives: On Self, Relationships and Morality," *Harvard Educational Review* 53, no. 2 (1983): 136.

145. Lawrence A. Blum, *Moral Perception and Particularity* (Cambridge: Cambridge University Press, 1994), p. 12; Robin S. Dillon, "Care and Respect," in *Explorations in Feminist Ethics: Theory and Practice*, ed. Eve Browning Cole and Susan Coultrap-McQuin (Bloomington, IN: Indiana University Press, 1992), pp. 69–81. See also Mary C. Raugust, "Feminist Ethics and Workplace Values" in Browning Cole and Coultrap-McQuin, *Exploration in Feminist Ethics*, p. 127.

146. This account of the Malden Mills incident is based on stories in *Parade Magazine*, September 8, 1996; *Boston Globe*, December 5, 1995, December 13, 1995, January 12, 1996, and January 16, 1996; *Sun* (Lowell, MA), December 17, 1995 and November 5, 1995; *New York Times*, July 24, 1994, December 16, 1995, and July 14, 1996; and Penelope Washbourn, "'When All Is Moral Chaos, This Is the Time for You to Be a Mensche': Reflections on Malden Mills for the Teaching of Business Ethics" (unpublished paper presented at The Society for Business Ethics Annual Meeting, August 10, 1996, Quebec City, Quebec).

147. See, for example, John Cottingham, "Ethics and Impartiality," *Philosophical Studies* 43 (1983): 90–91.

148. See William Godwin in K. Codell Carter, ed., *Enquiry Concerning Political Justice* (Oxford: Clarendon House, 1971), p. 71; and Singer, *Practical Ethics*, pp. 10–12, 21.

149. See Blum, *Moral Perception and Particularity*; Lawrence Blum, *Friendship, Altruism, and Morality* (London: Routledge & Kegan Paul, 1980); and John Kekes, "Morality and Impartiality," *American Philosophical Quarterly* 18 (October 1981).

150. Nell Noddings, *Starting at Home: Caring and Social Policy* (Berkeley, CA: University of California Press, 2002).

151. See the essays collected in Shlomo Avineri and Avner de-Shalit, eds., *Individualism and Communitarianism* (Oxford: Oxford University Press, 1992).

152. Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982) p. 150.

153. See Ibid., p. 179; Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press), pp. 204–5.

154. Nell Noddings, *Caring* (Berkeley, CA: University of California Press, 1984), distinguishes between caring for and caring about on pp. 21–22; she refers to what I have called "caring after" as "institutional" caring on pp. 25–26.

155. See Sara Ruddick, *Maternal Thinking* (New York: Ballantine Books, 1989).

156. Lawrence Walker, "Sex Differences in the Development of Moral Reasoning: A Critical Review," and Catherine G. Greeno and Eleanor E. Maccoby, "How Different is the 'Different Voice'?" both in Mary Jeanne Larrabee, ed., *An Ethic of Care: Feminist and Interdisciplinary Perspectives* (New York: Routledge, 1993). For some evidence of some differences between men and women in how they deal with moral dilemmas, see T. White, "Business Ethics and Carol Gilligan's 'Two Voices,'" *Business Ethics Quarterly* 2, no. 1 (1992): 51–59. White provides some highly provocative suggestions about the implications of an ethic of care to business ethics.

157. See Joan C. Tronto, "Beyond Gender Difference to a Theory of Care," *Signs* (Summer 1987): 644–63; and Debra Shogan, *Care and Moral Motivation* (Toronto: The Ontario Institute for Studies in Education Press, 1988).

158. See Alan Gewirth, "Ethical Universalism and Particularism," *Journal of Philosophy* 85 (June 1988); John Cottingham, "Partiality, Favoritism, and Morality," *Philosophical Quarterly* 36, no. 144 (1986).

159. This balancing of caring for self versus caring for others is a central theme in Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, 1982).

160. *Securities and Exchange Commission v. Joseph P. Nacchio, et al.*, in the U.S. District Court for the District of Colorado, civil action no. 05-MK-480 (OES), March 15, 2005, p. 44; accessed August 15, 2015, https://www.sec.gov/litigation/litreleases/lr19136.htm.

161. U.S. Securities and Exchange Commission, "SEC Charges Former Qwest CEO Joseph Nacchio and Eight Others with Massive Financial Disclosure Fraud," news release, March 15, 2005, https://www.sec.gov/news/press/2005-36.htm.

162. Kris Hudson, "Nacchio an Icon of Guts, Hubris," *Denver Post*, March 16, 2005.

163. Ibid.

164. Kris Hudson and Tom McGhee, "12 Qwest ex-execs sued—Nacchio among Defendants; 'Massive Financial Fraud' alleged—'Culture of Fear' detailed," *Denver Post*, March 16, 2005.

165. Robert H. Rosen, *Just Enough Anxiety: The Hidden Driver of Business Success* (New York: Penguin Group, 2008), pp. 112–13.

166. Ibid.

167. MacIntyre, *After Virtue*, p. 204.

168. See Edmund L. Pincoffs, *Quandaries and Virtues* (Lawrence, KS: University Press of Kansas, 1986).

169. Ibid.

170. Ibid.

171. Ibid.

172. Ibid.

173. Gilbert Harmon, "Moral Philosophy Meets Social Psychology: Virtue Ethics and the Fundamental Attribution Error," *Proceedings of the Aristotelian Society*, New Series, vol. 99 (1999), pp. 315–31. See also John Doris, *Lack of Character: Personality and Moral Behavior* (Cambridge: Cambridge University Press, 2002); P. Railton, "Made in the Shade: Moral Compatibilism and the Aims of Moral theory," *Canadian Journal of Philosophy* 25, supp. 1 (1995).

174. J. M. Darley and C. D. Batson, "From Jerusalem to Jerico: A Study of Situational and Dispositional Variables in Helping Behavior," *Journal of Personality and Social Psychology* 27, no. 1 (1973): 100–108.

175. Craig Haney, Curtis Banks, and Philip Zimbardo, "Interpersonal Dynamics in a Simulated Prison," *Interpersonal Journal of Criminology and Penology* 1 (1973): 69–97. Additional articles and materials on Zimbardo's prison experiment may be found at http://www.prisonexp.org/psychology/42.

176. Daniel Lapsley and Darcia Narvaez, "A Social-Cognitive Approach to the Moral Personality," in *Moral Development, Self and Identity*, ed. D. K. Lapsley and D. Narvaez (Mahwah, NJ: Erlbaum, 2004), pp. 189–212.

177. Scott Reynolds, "A Neurocognitive Model of the Ethical Decision-Making Process: Implications for Study and Practice," *Journal of Applied Psychology* 91, no. 4 (2006): 737–48. For a review of the large literature on "two system" models of reasoning, see Jonathan St. B. T. Evans, "Dual-Processing Accounts of Reasoning, Judgment, and Social Cognition," *Annual Review of Psychology* 59 (2008): 255–78; J. A. Bargh and T. L. Chartrand, "The Unbearable Automaticity of Being," *American Psychologist* 54 (1999): 462–79; J. A. Bargh and E. L. Williams, "The Automaticity of Social Life," *Current Directions in Psychological Science* 15 (2006): 1–4.

178. Eleanor Rosch, "Natural Categories," *Cognitive Psychology* 4 (1973): 328–50; Eleanor Rosch, "Prototype Classification and Logical Classification: The Two Systems," in *New Trends in Conceptual Representation: Challenges to Piaget's Theory?*, ed. E. K. Scholnick (Hillsdale, NJ: Lawrence Erlbaum Associates, Publishers, 1983), pp. 73–86; Eleanor Rosch, "Principles of Categorization," in *Cognition and Categorization*, ed. E. Rosch and B. B. Lloyd (Hillsdale, NJ: Lawrence Erlbaum Associates, Publishers, 1978), pp. 27–48; G. Lakoff, *Women, Fire and Dangerous Things: What Categories Reveal about the Mind* (Chicago: Chicago University Press, 1987); U. Hahn and M. Ramscar, *Similarity and Categorization* (New York: Oxford University Press, 2001); Darcia Narvaez and Tonia Bock, "Moral Schemas and Tacit Judgment or How the Defining Issues Test is Supported by Cognitive Science," *Journal of Moral Education* 31, no. 3 (2002): 297–314.

179. F. Schauer, "Precedent," *Stanford Law Review* 39 (1987): 571–605.

180. Agnar Aamodt and Enric Plaza, "Case-Based Reasoning: Foundational Issues, Methodological Variations, and System Approaches," *Artificial Intelligence Communications* 7, no. 1 (1994): 39–52.

181. Albert R. Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley, CA: University of California Press, 1988).

182. The term *intuition* is used by many psychologists to include not only the kind of unmediated knowledge we are talking about here, but to also include any kind of unconsciously acquired knowledge including the knowledge acquired through the use of prototypes. Here, we are using the term *intuition* in a narrow sense that excludes the kind of knowledge we acquire through the use of prototypes.

183. Jonathan Haidt, "The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment," *Psychological Review* 108 (2001): 814–34.

184. See James Rachaels and Peter Singer.

## Chapter 3

1. See World Bank, *Globalization, Growth and Poverty* (New York: Oxford University Press, 2002), http://www.econ.worldbank.org/prr/globalization/text-2857.

2. Michael Mandel, "Economists against the plan" © 2008, Published in Bloomberg Press.

3. See "Economic Systems," *The New Encyclopedia Britannica*, vol. 17 (Chicago, IL: Encyclopedia Britannica, Inc., 1993), p. 913.

4. "Financing Assistance to Facilitate the Restructuring of Auto Manufacturers to Attain Financial Viability", © 2008 by The White House Office of the Press Secretary.

5. See Martin Schnitzer, *Comparative Economic Systems*, 8th ed. (Cincinnati, OH: South-Western College Publishing, 2000), pp. 113ff.

6. Ibid., pp. 21ff.

7. Joseph Schumpeter, *A History of Economic Analysis* (New York: Oxford University Press, 1954), pp. 370–72 and 397–99. For a treatment of twentieth-century controversies, see Otis Graham, *Toward a Planned Society: From Roosevelt to Nixon* (New York: Oxford University Press, 1976).

8. Milton Friedman, *Capitalism and Freedom* (Chicago, IL: The University of Chicago Press, 1962), p. 14; see also John Chamberlain, *The Roots of Capitalism* (New York: D. Van Nostrand Company, 1959), pp. 7–42.

9. For a useful introduction to the notion of an ideology and an introduction to key ideologies, see Andrew Heywood, *Political Ideologies: An Introduction*, 3rd ed. (New York: MacMillan, 2003).

10. George C. Lodge, *Perestroika for America: Restructuring Business-Government Relations for World Competitiveness* (Boston, MA: Harvard Business School Press, 1990), pp. 15–17.

11. Judy Temes, "Giant Sucking Sound Heard in Queens Factory: Moving to Mexico Would Let Swingline Cut Wages by 85%; 450 Would Lose Jobs," *Crain's New York Business*, May 26, 1997.

12. Quoted in John MacArthur, *The Selling of "Free Trade": NAFTA, Washington, and the Subversion of American Democracy* (Berkeley, CA: University of California Press, 2001), p. 54.

13. "The Great Bailout Brouhaha, Free Market Economists Weigh in on Paulson's Plan," Reason Magazine, September 25, 2008.

14. Elizabeth Becker, "U.S. Corn Subsidies Said to Damage Mexico," *New York Times*, August 27, 2003.

15. Jim Toedtman and Letta Taylor, "Jobs Move Again: Factory Work Shifted to Mexico after NAFTA Now Goes to Asia," *Newsday*, December 28, 2003.

16. AVERT, "AIDS, Drug Prices and Generic Drugs," accessed June 10, 2015, http://www.avert.org/generic.htm.

17. Joseph A. DiMasi, Ronald W. Hansen, and Henry G. Grabowski, "The Price of Innovation: New Estimates of Drug Development Costs," *Journal of Health Economics* 22 (2003): 151–85.

18. World Trade Organization, "Declaration on the TRIPS Agreement and Public Health," November 20, 2001, https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.pdf.

19. World Trade Organization, “Agreement on Trade-Related Aspects of Intellectual Property Rights,” January 1, 1995, https://www.wto.org/english/docs_e/legal_e/27-trips.pdf.

20. PR Newswire, “AIDS Healthcare Foundation ‘Horrified’ as Abbott Blacklists Thailand from New Drugs,” news release, March 13, 2007, http://www.prnewswire.com/news-releases/aids-health-care-foundation-horrified-as-abbott-blacklists-thailand-from-new-drugs-51617797.html.

21. Associated Press, March 22, 2007.

22. Nicholas Zamiska, “Abbott Escalates Thai Patent Rift: Firm Pulls Plans to Offer New Drugs in Spat with Regime,” *Wall Street Journal*, March 14, 2007.

23. The literature on Locke is extensive; see Richard I. Aaron, *John Locke*, 3rd ed. (London: Oxford University Press, 1971), pp. 352–376 for bibliographic materials.

24. John Locke, *Two Treatises of Civil Government* (London: George Routledge and Sons, 1887), pp. 192–194.

25. Ibid., p. 240.

26. Ibid., p. 204.

27. Ibid., p. 256.

28. Ibid., p. 258.

29. C. B. Macpherson, however, argues that Locke was attempting to establish the morality and rationality of a capitalist system; see his *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: The Clarendon Press, 1962).

30. Friedrich A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944); Murray N. Rothbard, *For a New Liberty* (New York: Collier Books, 1978); Gottfried Dietz, *In Defense of Property* (Baltimore: The Johns Hopkins Press, 1971); Eric Mack, “Liberty and Justice,” in *Justice and Economic Distribution*, ed. John Arthur and William Shaw (Englewood Cliffs, NJ: Prentice Hall, 1978), pp. 183–93; John Hospers, *Libertarianism* (Los Angeles: Nash, 1971); T. R. Machan, *Human Rights and Human Liberties* (Chicago: Nelson-Hall, 1975).

31. Zamiska, “Abbott Escalates Thai Patent Rift.”

32. Nicholas Zamiska, “Thai Move to Trim Drug Costs Highlights Growing Patent Rift,” *Wall Street Journal*, January 30, 2007.

33. The Ministry of Public Health and the National Health Security Office, Thailand, “Facts and Evidences on the Ten Burning Issues Related to the Government Use of Patents on Three Patented Essential Drugs in Thailand: Document to Support Strengthening of Social Wisdom on the Issue of Drug Patent,” February 2007.

34. Cynthia M. Ho, “Unveiling Competing Patent Perspectives,” *Houston Law Review* 3 (2009): 1047–114.

35. Arthur M. Okun, *Equality and Efficiency* (Washington, DC: The Brookings Institution, 1975), pp. 1–4.

36. Locke, *Two Treatises*, p. 311; for a fuller treatment of Locke’s views on the law of nature, see John Locke *Essays on the Law of Nature*, ed. W. von Leyden (Oxford: The Clarendon Press, 1954).

37. William K. Frankena, *Ethics*, 2nd ed. (Englewood Cliffs, NJ: Prentice Hall, 1973), pp. 102–5.

38. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, Inc., 1974).

39. For versions of this argument, see Lindblom, *Politics and Markets*, pp. 45–51.

40. Edward N. Wolff, “Recent Trends in Household Wealth in the United States: Rising Debt and the Middle-Class Squeeze—An Update to 2007” (working paper, Levy Economics Institute of Bard College, Annandale-on-Hudson, NY, March 2010), table 2 and table 4, http://www.levyinstitute.org/pubs/wp_589.pdf.

41. U.S. Census Bureau, 2008 American Community Survey 1–Year Estimates, Table B19081, “Mean Household Income of Quintiles–Universe: Households,” September 2009.

42. U.S. Bureau of the Census, Current Population Survey 2014, Annual Social and Economic Supplements, Table 2. Povery Status of People by Family Relationship, Race, and Hispanic Origin: 1959–2013;, accessed June 10, 2015, at http://www.census.gov/hhes/www/poverty/data/historical/people.html.

43. U.S. Census Bureau, Current Population Reports 2014, Annual Social and Economic Supplements, Table H-3 Mean Household Income Received by Each Fifth and Top 5 Percent, All Races: 1967–2013, accessed June 10, 2015, http://www.census.gov/hhes/www/income/data/historical/household.

44. Alisha Coleman-Jensen, Christian Gregory, and Anita Singh, *Household Food Security in the United States in 2013*, Economic Research Report No. 173 (ERR-173) (Washington, DC: U.S. Department of Agriculture, Economic Research Service, 2014).

45. Jessica C. Smith and Carla Medalia, *Health Insurance Coverage in the United States: 2013—Current Population Reports*, P60–250 (Washington, DC: U.S. Government Printing Office, 2014), p. 2.

46. Meghan Henry, Alvaro Cortes, and Sean Morris, *The 2013 Annual Homeless Assessment Report (AHAR) to Congress* (n.p.: The U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 2013).

47. Edward N. Wolff, “Household Wealth Trends in the United States, 1962–2013: What Happened over the Great Recession” (working paper 20733 in the National Bureau of Economic Research Working Paper Series, December 2014), accessed June 2, 2015, http://www.nber.org/papers/w20733.

48. See Patricia Werhane, *Adam Smith and His Legacy for Modern Capitalism* (New York: Oxford University Press, 1991); S. Hollander, *The Economics of Adam Smith* (Toronto: University of Toronto Press, 1973).

49. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* [1776] (New York: The Modern Library, n.d.), p. 423.

50. Ibid., p. 55.

51. Ibid., p. 14.

52. Ibid., p. 651.

53. Ibid., pp. 55–58.

54. Friedrich A. Hayek, “The Price System as a Mechanism for Using Knowledge,” and Ludwig von Mises, “Economic Calculation in Socialism,” both in Morris Bornstein, ed., *Comparative Economic Systems: Models and Cases* (Homewood, IL: Richard D. Irwin, Inc., 1965), pp. 39–50 and 79–85.

55. Thomas Aquinas, *Summa Theologica*, II–II, q. 66, a. 2.

56. Elisabeth M. Landes and Richard A. Posner, “The Economics of the Baby Shortage,” *Journal of Legal Studies* 7, no. 2 (1978): 323–48.

57. Dave Hoffman, “The Economics of the Baby Shortage: A Horrifying Counter-Example,” *Concurring Opinions*, September 13, 2013, http://concurringopinions.com/archives/2013/09/the-economics-of-the-baby-shortage-a-horrifying-counter-example.html.

58. Afif Sarhan, “Helpless Iraqis Sell Their Organs,” *QatarLiving.com*, October 17, 2009, http://www.qatarliving.com/node/754107.

59. Larry Rohter, “The Organ Trade: A Global Black Market,” *New York Times*, May 23, 2004.

60. “The International Organ Trafficking Market,” *National Public Radio*, July 30, 2009, http://www.npr.org/templates/story/story.php?storyId=111379908.

61. Larry Smith, “Does the War on Drugs Still Make Sense?,” *New Black Magazine*, http://www.thenewblackmagazine.com/view.aspx?index=638.

62. For example, David Hume, Essay XLI, *An Enquiry Concerning the Principles of Morals*, part II, pp. 423–29, in *Essays, Literary, Moral, and Political*, by David Hume, Esq. (New York: Ward, Lock, & Co., Warwick House, n.d.).
63. These criticisms can be found in any standard economic textbook, but see especially Frank J. B. Stilwell, *Normative Economics* (Elmsford, NY: Pergamon Press, 1975).
64. But see Werhane, *Adam Smith and His Legacy*, who argues that Smith did not hold that individuals are motivated only by self-interest. Instead, she argues, Smith's views in *The Wealth of Nations* must be supplemented with his views on "sympathy," "approbation," "propriety," "virtue," and "sentiment," which are spelled out in his earlier treatise, *Theory of the Moral Sentiments*.
65. See, for example, J. Philip Wogaman, *The Great Economic Debate: An Ethical Analysis* (Philadelphia: The Westminster Press, 1977), pp. 61 and 85.
66. See Vaclav Holesovsky, *Economic Systems, Analysis, and Comparison* (New York: McGraw-Hill Book Company, 1977), chaps. 9 and 10.
67. Oskar Lange, "On the Economic Theory of Socialism," in *Comparative Economic Systems*, ed. Bornstein (Homewood, IL: Richard D. Irwin, Inc. 1985), pp. 86–94.
68. Charles Darwin, *The Origin of Species by Means of Natural Selection* (New York: D. Appleton and Company, 1883), p. 63.
69. Herbert Spencer, *Social Statics, Abridged and Revised* (New York: D. Appleton and Company, 1893), pp. 204–5; for an account of Spencerism in America, see Richard Hofstadter, *Social Darwinism in American Thought* (Boston: Beacon Press, 1955).
70. Smith, *The Wealth of Nations*, p. 424.
71. David Ricardo, *On the Principles of Political Economy and Taxation* (Georgetown, DC: Joseph Milligan, 1819), pp. 115–16.
72. Ibid.
73. J. Michael Finger and Philip Schuler, eds., *Poor People's Knowledge: Promoting Intellectual Property in Developing Countries* (Washington, DC: The World Bank, 2004), p. 4.
74. For these and other illustrations cited by Marx, see his *Capital*, vol. I, Samuel Moore and Edward Aveling, trans. (Chicago, IL: Charles H. Kerr & Company, 1906), pp. 268–82.
75. Karl Marx, "Critique of the Gotha Program," in *Marx/Engels Selected Works*, vol. 3 (Moscow: Progress Publishers, 1970).
76. Ibid., p. 17.
77. On this point, see Norman Geras, "The Controversy about Marx and Justice," in A. Callinicos, ed., *Marxist Theory* (Oxford: Oxford University Press, 1989). Geras surveys the scholarship on Marx's (negative) attitude toward the concept of justice, and on whether he thought that capitalism's treatment of workers was nevertheless in some sense unjust. Here I adopt Geras's view that although Marx criticizes and disowns moral concepts, including the concept of justice, as mere ideological constructs, he nevertheless makes critical normative judgments, both explicitly and implicitly, that amount to judgments about the injustice of capitalism's distribution of benefits and burdens, and the justice of a future communist regime's distribution of these. For an opposing view, however, see Allen Wood, "The Marxian Critique of Justice," *Philosophy and Public Affairs* 1, no. 3 (Spring 1972): 244–82.
78. Karl Marx, "Estranged Labor," in Dirk Struik, ed., *The Economic and Philosophic Manuscripts of 1844*, Martin Milligan, trans. (New York: International Publishers, 1964), pp. 106–19.
79. Ibid., pp. 110–11.
80. Ibid., pp. 108–9.
81. Ibid., p. 116.
82. Karl Marx and Friedrich Engels, *Manifesto of the Communist Party* (New York: International Publishers, 1948), p. 9.
83. Marx, "Estranged Labor," p. 150.
84. Ibid., p. 150.
85. Marx and Engels, *Manifesto*, pp. 37–38.
86. "Press release of Global March on World Cup Campaign," Tuesday, 01, 2002, © Global March International Secretariat.
87. Human Rights Watch, *Fields of Peril: Child Labor in US Agriculture* (New York: Human Rights Watch, 2010), https://www.hrw.org/sites/default/files/reports/crd0510_brochure_low_0.pdf; International Labor Rights Forum.
88. Human Rights Watch, Teens of the Tobacco Fields, December 9, 2015, https://www.hrw.org/report/2015/12/09/teens-tobacco-fields/child-labor-united-states-tobacco-farming
89. The classic expression of this distinction is Karl Marx, *A Contribution to the Critique of Political Economy*, ed. N. I. Stone (New York: The International Library Publishing Co., 1904), pp. 11–13.
90. Karl Marx, *The Poverty of Philosophy*, trans. The Institute of Marxism Leninism (Moscow: Progress Publishers, 1955), chap. 2, "Second Observation."
91. Marx and Engels, *Manifesto*; see also Karl Marx, *The German Ideology* (Amherst, NY: Prometheus Books, 1998 [1845]), part I: Feuerbach, s. C, "The Real Basis of Ideology."
92. Marx, *The German Ideology*.
93. Marx, *A Contribution to the Critique*, p. 12.
94. Marx, *Capital*, vol. I, pp. 681–89.
95. Marx, *Capital*, vol. II, pp. 86–87.
96. Marx, *Capital*, vol. I, pp. 689ff.
97. Marx and Engels, *Manifesto*, p. 30.
98. Marx and Engels, p. 48.
99. Marx and Engels, p. 49.
100. Ibid.
101. Ibid.
102. Marx, *The German Ideology*.
103. Irving Kristol, "A Capitalist Conception of Justice," in *Ethics, Free Enterprise and Public Policy*, ed. Richard T. DeGeorge and Joseph A. Pickler (New York: Oxford University Press, 1978), p. 65; see also H. B. Acton, *The Morals of Markets* (London: Longman Group Limited, 1971), pp. 68–72.
104. See, for example, the arguments in John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 37–43; and John Rawls, *A Theory of Justice* (Boston, MA: Harvard University Press, 1971).
105. See, for example, Richard Rorty, "For a More Banal Politics," *Harper's*, May 1992, pp. 16–21.
106. See George C. Lodge, *Perestroika for America: Restructuring Business-Government Relations for World Competitiveness* (Cambridge, MA: Harvard Business School Press, 1990).
107. See, for example, Paul Samuelson, *Economics*, 9th ed. (New York: McGraw-Hill Book Company, 1973), p. 845.
108. See U.S. Central Intelligence Agency, "Guide to Country Comparisons," *The World Factbook*, 2010, accessed June 20, 2010 at https://www.cia.gov/library/publications/the-world-factbook/rankorder/rankorderguide.html.
109. Paul Steidlmeier, "The Moral Legitimacy of Intellectual Property Claims: American Business and Developing Country Perspectives," *Journal of Business Ethics* 12, no. 2 (1993): 161–62.
110. More exactly, patents on manufactured articles and processes expire after 20 years, whereas design patents expire after 14

years. Patents are granted only when the invention is novel, useful, and nonobvious.

111. See Francis Fukuyama, *The End of History and the Last Man* (New York: The Free Press, 1992).

## Chapter 4

1. Sharen D. Knight, ed., *Concerned Investors Guide*, NYSE Volume 1983 (Arlington, VA: Resource Publishing Group, Inc., 1983), pp. 24–25.
2. Ralph Nader and Mark J. Green, "Crime in the Suites," *New Republic*, April 29, 1972, pp. 17–21.
3. Department of Justice Office of Public Affairs, "Nine Automobile Parts Manufacturers and Two Executives Agree to Plead Guilty to Fixing Prices on Automobile Parts Sold to U.S. Car Manufacturers and Installed in U.S. Cars," news release, September 26, 2013.
4. Department of Justice Office of Public Affairs, "Supreme Court Rejects Apple's Request to Review E-Books Antitrust Conspiracy Findings," news release, March 7, 2016.
5. Department of Justice, "Third Ocean Shipping Executive Pleads Guilty to Price Fixing on Ocean Shipping Services for Cars and Trucks," news release, March 10, 2015, accessed September 5, 2015, http://www.justice.gov/opa/pr/third-ocean-shipping-executive-pleads-guilty-price-fixing-ocean-shipping-services-cars-and.
6. Department of Justice Office of Public Affairs, "Ten Eastern California Real Estate Investors Sentenced for Roles in Bid-Rigging and Mail-Fraud Conspiracies Involving Real Estate Purchased at Public Foreclosure Auctions," news release, September 13, 2016.
7. Vikas Anand, Blake E. Ashforth, and Mahendra Joshi, "Business as Usual: The Acceptance and Perpetuation of Corruption in Organizations," *Academy of Management Executive* 18, no. 2 (2004): 39–53.
8. The elementary account that follows can be found in any standard economics textbook. See, for example, Paul A. Samuelson, *Economics*, 11th ed. (New York: McGraw-Hill Book Company, 1980), pp. 52–62.
9. Daniel B. Suits, "Agriculture," in *The Structure of American Industry*, 5th ed., ed. Walter Adams (New York: Macmillan Inc., 1977), pp. 1–39.
10. You may recall that one of the major criticisms leveled at the capitalist conception of justice is that it says people should be paid the exact value of the things they contribute, yet it gives no criterion for determining the "value" of a thing. Because different people place different values on things, this indeterminacy seems to make the capitalist conception of justice hopelessly vague: a price that is "just" in terms of the value one person places on a thing may be "unjust" in terms of the value another person places on that same thing. However, the values given to things by perfectly competitive markets are just from every participant's point of view because at the point of equilibrium, all participants (both buyers and sellers) place the same value on commodities and prices converge on this uniquely just value.
11. Russell G. Warren, *Antitrust in Theory and Practice* (Columbus, OH: Grid, Inc., 1975), pp. 58–59.
12. Milton Friedman, *Capitalism and Freedom* (Chicago: The University of Chicago Press, 1962), p. 14.
13. Warren, *Antitrust*, pp. 76–77.
14. It has been argued, however, that a company in which caring flourishes will have a competitive economic advantage over a company in which caring is not present. See Jeanne M. Liedtka, "Feminist Morality and Competitive Reality: A Role for an Ethic of Care?" *Business Ethics Quarterly* 6, no. 2 (April 1996): 179–200.
15. Dean Takahashi, "Why Vista Might Be the Last of Its Kind," *Seattle Times*, December 4, 2006.
16. Again, any standard economics textbook can be consulted for these elementary ideas. See, for example, H. Robert Heller, *The Economic System* (New York: Macmillan Inc., 1972), p. 109.
17. C. W. DeMarco, "Knee Deep in Technique: The Ethics of Monopoly Capital," *Journal of Business Ethics* 31 (2001): 151–64.
18. For an excellent and elementary review of both the theory and empirical evidence on monopoly profits, see Thomas Karier, *Beyond Competition: The Economics of Mergers and Monopoly Power* (New York: M. E. Sharpe, Inc., 1993).
19. Public Citizen's Congress Watch, *The Other Drug War 2003: Drug Companies Deploy an Army of 675 Lobbyists to Protect Profits*, *Public Citizen* (Washington, DC: Public Citizen, 2003), http://www.citizen.org/documents/Other_Drug_War2003.pdf.
20. U.S. Census Bureau, "Quarterly Financial Reports: Manufacturing, Mining, and Selected Service Industries," accessed November 22, 2016, https://www.census.gov/econ/qfr/.
21. Sharon Davis and Mary Palmer, "The True Cost of Your Prescription Drugs!," accessed October 19, 2016, http://www.rense.com/general54/preco.htm.
22. See George J. Stigler, "Monopoly and Oligopoly by Merger," *American Economic Review* 40, no. 2 (Proceedings of the American Economic Association, 1950), pp. 23–34; for a more recent review of the literature on oligopolies, see Karier, *Beyond Competition*.
23. Market share figures and average airline fares are taken from the Bureau of Transportation Statistics, accessed October 21, 2016, http://www.transtats.bts.gov/.
24. U.S. Census Bureau, Concentration Ratios: 2002, May 2006, Table 3. An industry with a four-firm combined share above 80 percent is considered to be highly concentrated.
25. Mintel Market Research Reports, various dates.
26. The numerous studies confirming this relationship are surveyed in Douglas F. Greer, *Industrial Organization and Public Policy*, 2nd ed. (New York: Macmillan, Inc., 1984), pp. 407–14; Greer also critically evaluates the few studies that seem to show no such relationship.
27. Greer, *Industrial Organization*, pp. 416–17.
28. United States Department of Justice, "Micron Executive Agrees to Plead Guilty to Obstructing a Price-Fixing Investigation Involving Computer Memory Chips," news release, December 17, 2003, https://www.justice.gov/archive/atr/public/press_releases/2003/201884.htm; FBI, "Micron Executive Agrees to Plead Guilty to Obstruction Charges in Price-Fixing Investigation," news release, December 17, 2003, https://archives.fbi.gov/archives/news/pressrel/press-releases/icron-executive-agrees-to-plead-guilty-to-obstructing-a-price-fixing-investigation-involving-computer-memory-chips; United States Department of Justice, "Sixth Samsung Executive Agrees to Plead Guilty to Participating in Dram Price-Fixing Cartel," news release, April 19, 2007, https://www.justice.gov/archive/atr/public/press_releases/2007/222770.htm.
29. Anne Szustek, "Hitachi Will Plead Guilty in LCD Price-Fixing Case," *Finding Dulcinea*, March 11, 2009, accessed June 28, 2010, http://www.findingdulcinea.com/news/business/2009/march/Hitachi-Agrees-to-Plead-Guilty-In-LCD-Price-Fixing-Case.html; and Kevin Cho, "LG Display, Sharp Shares Fall on Price-Fixing Fine," *Bloomberg*, November 13, 2008.
30. Rebecca Boone, "Wholesale Grocers, Potato Growers Settle Price-Fixing Lawsuit for $25 M," *Associated Press*, June 22, 2015, http://www.cnsnews.com/news/article/wholesale-grocers-potato-growers-settle-lawsuit-25-m.
31. National Potato Council, *2015 Potato Statistical Yearbook* (Washington, DC: National Potato Council, 2015).
32. Warren, *Antitrust*, pp. 233–35.

33. Newman S. Peery Jr., *Business, Government, & Society: Managing Competitiveness, Ethics, and Social Issues* (Englewood Cliffs, NJ: Prentice Hall, 1995), pp. 400–401.

34. Eastman Kodak Company, Petitioner, v. Image Technical Services, Inc., et al., Supreme Court of the United States (90–1029), 504 U.S. 451 (1992).

35. Malcom Burns, "Predatory Pricing and the Acquisition Costs of Competitors," *Journal of Political Economy* 94 (1986): 266.

36. Quoted in Leslie D. Manns, "Dominance in the Oil Industry: Standard Oil from 1865 to 1911," in *Market Dominance: How Firms Gain, Hold, or Lose It and the Impact on Economic Performance*, ed. David I. Rosenbaum (Westport, CT: Praeger, 1998), p. 11.

37. Walter Adams and James W. Brock, "Tobacco: Predation and Persistent Market Power," in *Market Dominance*, ed. David I. Rosenbaum, pp. 39–53.

38. Siri Schubert and T. Christian Miller, "At Siemens, Bribery Was Just a Line Item," *New York Times*, December 21, 2008.

39. Neil H. Jacoby, Peter Nehemkis, and Richard Fells, *Bribery and Extortion in World Business* (New York: Macmillan Inc., 1977), p. 183.

40. Donald Cressey, *Other People's Money: A Study in the Social Psychology of Embezzlement* (Montclair, NJ: Patterson Smith, 1973).

41. Jeffrey Sonnenfeld and Paul R. Lawrence, "Why Do Companies Succumb to Price-Fixing?" *Harvard Business Review* 56, no. 4 (July–August 1978): 145–57.

42. Ibid.

43. Jesse W. Markham, "The Nature and Significance of Price Leadership," *American Economic Review* 41 (1951): 891–905.

44. United States v. Topco Assocs., Inc., 405 U.S. 596, 610 (1972).

45. See J. M. Clarm, "Toward a Concept of Workable Competition," *American Economic Review* 30 (1940): 241–56.

46. John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power*, rev. ed. (Cambridge, MA: The Riverside Press, 1956), pp. 112–13.

47. Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (New York: Basic Books, 1978), pp. 20–58, 405.

48. Richard Posner, "The Chicago School of Antitrust Analysis," *University of Pennsylvania Law Review* 925 (1979.

49. J. A. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper, 1943), pp. 79ff.

50. L. Von Mises, *Planned Chaos* (New York: Foundations for Economic Education, 1947).

51. United States Department of Justice, "Pricing Intelligence: PeopleSoft: Product Pricing Overview," October 2002, accessed November 24, 2016, https://www.justice.gov/atr/p3325-oracle-pricing-intelligence-peoplesoft-product-pricing-overview.


## Chapter 5


1. Energy Information Administration, "United States of America Country Analysis Brief, 2004," accessed June 22, 2004, http://www.eia.doe.gov/emeu/cabs/usa.html.

2. Michael Renner, "The Seeds of Modern Threats," in *State of the World 2015: Confronting Hidden Threats to Sustainability* (Washington, DC: Island Press, 2015), pp. 3–17, http://www.worldwatch.org/system/files/SOTW%20intro.pdf.

3. United Nations Department of Economic and Social Affairs, "World Population Prospects, the 2015 Revision," accessed November 24, 2016, https://esa.un.org/unpd/wpp/.

4. William G. Pollard, "The Uniqueness of the Earth," in *Earth Might Be Fair*, ed. Ian G. Barbour (Englewood Cliffs, NJ: Prentice Hall, 1972), pp. 95–96.

5. Mihalis Lazaridis and Ian Colbeck, eds., *Human Exposure to Pollutants via Dermal Absorption and Inhalation* (New York: Springer, 2010). For an older overview of the health effects of air pollution, see World Resources Institute, *World Resources 1998–1999: Environmental Changes and Human Health* (New York: Basic Books, 1998).

6. Reports of the Intergovernmental Panel on Climate Change are available at http://www.ipcc.ch.

7. Pieter Tans, "Trends in Atmospheric Carbon Dioxide," National Oceanic and Atmospheric Administration/Earth System Research Laboratory, accessed September 20, 2015, http://www.esrl.noaa.gov/gmd/ccgg/trends/index.html.

8. U.S. National Oceanic and Atmospheric Administration.

9. U.S. Global Climate Research Program.

10. Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, R. K. Pachauri and L. A. Meyer (eds.)] (Geneva: Intergovernmental Panel on Climate Change, 2014), p. v.

11. See D. S. Arndt, M. O. Baringer, and M. R. Johnson, eds., "State of the Climate in 2009," *Bulletin of the American Meteorological Society* 91, no. 7 (July 2010). See also the EPA website on global warming at http://www.epa.gov/globalwarming/index.html.

12. U.S. Environmental Protection Agency, "Causes of Climate Change," accessed November 24, 2016, https://www.epa.gov/climate-change-science/causes-climate-change.

13. GlobalChange.gov.

14. National Oceanic and Atmospheric Administration.

15. Lester R. Brown, ed., *State of the World, 2000* (New York: W. W. Norton & Company, 2000), p. 200. See, more generally, World Meteorological Organization, *Scientific Assessment of Ozone Depletion: 1994*, WMO Global Ozone Research and Monitoring Project—Report No. 37 (Geneva: World Meteorological Organization, 1995; the executive summary of the WMO report is available at http://www.al.noaa.gov/WWWHD/pubdocs/Assessment94/executive-summary.html#A.

16. U.S. Environmental Protection Agency, "Ozone Science Fact Sheet," 1997.

17. U.S. Environmental Protection Agency, "What You Should Know about Refrigerants When Purchasing or Repairing a Residential A/C System or Heat Pump," April 26, 2000.

18. World Health Organization, "Water Sanitation and Health," accessed September 20, 2015, http://www.who.int/water_sanitation_health/mdg1/en/.

19. Organisation for Economic Co-operation and Development, *OECD Environmental Outlook to 2050: The Consequences of Inaction, Highlights* (Paris: OECD Publishing, 2012), http://www.oecd.org/env/indicators-modelling-outlooks/oecdenvironmentaloutlookto2050theconsequencesofinaction.htm.

20. World Food Programme, "Hunger," accessed September 24, 2015, https://www.wfp.org/hunger.

21. Intergovernmental Panel on Climate Change, *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change: Summary for Policymakers* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)] (Cambridge: Cambridge University Press, 2013).

22. Anthony J. McMichael, et al., *Climate Change and Human Health: Risks and Responses* (Geneva, Switzerland: World Health Organization, 2003); Paul R. Epstein, "Is Global Warming Harmful to Health?" *Scientific American* 283 no. 2 (August 2000): 50–57.

23. James M. O'Neill, "Ford Asks to Buy Old Dumping Ground," *NorthJersey.com*, August 18, 2011, http://www.northjersey.com/news/ford-asks-to-buy-old-dumping-ground-1.854559?page=all.
24. Cynthia Mcfadden, "Citizens of 'Sludge City' File Lawsuit against Ford over Toxic Waste," *ABC News*, January 14, 2009, http://abcnews.go.com/Technology/story?id=6644516&page=1.
25. Ibid.
26. Ibid.
27. Jan Barry, "Four Cleanups, Yet Waste Still Is Everywhere," *NorthJersey.com*, August 7, 2009, http://www.northjersey.com/news/environment/the-watchdogs-failed-four-cleanups-yet-waste-still-is-everywhere-1.285388.
28. Akiko Matsuda, "Ford Motor to Begin Paint Sludge Cleanup in Hillburn," *Lohud*, August 8, 2015, http://www.lohud.com/story/tech/science/environment/2015/08/08/ford-motor-resume-paint-sludge-cleanup-torne-valley-hillburn/31239217/.
29. https://www.epa.gov/sites/production/files/2015-09/documents/webpopulationrsuperfundsites9.28.15.pdf
30. U.S. Environmental Protection Agency, "Environmental Effects of Acid Rain," April 1999.
31. See B. J. Mason, *Acid Rain: Its Causes and Effects on Inland Waters* (Oxford: Clarendon Press, 1992).
32. U.S. Environmental Protection Agency, *National Air Quality and Emissions Trends Report, 1998* (EPA 454/R-00–003) (Research Triangle Park, NC: U.S. Environmental Protection Agency, 2000), p. 81.
33. "Bad Air's Damage to Lungs Is Long-lasting, Study Says," *San Jose Mercury News*, March 29, 1991, p. 1f. See also Philip E. Graves, Ronald J. Krumm, and Daniel M. Violette, "Issues in Health Benefit Measurement," in *Environment Policy*, vol. II, ed. George S. Tolley, Philip E. Graves, and Alan S. Cohen (Cambridge, MA: Harper & Row Publishers, Inc., 1982).
34. U.S. Environmental Protection Agency, *Our Nation's Air: Status and Trends through 2008*, Contract No. EP-D-05-004, Work Assignment No. 5-07 (Research Triangle Park, NC: U.S. Environmental Protection Agency, 2010).
35. Ibid.
36. Lester Lave and Eugene Seskind, *Air Pollution and Human Health* (Baltimore, MD: Johns Hopkins University Press, 1977).
37. Ibid., pp. 723–33.
38. Freeman, A. Myrick. *Air and Water Pollution Control: A Benefit-Cost Assessment*, Environmental Science and Technology Series (Hoboken, New Jersey, John Wiley & Sons), p. 69.
39. Office of Management and Budget, *2014 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (Washington, DC: 2014), p. 12, https://www.whitehouse.gov/omb/inforeg_regpol_reports_congress.
40. U.S. Environmental Protection Agency, "Air Pollutant Emissions Trends Data," accessed October 27, 2016, http://www3.epa.gov/airtrends/aqtrends.html#comparison; and U.S. Environmental Protection Agency, "Air Quality—National Summary," accessed October 27, 2016, https://www.epa.gov/air-trends/air-quality-national-summary#Air Quality Trends.
41. U.S. Environmental Protection Agency, "WATERS (Watershed Assessment, Tracking & Environmental Results System)," Table "National Summary Designated Use Support in Assessed Rivers and Streams," accessed September 27, 2015, http://ofmpub.epa.gov/waters10/attains_nation_cy.control.
42. Joshua E. Keating, "The World's Ongoing Ecological Disasters," *Foreign Policy*, July 16, 2010, http://www.foreignpolicy.com/articles/2010/07/16/the_world_s_worst_ongoing_disasters; and "List of Oil Spills" *Wikipedia*, accessed September 2, 2015, https://en.wikipedia.org/wiki/List_of_oil_spills.
43. Daphnis De Pooter, "*Heavy Metals*," accessed September 26, 2015, http://www.coastalwiki.org/wiki/Heavy_metals.
44. Moritz Bollmann, et al., "Last Stop: The Ocean—Polluting the Seas," *World Ocean Review 1: Living with the Oceans* (Hamburg, Germany: Maribus, 2010).
45. William R. Mason, "Pollution of Groundwater," *Water Encyclopedia: Science and Issues*, accessed September 12, 2015, http://www.waterencyclopedia.com/Oc-Po/Pollution-of-Groundwater.html.
46. World Health Organization, *Progress on Sanitation and Drinking Water: 2010 Update* (Geneva: World Health Organization, 2010), pp. 7 and 18.
47. United Nations World Water Assessment Programme, *The United Nations World Water Development Report 3: Water in a Changing World* (Paris: The United Nations Educational, Scientific and Cultural Organization, 2009).
48. Office of Management and Budget, *2014 Report*.
49. For these and other reports on communities affected by leaked or buried toxic substances, see the website blog "Contaminated Nation" at http://contaminatednation.blogspot.com/.
50. U.S. Environmental Protection Agency Office of Solid Waste, *Coal Combustion Waste Damage Case Assessments*, July 9, 2007 accessed July 26, 2010, http://graphics8.nytimes.com/packages/pdf/national/07sludge_EPA.pdf. See also Kristen Lombardi, "Coal Ash: The Hidden Story: How Industry and the EPA Failed to Stop a Growing Environmental Disaster," The Center for Public Integrity, February 19, 2009, http://www.publicintegrity.org/articles/entry/1144/.
51. Shaila Dewan, "Hundreds of Coal Ash Dumps Lack Regulation," *New York times*, January 6, 2009.
52. Scott M. Kaufman, et al., "The State of Garbage in America," *BioCycle*, January 2004, pp. 31–42.
53. Paul Keith Conkin, *The State of the Earth: Environmental Challenges on the Road to 2100* (Lexington, KY: University Press of Kentucky, 2006) p. 107.
54. Council on Environmental Quality, "Preserving and Enhancing the Environment," accessed November 24, 2016, https://www.whitehouse.gov/administration/eop/ceq; Council on Environmental Quality, *Environmental Trends*, p. 139.
55. Ibid., p. 140.
56. Ibid.
57. Thomas O'Toole, "Glass, Salt Challenged as Radioactive Waste Disposal Methods," *Washington Post*, December 24, 1978.
58. See Theodore B. Taylor and Mason Willrich, *Nuclear Theft: Risks and Safeguards* (Cambridge, MA: Ballinger Publishing Co., 1974).
59. See U.S. Nuclear Regulatory Commission, "NRC Statement on Risk Assessment and the Reactor Safety Study Report in Light of the Risk Assessment Review Group Report," January 18, 1979.
60. U.S. Nuclear Regulatory Commission, "Final Generic Environmental Statement on the Use of Plutonium Recycle in Mixed Oxide Fuel in Light Water Cooled Reactors," *NUREG-0002*, vol. 1, August 1976.
61. Pushker A. Kharecha and James E. Hansen, "Prevented Mortality and Greenhouse Gas Emissions from Historical and Projected Nuclear Power," *Environmental Science & Technology*, 47, no. 9 (2013): 4889–95.
62. See U.S. Environmental Protection Agency, "National Priorities List," accessed June 25, 2004, http://www.epa.gov/superfund/sites/query/queryhtm/nplfin.htm.
63. Kaufman, et al., "The State of Garbage."

64. See U.S. Environmental Protection Agency, "Industrial Waste Management," accessed June 25, 2004, http://www.epa.gov/industrialwaste.

65. U.S. Environmental Protection Agency, *Cleaning Up the Nation's Waste Sites: Markets and Technology Trends, 2004 Edition* (Cincinnati, OH: U.S. EPA/National Service Center for Environmental Publications, 2004).

66. Council on Environmental Quality, *Environmental Trends,* p. 139.

67. Ibid.

68. Ibid.

69. U.S. Environmental Protection Agency, *TRI National Analysis 2013: Complete Report,* accessed September 20, 2015, http://www2.epa.gov/toxics-release-inventory-tri-rogram/2013-toxics-release-inventory-national-analysis-supporting.

70. Ibid.

71. Ellen Winchester, "Nuclear Wastes," *Sierra*, July/August 1979.

72. Charles Officer and Jake Page, *Earth and You: Tales of the Environment* (Portsmouth, NH: Peter E. Randall Publisher, 2000). See also Harry Goodwin and J. M. Goodwin, *List of Mammals which Have Become Extinct Since 1600: An Extension and Updating of the List Drawn Up by the Late James Fisher in 1968* (Morges, Switzerland: International Union for Conservation of Nature, 1973), http://data.iucn.org/dbtw-wpd/commande/downpdf.aspx?id=8547&url=http://www.iucn.org/dbtw-wpd/edocs/OP-008.pdf.

73. C. S. Wong, "Atmospheric Input of Carbon Dioxide from Burning Wood," *Science* 200 (1978): 197–200.

74. G. M. Woodwell, "The Carbon Dioxide Question," *Scientific American*, 1978, pp. 34–43.

75. International Union for Conservation of Nature, "Table 1: Numbers of Threatened Species by Major Groups of Organisms (1996–2010)," *IUCN Red List of Threatened Species. Version 2010.2*, Summary Statistics, accessed July 28, 2010, http://www.iucnredlist.org/about/summary-statistics.

76. WWF International and Institute of Zoology, *Living Blue Planet Report: Species, Habitats and Human Well-Being* (Gland, Switzerland: NCP SA and Cavin SA, 2015). See also Boris Worm et. al., "Rebuilding Global Fisheries," *Science* 325, no. 5940 (July 31, 2009): 578–85.

77. Mindy Selman and Suzie Greenhalgh, *Eutrophication: Sources and Drivers of Nutrient Pollution*, WRI Policy Note, Water Quality: Eutrophication and Hypoxia, no. 2 (Washington, DC: World Resources Institute, June 2009).

78. An exponential rate of depletion is assumed in the Club of Rome report; Donella H. Meadows, Dennis L. Meadows, Jergen Randers, and William W. Behrens, III, *The Limits to Growth* (New York: Universe Books, 1972).

79. U.S. Congress Office of Technology Assessment, *World Petroleum Availability: 1980–2000* (Washington, DC: U.S. Government Printing Office, 1980).

80. M. K. Hubbert, *U.S. Energy Resources: A Review as of 1972*, Document No. 93–40 (92–72) (Washington, DC: U.S. Government Printing Office, 1974).

81. Ibid.

82. See the very readable and excellent overview of this issue in Tim Appenzeller, "The End of Cheap Oil?," *National Geographic*, June 2004, pp. 80–109.

83. See Colin Campbell, "The End of Cheap Oil?," *Scientific American*, March 1998; Jean H. Laherrère, "Future Sources of Crude Oil Supply and Quality Considerations" (DRI/McGraw-Hill/French Petroleum Institute conference, Rueil-Malmaison, France, June 12–13, 1997; L. F. Ivanhoe, "Get Ready for Another Oil Shock!" *Futurist*, January/February 1997; the estimates of David Greene are in Appenzeller, "The End of Cheap Oil?," p. 90.

84. W. Jackson Davis, *The Seventh Year* (n.p.: W. W. Norton & Company, 1979), p. 128.

85. David Cohen, "Earth's Natural Wealth: An Audit," *New Scientist*, issue 2605 (May 23, 2007), pp. 34–41.

86. Davis, *The Seventh Year*, pp. 131–32.

87. Paul R. Portney, ed., *Current Issues in Natural Resource Policy* (Washington, DC: Resources for the Future, 1982), pp. 80–81.

88. Robert B. Gordon, et al., *Toward a New Iron Age?* (Cambridge, MA: Harvard University Press, 1987).

89. Ibid., p. 153.

90. U.S. Geological Survey, *Mineral Commodity Summaries 2000* (n.p.: U.S. Geological Survey, 2000), p. 23.

91. The term is Garrit Hardin's; see his "The Tragedy of the Commons," *Science* 162, no. 3859 (December 13, 1968): 1243–48.

92. Richard M. Stephenson, *Living with Tomorrow* (New York: John Wiley & Sons, Inc., 1981), pp. 205–8.

93. Ibid., p. 204.

94. United Nations Department of Economic and Social Affairs, "World Population Prospects, the 2015 Revision," accessed November 24, 2016, https://esa.un.org/unpd/wpp/. http://www.un.org/en/development/desa/news/population/2015-report.html

95. Carl J. George and Daniel McKinely, *Urban Ecology: In Search of an Asphalt Rose* (New York: McGraw-Hill Book Company, 1974).

96. L. Gari, "Arabic Treatises on Environmental Pollution Up to the End of the Thirteenth Century," *Environment and History* 8, no. 1 (2002): 475–88.

97. The quote by Aristotle is from his *Politics*, bk. 1, chap. 8; the quote by Aquinas is from his *Summa Contra Gentiles*, bk. 3, part 2, chap. 112; and the quote from the Old Testament is from *Genesis* 1:28.

98. Immanuel Kant, *Lectures on Ethics*, translated by Louis Infield (New York: Harper and Row Publishers, 1963), pp. 23–41.

99. Quoted in Bill Devall, *Simple in Means, Rich in Ends, Practicing Deep Ecology* (Salt Lake City, UT: Peregrine Smith Books, 1988), pp. 14–15.

100. R. Routley and V. Routley, "Human Chauvinism and Environmental Ethics" in *Environmental Philosophy*, ed. D. Mannison, M. A. McRobbie, and R. Routley (Canberra: Australian National University, Research School of Social Sciences, 1980), pp. 96–189.

101. Barry Commoner, *The Closing Circle* (New York: Alfred A. Knopf, Inc., 1971), chap. 2.

102. See Kenneth E. F. Watt, *Understanding the Environment* (Boston, MA: Allyn & Bacon, Inc., 1982).

103. Matthew Edel, *Economics and the Environment* (Englewood Cliffs, NJ: Prentice Hall, 1973); for the term *spaceship earth*, see Kenneth Boulding, "The Economics of the Coming Spaceship Earth," in *Environmental Quality in a Growing Economy*, ed. Henry Jarret (Baltimore, MD: Johns Hopkins Press for Resources for the Future, 1966).

104. George Perkins Marsh, *Man and Nature* (1864; repr., Cambridge, MA: Harvard University Press, 1965), p. 76.

105. For discussions favoring this view as well as criticisms, see the essays collected in Donald Scherer and Thomas Attig, eds., *Ethics and the Environment* (Englewood Cliffs, NJ: Prentice Hall, 1983).

106. Ted Gup, "Owl vs. Man," *TIME*, June 25, 1990, pp. 56–62; Catherine Caufield, "A Reporter at Large: The Ancient Forest," *New Yorker*, May 14, 1990, pp. 46–84.

107. Devall, *Simple in Means, Rich in Ends*, p. 138.

108. Peter Singer, *Animal Liberation* (New York: Random House, Inc., 1975).

109. Tom Regan, *The Case for Animal Rights* (Berkeley, CA: University of California Press, 1983). In a similar vein, Joel Feinberg argues that animals have interests and consequently have rights in "The Rights of Animals and Unborn Generations," in *Philosophy and Environmental Crisis*, ed. William T. Blackstone (Athens, GA: University of Georgia Press, 1974).

110. See William Aiken, "Ethical Issues in Agriculture," in *Earthbound: New Introductory Essays in Environmental Ethics*, ed. Tom Regan (New York: Random House, Inc., 1984), pp. 247–88.

111. People for the Ethical Treatment of Animals, "Companies That Do Test on Animals," accessed July 28, at http://search.caringconsumer.com/.

112. Kenneth Goodpaster, "On Being Morally Considerable," *Journal of Philosophy* 75 (1978): 308–25. See also Paul Taylor, "The Ethics of Respect for Nature," *Environmental Ethics* 3 (1981): 197–218; Robin Attfield, "The Good of Trees," *Journal of Value Inquiry* 15 (1981): 35–54; and Christopher D. Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects* (Boston, MA: Houghton Mifflin, 1978).

113. Aldo Leopold, "The Land Ethic," in *A Sand County Almanac* (New York: Oxford University Press, 1949), pp. 201–26. See also J. Baird Callicott, "Animal Liberation: A Triangular Affair," *Environmental Ethics* 2, no. 4 (Winter 1980): 311–38; John Rodman, "The Liberation of Nature?" *Inquiry* 20 (1977): 83–131; K. Goodpaster argues that the "biosphere" as a whole has moral value in "On Being Morally Considerable"; Holmes Rolston, III, holds a similar position in "Is There an Ecological Ethic?," *Ethics* 85 (1975): 93–109; for a variety of views on this issue, see Bryan G. Norton, ed., *The Preservation of Species* (Princeton, NJ: Princeton University Press, 1986).

114. Albert Schweitzer, *Out of My Life and Thought*, trans. A. B. Lemke (New York: Holt, 1990), p. 130.

115. Ibid., p. 131.

116. Paul Taylor, *Respect for Nature* (Princeton, NJ: Princeton University Press, 1986), p. 80.

117. Ibid., pp. 121–22.

118. W. K. Frankena, "Ethics and the Environment," in *Ethics and Problems of the 21st Century*, ed. K. E. Goodpaster and K. M. Sayre (Notre Dame, IN: University of Notre Dame Press, 1979), pp. 3–20.

119. For other criticisms of these arguments, see Edward Johnson, "Treating the Dirt: Environmental Ethics and Moral Theory," in *Earthbound*, ed. Regan, pp. 336–65. See also the discussion between Goodpaster and Hunt in W. Murray Hunt, "Are Mere Things Morally Considerable?" *Environmental Ethics* 2 (1980): 59–65; and Kenneth Goodpaster, "On Stopping at Everything: A Reply to W. M. Hunt," *Environmental Ethics* 2 (1980): 281–84.

120. See, for example, R. G. Frey, *Interests and Rights: The Case against Animals* (Oxford: Clarendon Press, 1980), and Martin Benjamin, "Ethics and Animal Consciousness," in *Ethics: Theory and Practice*, ed. Manuel Velasquez and Cynthia Rostankowski (Englewood Cliffs, NJ: Prentice Hall, 1985).

121. For useful treatments of the ethics of environmental issues, see Dale Jamison, ed., *A Companion to Environmental Ethics* (New York: Blackwell Publishers, 2000); and Robin Attfield, *The Ethics of Environmental Concern* (New York: Columbia University Press, 1983).

122. William T. Blackstone, "Ethics and Ecology," in *Philosophy and Environmental Crisis*, ed. William T. Blackstone (Athens, GA: University of Georgia Press, 1974). See also his later article, "On Rights and Responsibilities Pertaining to Toxic Substances and Trade Secrecy," *Southern Journal of Philosophy* 16 (1978): 589–603.

123. Blackstone, "Ethics and Ecology," p. 31. See also William T. Blackstone, "Equality and Human Rights," *Monist* 52, no. 4 (1968); and William T. Blackstone, "Human Rights and Human Dignity," in *Human Dignity*, ed. Rubin Gotesky and Ervin Laszlo (New York: Goerdon and Breach, 1970).

124. Quoted in Keith Davis and William C. Frederick, *Business and Society* (New York: McGraw-Hill Book Company, 1984), pp. 403–4.

125. Alon Rosenthal, George M. Gray, and John D. Graham, "Legislating Acceptable Cancer Risk from Exposure to Toxic Chemicals," *Ecology Law Quarterly* 19, no. 2 (1992): 269–362.

126. Robert H. Haveman and Greg Christiansen, *Jobs and the Environment* (Scarsdale, NY: Work in America Institute, Inc., 1979), p. 4.

127. Richard Kazis and Richard L. Grossman, "Job Blackmail: It's Not Jobs or Environment," in *The Big Business* Reader, ed. Mark Green (New York: The Pilgrim Press, 1983), p. 260.

128. See U.S. Department of Labor, *Mass Layoffs in 1987–1990*, Bureau of Labor Statistics Bulletins 2395, 2375, 2310. See also E. B. Goodstein, "Jobs or the Environment? No Trade-off," *Challenge*, January–February 1995, pp. 41–45.

129. For an analysis of the impact of this executive order, see the essays collected in V. Kerry Smith, ed., *Environmental Policy Under Reagan's Executive Order* (Chapel Hill, NC: The University of North Carolina Press, 1984).

130. There are a number of texts describing this approach. An elementary text is Tom Tietenberg, *Environmental and Natural Resource Economics* (Glenview, IL: Scott, Foresman & Company, 1984); a more compact treatment is Edwin S. Mills, *The Economics of Environmental Quality* (New York: W. W. Norton & Co., Inc., 1978), chap. 3; for several viewpoints, consult Robert Dorfman and Nancy Dorman, eds., *Economics of the Environment* (New York: W. W. Norton & Co., Inc., 1977).

131. For a still useful review of the literature on external costs, see E. J. Mishan, "The Postwar Literature on Externalities: An Interpretative Essay," *Journal of Economic Literature* 9, no. 1 (March 1971): 1–28.

132. See E. J. Mishan, *Economics for Social Decisions* (New York: Praeger Publishers, Inc., 1973), pp. 85ff. See also E. J. Mishan, *Cost-Benefit Analysis*, 3rd ed. (London: Allen & Unwin, 1982).

133. S. Prakesh Sethi, *Up Against the Corporate Wall* (Englewood Cliffs, NJ: Prentice Hall, 1977), p. 21.

134. See Mishan, "The Postwar Literature on Externalities," p. 24.

135. Ibid., pp. 180–82.

136. Ibid., pp. 182–84.

137. Ibid., p. 24.

138. Mills, *Economics of Environmental Quality*, pp. 111–12 and pp. 83–91.

139. See Boyd Collier, *Measurement of Environmental Deterioration* (Austin, TX: Bureau of Business Research, The University of Texas at Austin, 1971).

140. See Michael D. Boyles, "The Price of Life," *Ethics* 89, no. 1 (October 1978): 20–34; for other problems with using cost-benefit analysis in environmental areas, see Mark Sagoff, "Ethics and Economics in Environmental Law," in *Earthbound*, ed. Regan, pp. 147–78; and Rosemarie Tong, *Ethics in Policy Analysis* (Englewood Cliffs, NJ: Prentice Hall, 1986), pp. 14–29.

141. Much of the material in this and the following paragraphs is based on the superb analysis in Robert E. Goodwin, "No Moral Nukes," *Ethics* 90, no. 3 (April 1980): 417–49.

142. Ibid., pp. 83–91.

143. For a number of cases that apply these techniques, see Yusuf J. Ahmad, Partha Dasgupta, and Karl-Goran Maler, eds., *Environmental Decision-Making* (London: Hodder and Stoughton, 1984).

144. Thomas A. Klein, Social Costs and Benefits of Business (Englewood Cliffs, NJ: Prentice Hall, 1977), p. 118.

145. Ibid., p. 119; the literature on social accounting for business firms was once vast; see U.S. Department of Commerce, *Corporate Social Reporting in the United States and Western Europe* (Washington, DC: U.S. Government Printing Office, 1979); Committee on Social Measurement, *The Measurement of Corporate Social Performance* (New York: American Institute of Certified Public Accountants, Inc., 1977).

146. Committee on Social Measurement, *The Measurement of Corporate Social Performance* (New York: American Institute of Certified Public Accountants, Inc., 1977).

147. U.S. General Accounting Office, *The Nation's Nuclear Waste* (Washington, DC: U.S. Government Printing Office, 1979), p. 12. For a criticism of this kind of policy analysis, see Tong, *Ethics in Policy Analysis*, pp. 39–54.

148. Murray Bookchin, *Defending the Earth: A Dialogue between Murray Bookchin and Dave Foreman*, ed. Steve Chase (Boston: South End Press, 1991), p. 58.

149. Karen J. Warren, "The Power and Promise of Ecological Feminism," *Environmental Ethics* 12 (Summer 1990): 126.

150. Val Plumwood, "Current Trends in Ecofeminism," *Ecologist* 22, no. 1 (January/February 1992): 10.

151. Nell Noddings, *Caring, A Feminine Approach to Ethics and Moral Education* (Berkeley, CA: University of California Press, 1984), p. 14.

152. Karen J. Warren, "The Power and the Promise of Ecological Feminism," in *People, Penguins, and Plastic Trees, Basic Issues in Environmental Ethics*, 2nd ed., ed. Christine Pierce and Donald VanDeVeer (Belmont, CA: Wadsworth, 1995), pp. 218 and 223.

153. Warren, "The Power and the Promise," p. 143.

154. Martin Golding, "Obligations to Future Generations," *Monist* 56, no. 1 (1972): 85–99; Richard T. DeGeorge, "The Environment, Rights, and Future Generations," in *Ethics and Problems of the 21st Century*, ed. Goodpaster and Sayre, pp. 93–105.

155. DeGeorge, "The Environment, Rights, and Future Generations," pp. 97–98.

156. Ibid.

157. Golding, "Obligations to Future Generations." Gregory Kavka argues, however, that full knowledge of the needs of future people is not required to accord them moral standing in "The Futurity Problem," in *Responsibilities to Future Generations*, ed. Ernest Partridge (New York: Prometheus Books, 1981), pp. 109–22. See also Annette Baier, "For the Sake of Future Generations," in *Earthbound*, ed. Regan, pp. 214–46.

158. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 289.

159. Ibid., pp. 285 and 288.

160. Among authors who favor Rawls in their treatment of our obligations to future generations are R. Routley and V. Routley, "Nuclear Energy and Obligations to the Future," *Inquiry* 21 (1978): 133–79; K. S. Shrader-Frechette, *Nuclear Power and Public Policy* (Dordrecht, Netherlands: Reidel, 1980); F. Patrick Hubbard, "Justice, Limits to Growth, and an Equilibrium State," *Philosophy and Public Affairs* 7 (1978): 326–45; Victor D. Lippit and Koichi Hamada, "Efficiency and Equity in Intergenerational Distribution," in *The Sustainable Society*, ed. Dennis Clark Pirages (New York and London: Praeger Publishers, Inc., 1977), pp. 285–99. Each of these authors, however, introduces modifications to Rawls's position.

161. Attfield adopts this "Lockean principle" from G. Kavka, "The Futurity Problem," in *Responsibilities to Future Generations*, ed. E. Partridge (Buffalo: Prometheus Books, 1981).

162. Attfield, *The Ethics of Environmental Concern*, pp. 107–10.

163. Carl Smith, "Pesticide Exports from U.S. Ports, 1997–2000," *International Journal of Occupational and Environmental Health* 7, no. 2 (2001): 266–74.

164. J. Brenton Stearns, "Ecology and the Indefinite Unborn," *Monist* 56, no. 4 (October 1972): 612–25; Jan Narveson, "Utilitarianism and New Generations," *Mind* 76 (1967): 62–67.

165. Robert Scott Jr., "Environmental Ethics and Obligations to Future Generations," in *Obligations to Future Generations*, ed. R. I. Sikora and Brian Barry (Philadelphia, PA: Temple University Press, 1978), pp. 74–90; but see Kavka, "The Futurity Problem," who argues against discounting.

166. Joan Robinson, *Economic Philosophy* (London: Penguin Books, 1966), p. 115.

167. William G. Shepherd and Clair Wilcox, *Public Policies toward Business*, 6th ed. (Homewood, IL: Richard D. Irwin, Inc., 1979), pp. 524–25.

168. Susan Murcott, "Sustainable Development: A Meta-Review of Definitions, Principles, Criteria Indicators, Conceptual Frameworks and Information Systems" (Annual Conference of the American Association for the Advancement of Science. IIASA Symposium on "Sustainability Indicators." Seattle, WA, February 13–18, 1997; Barbara Becker, "Sustainability Assessment: A Review of Values, Concepts, and Methodological Approaches," *Agricultural Issues*, vol. 10 (Washington, DC: Secretariat of the Consultative Group on International Agricultural Research, The World Bank, February 1997).

169. World Commission on Environment and Development, *Our Common Future* (London: Oxford University Press, 1987).

170. Herman E. Daly, "Sustainable Growth: An Impossibility Theorem," in *Valuing the Earth: Economics, Ecology, Ethics*, ed. Herman E. Daly and Kenneth N. Townsend (Boston: The MIT Press, 1993), pp. 267–74.

171. E. F. Schumacher, *Small Is Beautiful* (London: Blond and Briggs, Ltd., 1973).

172. Herman E. Daly, ed., *Toward a Steady-State Economy* (San Francisco: W. H. Freeman & Company, Publishers, 1974), p. 152.

173. See, for example, Wilfred Beckerman, *In Defense of Economic Growth* (London: Jonathan Cape, 1974); Rudolph Klein, "The Trouble with Zero Economic Growth," *New York Review of Books*, April 1974; Julian L. Simon, *The Ultimate Resource* (Princeton, NJ: Princeton University Press, 1981).

174. E. J. Mishan, *The Economic Growth Debate: An Assessment* (London: George Allen & Unwin Ltd., 1977).

175. See Heilbroner, *An Inquiry into the Human Prospect, Updated for the 1980s.*

176. Several of these scenarios are reviewed in James Just and Lester Lave, "Review of Scenarios of Future U.S. Energy Use," *Annual Review of Energy* 4 (1979): 501–36; and in Barry Hughes, *World Futures* (n.p.: Johns Hopkins University Press, 1984).

177. Donella Meadows, et al., *The Limits to Growth* (New York: Universe Books, 1974).

178. Meadows et al. revised their models but came up with very similar results in D. H. Meadows, D. L. Meadows, and J. Randers, *Beyond the Limits: Confronting Global Collapse, Envisioning a Sustainable Future* (Post Mills, VT: Chelsea Green, 1992). For other examples, see the many much more recent and depressing papers collected at http://www.dieoff.org/index.html.

179. Meadows et al., *The Limits to Growth*, p. 132.

180. On the link between environmental resource use and the uneven distribution of world wealth, see Willy Brandt, *North-South: A Program for Survival* (Cambridge, MA: MIT Press, 1980).

181. R. Stobaugh and D. Yergin, Eds., *Energy Future,* New York: Random House Vintage Books. 1983, p.100.

## Chapter 6


1. U.S. Consumer Product Safety Commission, *2014 Annual Report to the President and Congress*, p. 3.
2. B. A. Lawrence, R. S. Spicer, and T. R. Miller, "A Fresh Look at the Costs of Non-fatal Consumer Product Injuries," *Injury Prevention* 21, no. 1 (2015): 23–9.
3. National Highway Traffic Safety Administration, "Fatality Analysis Reporting System Encyclopedia (FARS)," accessed January 19, 2011, http://www-fars.nhtsa.dot.gov; Centers for Disease Control and Prevention, *Web-based Injury Statistics Query and Reporting System (WISQARS)*, accessed January 19, 2011, http://www.cdc.gov/injury/wisqars/index.html; National Highway Traffic Safety Administration, Traffic Safety Facts Research Note, "Highlights of 2009 Motor Vehicle Crashes," (DOT HS 811 363), accessed January 30, 2011, http://www-nrd.nhtsa.dot.gov/Pubs/811363.pdf.
4. Jiaquan Xu, Kenneth D. Kochanek, Sherry L. Murphy, Betzaida Tejada-Vera, *National Vital Statistics Reports* 58, no. 19 (2010): 18–19; and "Firearm Injury in the U.S. (2009 version)," Firearm and Injury Center at Penn, accessed January 21, 2011, http://www.uphs.upenn.edu/ficap/resourcebook/pdf/monograph.pdf.
5. "Tobacco Use Targeting the Nation's Leading Killer: At a Glance, 2010," Centers for Disease Control and Prevention, accessed August 12, 2010, http://www.cdc.gov/chronicdisease/resources/publications/aag/osh.htm.
6. "Smoking and Tobacco Use Fast Facts," Centers for Disease Control and Prevention, accessed November 3, 2016, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/.
7. "Injury Prevention and Control: Opioid Overdoes," Centers for Disease Control and Prevention, March 12, 2016, accessed April 20, 2016, http://www.cdc.gov/drugoverdose/data/overdose.html.
8. "Playground Injuries: Fact Sheet," Centers for Disease Control and Prevention, accessed April 20, 2016, http://www.cdc.gov/HomeandRecreationalSafety/Playground-Injuries/playground-injuries-factsheet.htm.
9. U.S. Consumer Product Safety Commission, *2014 Annual Report of ATV Deaths and Injuries* (Bethesda, MD: U.S. Consumer Product Safety Commission, 2015).
10. The facts summarized in this paragraph are drawn from Penny Addis, "The Life History Complaint Case of Martha and George Rose: 'Honoring the Warranty,'" in *No Access to Law*, ed. Laura Nader (New York: Academic Press, Inc., 1980), pp. 171–89.
11. Federal Trade Commission, "Cramming on Wireless Phone Bills: A Review of Consumer Protection Practices and Gaps" (prepared statement of the Federal Trade Commission before the Senate Committee on Commerce, Science, and Transportation United States Senate, Washington, DC, July 30, 2014), https://www.ftc.gov/public-statements/2014/07/prepared-statement-federal-trade-commission-cramming-wireless-phone-bills.
12. U.S. District Court, Southern District of California, The Guardian Corporation et. al. v. AT&T Services, Inc., Case No. 10 CV 1846 WQH CAB, September 3, 2010. See also "AT&T Faces Class Action over Excessive Data Usage Charges," BigClassAction.com, September 10, 2010, accessed March 10, 2016, https://www.bigclassaction.com/lawsuit/at-t-class-action-excessive-data-usage-charges.php; and "Settlement of AT&T Mobility Universal Services Charges Class Action Lawsuit Reached," BigClassAction.com, January 9, 2013, accessed March 10, 2016, https://www.bigclassaction.com/settlement/at-t-mobility-universal-services-charges-class.php.
13. *Consumer Reports* Staff, "Takata Airbag Recall–Everything You Need to Know," Consumer Reports, April 14, 2016, http://www.consumerreports.org/cro/news/2016/05/everything-you-need-to-know-about-the-takata-air-bag-recall/index.htm.
14. Gautham Nagesh, "More Than 90% of GM Ignition-Suit Claims Rejected," *Wall Street Journal*, August 24, 2015.
15. "Gree Reannounces Dehumidifier Recall Due to Serious Fire and Burn Hazards; More Fires and Property Damage Reported," U.S. Consumer Product Safety Commission, May 15, 2014, accessed November 3, 2016, http://cpsc.gov/en/Recalls/2014/Gree-Reannounces-Dehumidifier-Recall/.
16. "Blair Expands Recall to All Women's Chenille Apparel Due to Burn Hazard; Additional Reported Deaths Prompt Re-announcement of Robe Recall," U.S. Consumer Product Commission, October 22, 2009, accessed November 3, 2016, https://www.cpsc.gov/Recalls/2010/Blair-Expands-Recall-To-All-Womens-Chenille-Apparel-Due-to-Burn-Hazard-Additional-Reported-Deaths-Prompt-Re-Announcement-of-Robe-Recall/.
17. Jane Zhang, "Cookie Dough Is Linked to E. Coli Risks," *Wall Street Journal*, June 20, 2009.
18. Several of these criticisms are surveyed in Stephen A. Greyser, "Advertising: Attacks and Counters," *Harvard Business Review* 50 (March 10, 1972): 22–28.
19. U.S. Consumer Product Safety Commission, *2014 Annual Report*, p. 4.
20. Based on figures provided in National Highway Traffic Safety Administration, *Traffic Safety Facts: Research Note*, December 2014, p. 1, https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812101.
21. L. J. Blincoe et al., *The Economic and Societal Impact of Motor Vehicle Crashes, 2010. (Revised)* (Report No. DOT HS 812 013) (Washington, DC: National Highway Traffic Safety Administration, 2015).
22. Paul A. Samuelson and William D. Nordhaus, *Macroeconomics*, 13th ed. (New York: McGraw-Hill Book Company, 1989), p. 41.
23. See Robert N. Mayer, *The Consumer Movement: Guardians of the Marketplace* (Boston: Twayne Publishers, 1989), p. 67; and Peter Asch, *Consumer Safety Regulation* (New York: Oxford University Press, 1988), p. 50.
24. For an overview of the research on irrationality in decision making, see Max Bazerman, *Judgment in Managerial Decision Making*, 3rd ed. (New York: John Wiley & Sons, Inc., 1994), pp. 12–76.
25. Asch, *Consumer Safety Regulation*, pp. 74, 76.
26. Ibid.
27. For references to these studies, see Asch, *Consumer Safety Regulation*, pp. 70–73.
28. See Thomas Garrett and Richard J. Klonoski, *Business Ethics*, 2nd ed. (Englewood Cliffs, NJ: Prentice Hall, 1986), p. 88.
29. Immanuel Kant, *Groundwork of the Metaphysic of Morals*, ed. H. J. Paton (New York: Harper & Row Publishers, Inc., 1964), pp. 90, 97. See also Alan Donagan, *The Theory of Morality* (Chicago: The University of Chicago Press, 1977), p. 92.
30. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, Belknap Press, 1971), pp. 344–50.
31. Crocker v. Winthrop Laboratories, Division of Sterling Drug, Inc., 514 Southwestern 2d 429 (1974).
32. See Donagan, *The Theory of Morality*, p. 91.
33. Ibid., p. 393.
34. National Commission on Product Safety, Final Report, quoted in William W. Lowrance, *Of Acceptable Risk* (Los Altos, CA: William Kaufmann, Inc., 1976), p. 80.
35. See Louis Stern, "Consumer Protection via Increased Information," *Journal of Marketing* 31, no. 2 (April 1967).
36. Lawrence E. Hicks, *Coping with Packaging Laws* (New York: AMACOM, 1972), p. 17.

37. See the discussions in Richard Posner, *Economic Analysis of Law*, 2nd ed. (Boston, MA: Little, Brown and Company, 1977), p. 83; and R. Posner, "Strict Liability: A Comment," *Journal of Legal Studies* 2, no. 1 (January 1973): 21.
38. See, for example, the many cases cited in George J. Alexander, *Honesty and Competition* (Syracuse, NY: Syracuse University Press, 1967).
39. Extended quotes are from U.S. District Court, Southern District of California, *Art Cohen, Individually and on Behalf of All Others Similarly Situated vs. Donald J. Trump*, Class Action No. 3:13-cv-02519-GPC-WVG; "Deposition of Donald Trump, December 10, 2015, New York, New York"; and "Declaration of Corinne Sommer." Other information in this feature is from D. Halperin, "NY Court Refuses to Dismiss Trump University Case, Describes Fraud Allegations," *Huffington Post*, March 1, 2016; R. Parloff, "How Bad Are the Charges against Trump University" Really Bad," *Fortune*, March 8, 2016; S. Brill, "What the Legal Battle over Trump University Reveals about Its Founder," *TIME*, November 5, 2015; and "Trump University 2010 Playbook," accessed November 3, 2016, http://static.politico.com/25/88/783a0dca43a0a898f3973da0086f/trump-university-playbook.pdf.
40. Henningsen v. Bloomfield Motors, Inc., 32 New Jersey 358, 161 Atlantic 2d 69 (1960).
41. See Friedrich Kessler and Malcolm Pitman Sharp, *Contracts* (Boston: Little, Brown and Company, 1953), pp. 1–9.
42. Edgar H. Schein, "The Problem of Moral Education for the Business Manager," *Industrial Management Review* 8 (1966): 3–11.
43. See W. D. Ross, *The Right and the Good* (Oxford: The Clarendon Press, 1930), chap. 2.
44. Donagan, *The Theory of Morality*, p. 83.
45. Rawls, A Theory of Justice, pp. 114–17, 333–42.
46. Codling v. Paglia, 32 New York 2d 330, 298 Northeastern 2d 622, 345 New York Supplement 2d 461 (1973).
47. This feature is based on United States of America v. Philip Morris Incorporated, et. al, U.S. District Court for the District of Columbia, Civil Action No. 99-CV-02496 (GK), "Final Proposed Finding of Facts," July 1, 2004, and "Final Opinion," August 17, 2006.
48. Discussions of the requirements of due care may be found in a variety of texts, all of which, however, approach the issues from the point of view of legal liability: Irwin Gray, *Product Liability: A Management Response* (New York: AMACOM, 1975), chap. 6; Eugene R. Carrubba, *Assuring Product Integrity* (Lexington, MA: Lexington Books, 1975); Frank Nixon, *Managing to Achieve Quality and Reliability* (New York: McGraw-Hill Book Co., 1971).
49. See, for example, Michael D. Smith, "The Morality of Strict Liability in Tort," *Business and Professional Ethics* 3, no. 1 (December 1979): 3–5. For a review of the rich legal literature on this topic, see Richard A. Posner, "Strict Liability: A Comment," *Journal of Legal Studies* 2, no. 1 (January 1973): 205–21.
50. This feature is based on company websites; Sivan Tamir, "Direct-to-Consumer Genetic Testing: Ethical-Legal Perspectives and Practical Considerations," *Medical Law Review* 18 (Spring 2010): 213–238; Andelka M. Phillips, "Only a Click Away–DTC Genetics for Ancestry, Health, Love . . . and More: A View of the Business and Regulatory Landscape," *Applied and Translational Genomics* 8 (2016): 16–22.
51. "Sorting Out the Liability Debate," *Newsweek*, May 12, 1986.
52. Ernest F. Hollings, "No Need for Federal Product-Liability Law," *Christian Science Monitor*, September 20, 1984. See also Harvey Rosenfield, "The Plan to Wrong Consumer Rights," *San Jose Mercury News*, October 3, 1984.
53. Irvin Molotsky, "Drive to Limit Product Liability Awards Grows as Consumer Groups Object," *New York Times*, March 6, 1986.
54. See forecasts in "Advertisers Will Spend Nearly $600 Billion Worldwide in 2015," *eMarketer*, December 10, 2014, http://www.emarketer.com/Article/Advertisers-Will-Spend-Nearly-600-Billion-Worldwide-2015/1011691.
55. Ibid.
56. Raymond A. Bauer and Stephen A. Greyser, *Advertising in America: The Consumer View* (Cambridge, MA: Harvard University Press, 1968), p. 394.
57. George P. Fletcher, "Fairness and Utility in Tort Theory," *Harvard Law Review* 85, no. 3 (January 1972): 537–73.
58. Posner, *Economic Analysis of Law*, pp. 139–42.
59. See "Unsafe Products: The Great Debate Over Blame and Punishment," *BusinessWeek*, April 30, 1984; Stuart Taylor, "Product Liability: The New Morass," *New York Times*, March 10, 1985; and "The Product-Liability Debate," *Newsweek*, September 10, 1984.
60. Walter Weir, *Truth in Advertising and Other Heresies* (New York: McGraw-Hill Book Company, 1963), p. 154.
61. See also J. Robert Moskin, ed., *The Case for Advertising* (New York: American Association of Advertising Agencies, 1973), passim.
62. See "Ads Infinitum," *Dollars & Sense*, May/June 1984. For an ethical analysis of the information content of advertising, see Alan Goldman, "Ethical Issues in Advertising," in *New Introductory Essays in Business Ethics*, ed. Tom Regan (New York: Random House, Inc., 1984), pp. 242–49; the view that advertising is justified by the "indirect" information it provides is advanced in Phillip Nelson, "Advertising and Ethics," in *Ethics, Free Enterprise, and Public Policy*, ed. Richard T. DeGeorge and Joseph A. Pichler (New York: Oxford University Press, 1978), pp. 187–98.
63. See Stephen A. Greyser, "Irritation in Advertising," *Journal of Advertising Research* 13, no. 3 (February 1973): 7–20.
64. See Michael Schudson, *Advertising, the Uneasy Persuasion* (New York: Basic Books, Inc., Publishers, 1984), p. 210; David M. Potter, *People of Plenty* (Chicago: The University of Chicago Press, 1954), p. 188; International Commission for the Study of Communication Problems, *Many Voices, One World* (London: Kogan Page, 1980), p. 110.
65. Mary Gardiner Jones, "The Cultural and Social Impact of Advertising on American Society," in *Consumerism*, 2nd ed., ed. David Aaker and George S. Day (New York: The Free Press, 1974), p. 431.
66. Stephen A. Greyser, "Advertising: Attacks and Counters," *Harvard Business Review* 50 (March 10, 1972): 22–28.
67. This feature is based on Meg Riordan, *Tobacco Industry Continues to Market to Kids* (Washington, DC: Campaign for Tobacco-Free Kids, 2010).
68. For an overview of the economic literature on this issue, see Mark S. Albion and Paul W. Farris, *The Advertising Controversy, Evidence on the Economic Effects of Advertising* (Boston: Auburn House Publishing Company, 1981), pp. 69–86, 153–70; for an informal discussion of the issue, see Jules Backman, "Is Advertising Wasteful?" *Journal of Marketing* 32, no. 1 (January 1968): 2–8.
69. See the discussion in Thomas M. Garrett, *An Introduction to Some Ethical Problems of Modern American Advertising* (Rome, GA: The Gregorian University Press, 1961), pp. 125–30.
70. Ibid., p. 177.
71. See E. F. Schumacher, *Small Is Beautiful* (London: Blond and Briggs, Ltd., 1973); and Herman E. Daly, ed., *Toward a Steady-State Economy* (San Francisco: W. H. Freeman & Company, Publishers, 1974), "Introduction."

72. Nicholas H. Kaldor, "The Economic Aspects of Advertising," *Review of Economic Studies* 18, no. 1 (1950): 1–27. See also William S. Comanor and Thomas Wilson, *Advertising and Market Power* (Cambridge, MA: Harvard University Press, 1975).

73. Phillip Nelson, "The Economic Value of Advertising," in *Advertising and Society*, ed. Yale Brozen (New York: New York University Press, 1974), pp. 43–66.

74. Richard Caves, *American Industry: Structure, Conduct, Performance* (Englewood Cliffs, NJ: Prentice Hall, Inc., 1972), p. 101.

75. David M. Blank, "Some Comments on the Role of Advertising in the American Economy–A Plea for Reevaluation," in *Reflections on Progress in Marketing*, ed. L. George Smith (Chicago: American Marketing Association, 1964), p. 151.

76. See L. G. Telser, "Some Aspects of the Economics of Advertising," *Journal of Business* 41, no. 2 (April 1968): 166–73.

77. See John Kenneth Galbraith, *The Affluent Society* (Boston: Houghton Mifflin Company, 1958).

78. John Kenneth Galbraith, *The New Industrial State* (New York: New American Library, 1967), p. 211.

79. Ibid., p. 215.

80. See the discussion of manipulation in advertising in Tom L. Beauchamp, "Manipulative Advertising," *Business & Professional Ethics Journal* 3, no. 3/4 (Spring/Summer 1984): 1–22. See also in the same volume the critical response of R. M. Hare, "Commentary," pp. 23–28.

81. See George Katova, *The Mass Consumption Society* (New York: McGraw-Hill Book Company, 1964), pp. 54–61.

82. F. A. von Hayek, "The Non Sequitur of the 'Dependence Effect,'" *Southern Economic Journal* 27 (April 1961).

83. Vance Packard, "Subliminal Messages: They Work; Are They Ethical?" *San Francisco Examiner*, August 11, 1985. See also W. B. Key, *Media Sexploitation* (Englewood Cliffs, NJ: Prentice Hall, 1976).

84. "Ads Aimed at Kids Get Tough NAD Review," *Advertising Age*, June 17, 1985.

85. Cynthia Kooi, "War Toy Invasion Grows Despite Boycott," *Advertising Age*, March 1986.

86. Howard LaFranchi, "Boom in War Toys Linked to TV," *Christian Science Monitor*, January 1986. LaFranchi notes that the average child watches 800 ads for war toys and 250 war-toy television segments in a year, or the equivalent of 22 days in the classroom. See also Glenn Collins, "Debate on Toys and TV Violence," *New York Times*, December 12, 1985.

87. See the discussion of manipulation in advertising in Beauchamp, "Manipulative Advertising"; and in the same volume the critical response of Hare, "Commentary." See also Goldman, "Ethical Issues in Advertising," pp. 253–260; and Robert L. Arrington, "Advertising and Behavior Control," *Journal of Business Ethics* 1, no. 1 (February 1982): 3–12.

88. A critical discussion of several definitions of deception in advertising is found in Thomas L. Carson, Richard E. Wokutch, and James E. Cox, "An Ethical Analysis of Deception in Advertising," *Journal of Business Ethics* 4 (1985): 93–104.

89. Greg Hadfield and Mark Skipworth, "Firms Keep 'Dirty Data' on Sex Lives of Staff," *Sunday Times* (London), July 25, 1993; quoted in John Weckert and Douglas Adeney, *Computer and Information Ethics* (Westport, CT: Greenwood Press, 1997), p. 75.

90. Jeffrey Rothfeder, *Privacy for Sale* (New York: Simon & Schuster, 1992).

91. Richard A. Spinello, *Case Studies in Information and Computer Ethics* (Upper Saddle River, NJ: Prentice Hall, 1997), pp. 108–9.

92. See Charles Fried, *An Anatomy of Values: Problems of Personal and Social Choice* (Cambridge, MA: Harvard University Press, 1970), p. 141.

93. See Garrett and Klonoski, *Business Ethics*, pp. 47–49, who distinguish these two types of privacy (as well as a third kind, "social" privacy).

94. The analyses in this paragraph and the following are drawn from Fried, *Anatomy of Values*, pp. 137–52; Richard A. Wasserstrom, "Privacy," in *Today's Moral Problems*, 2nd ed., ed. Richard A. Wasserstrom (New York: Macmillan, Inc., 1979); Jeffrey H. Reiman, "Privacy, Intimacy and Personhood," *Philosophy and Public Affairs* 6, no. 1 (1976): 26–44; and James Rachels, "Why Privacy Is Important," *Philosophy and Public Affairs* 4, no. 4 (1975): 295–333.

## Chapter 7

1. Fisher v. The University of Texas.

2. Grutter v. Bollinger, 539 U.S. (2003) Docket Number: 02-241; this case and documents related to the case are available at http://www.umich.edu/~urel/admissions/legal/grutter.

3. Brief *amici curiae* of 3M and other leading businesses, accessed August 1, 2004, http://www.umich.edu/~urel/admissions/legal/gratz/amici.html.

4. Grutter v. Bollinger.

5. ABC, *Prime-Time Live*, October 7, 1993.

6. For a review of recent studies, see Marianne Bertrand and Esther Duflo, "Field Experiments on Discrimination," in *Handbook of Field Experiments*, ed. Esther Duflo and Abhijit Banerjee (n.p.: North Holland, 2017); and Devah Pager and Bruce Western, "Identifying Discrimination at Work: The Use of Field Experiments," *Journal of Social Issues* 68, no. 2 (2012): 221–37. See also Judith Rich, *What Do Field Experiments of Discrimination in Markets Tell Us? A Meta Analysis of Studies Conducted Since 2000*, IZA [Institute for the Study of Labor, Bonn Germany] Discussion Paper No. 8584 (Bonn Germany: IZA, 2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2517887. For an older review of these so-called audit studies, see Devah Pager, "The Use of Field Experiments for Studies of Employment Discrimination: Contributions, Critiques, and Directions for the Future," *Annals of the American Academy of Political and Social Science* 609, no. 1 (2007): 104–33.

7. Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* (Chicago: University of Chicago Press, 2007); James Heckman and Peter Siegelman, "The Urban Institute Audit Studies: Their Methods and Findings," in *Clear and Convincing Evidence: Measurement in America*, ed. Michael Fix and Raymond J. Strucyk (Washington, DC: Urban Institute Press, 1993), pp. 187–258; Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology* 108, no. 5 (March 2003): 937–75; Marianne Bertrand and Sendhil Mullainathan, "Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination," *American Economic Review* 94, no. 4 (2004): 991–1013; John Yinger, "Measuring Racial Discrimination with Fair Housing Audits: Caught in the Act," *American Economic Review* 76, no. 5 (2001): 881–93; Jan Ondrich, Stephen Ross, and John Yinger, "Now You See It, Now You Don't: Why Do Real Estate Agents Withhold Houses from Black Customers?" *Review of Economics and Statistics* 85, no. 4 (2003): 854–73.

8. This morally charged meaning is now perhaps the dominant meaning given to the term *discrimination* and is found in any relatively recent dictionary; see, for example, *Webster's New Collegiate Dictionary* (Springfield, MA: G. & C. Merriam Company, 1974), p. 326, where a main meaning attributed to the term *discriminate* is "to make a difference in treatment or favor on a basis other than individual merit," and where a meaning attributed to

*discrimination* is "prejudiced or prejudicial outlook, action, or treatment."

9. Joe R. Feagin and Clairece Booker Feagin, *Discrimination American Style*, 2nd ed. (Malabar, FL: Robert E. Krieger Publishing Company, 1986), pp. 23–33.

10. U.S. Equal Employment Opportunity Commission, *Affirmative Action and Equal Employment: A Guidebook for Employers*, II (Washington, DC: Government Printing Office, 1974), p. D-28.

11. L. H. Krieger, "The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity," *Stanford Law Review* 47 (1995): 1161–248.

12. J. F. Dovido, K. Kawakami, N. Smoak, and S. L. Gaertner, "The Nature of Contemporary Racial Prejudice: Insights from Implicit and Explicit Measures of Attitudes," in *Attitudes: Insights from the New Implicit Measures*, ed. R. E. Petty, R. H. Fazio, and B. Brinol (New York: Psychology Press, 2009), pp. 165–92; and J. F. Dovidio and S. L. Gaertner, "Aversive Racism," in *Advances in Experimental Social Psychology*, vol. 36, ed. M. P. Zanna (San Diego, CA: Elsevier Academic press), pp. 1–52.

13. The necessity of basing analyses of discrimination on statistical grounds and the futility of attempting an individual case-by-case procedure are discussed by Lester Thurow in "A Theory of Groups and Economic Redistribution," *Philosophy and Public Affairs* 9, no. 1 (Fall 1979): 25–41.

14. Gallup, "Race Relations," poll conducted from June 15–July 10, 2015, accessed May 10, 2016, http://www.gallup.com/poll/1687/race-relations.aspx.

15. Robert Jones, Daniel Cox, Betsy Cooper, and Rachel Lienesch, *Anxiety, Nostalgia, and Mistrust: Findings from the 2015 American Values Survey* (Washington DC: Public Religion Research Institute, 2015), p. 38.

16. Brenda Chaney v. Plainfield Healthcare Center, U.S. Court of Appeals for the 7th Circuit, no. 09-3661, July 20, 2010.

17. Walter B. Connolly Jr., *A Practical Guide to Equal Employment Opportunity*, vol. 1 (New York: Law Journal Press, 1975), pp. 231–42. For a discussion of the relevance of statistics, see Tom Beauchamp, "The Justification of Reverse Discrimination," in *Social Justice and Preferential Treatment*, ed. W. T. Blackstone and R. Heslep (Athens, GA: The University of Georgia Press, 1977), pp. 84–110.

18. U.S. Census Bureau, "Historical Income Tables: Families—Table F-23, Families by Total Money Income, Race, and Hispanic Origin of Householder, 1967–2014 (Income in 2014 Dollars)," accessed November 11, 2016, http://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-families.html.

19. William J. Carrington and Kenneth R. Troske, *Gender Segregation in Small Firms* (Washington, DC: Center for Economic Studies of the U.S. Census Bureau, October 1992) [CES Report No. 92–13]; a short version of this report is available from the U.S. Census Bureau as a statistical brief entitled "Two Different Worlds: Men and Women From 9 to 5" (SB/94–24), issued February 1995.

20. Jessica Semega, *Men's and Women's Earnings by State: 2008 American Community Survey* American Community Survey Reports, ACSBR/08-3 (n.p.: U.S. Census Bureau, 2009), https://www.census.gov/prod/2009pubs/acsbr08-3.pdf.

21. Barbara Reskin and Irene Padavic, *Women and Men at Work* (Thousand Oaks, CA: Pine Forge Press, 1994), p. 106.

22. American Association of University Women, *The Simple Truth about the Gender Pay Gap* (Washington, DC: the American Association of University Women Educational Foundation, 2016).

23. Judy Goldberg Dey and Catherine Hill, *Behind the Pay Gap* (Washington, DC: the American Association of University Women Educational Foundation, 2007).

24. U.S. Census Bureau, "Historical Income Tables: People—Table P-39, Full-Time, Year-Round Workers by Mean Earnings and Sex: 1967 to 2014 (15 Years Old and Over)"; and "Table P-43, Full-Time, Year-Round Workers (Both Sexes Combined) by Median and Mean Earnings: 1974 to 2014 (15 Years Old and Over)."

25. Robert Pear, "Women's Pay Lags Further Behind Men's," *New York Times*, January 16, 1984, p. 1. See also "Gender Gap/Dollar Gap," *Los Angeles Times*, January 25, 1984.

26. U.S. Census Bureau, "Historical Income Tables: People—Table P-32, Educational Attainment—Full-Time Year-Round Workers 18 Years Old and Over, by Mean Earnings, Age, and Sex: 1991–2014."

27. U.S. Census Bureau, "Table PINC-04, Educational Attainment—People 18 Years Old and Over, by Total Money Earnings, Work Experience, Age, Race, Hispanic Origin, and Sex, 2014," accessed November 11, 2016, https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-04.2014.html.

28. U.S. Census Bureau, "Table P-43, Workers (Both Sexes Combined) Median and Mean Earnings: 1987–2014," accessed November 8, 2016, http://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-people.html.

29. U.S. Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey, Household Data, Annual Averages—Table 39, Median Weekly Earnings Of Full-Time Wage and Salary Workers by Detailed Occupation and Sex, 2015," accessed November 11, 2016, http://www.bls.gov/cps/cpsaat39.htm.

30. This relationship has been demonstrated by several studies. See, for example, Stephanie Boraas and William M. Rodgers III, "How Does Gender Play a Role in the Earnings Gap" An Update,? *Monthly Labor Review*, March 2003, pp. 9–15.

31. Barbara Reskin and Irene Padavic, *Women and Men at Work* (Thousand Oaks, CA: Pine Forge Press, 1994), pp. 82–84; and U.S. Department of Labor, Office of Federal Contract Compliance Programs, Glass Ceiling Commission, *Good for Business: Making Full Use of the Nation's Human Capital* (Washington, DC: Government Printing Office, 1995), pp. 11–12.

32. Fortune, "The Percentage of Female CEOs in the Fortune 500 Drops to 4%," http://fortune.com/2016/06/06/women-ceos-fortune-500-2016; CNN/Money, "Only 9 Hispanic CEOs at Top 500 Companies" http://money.cnn.com/2015/09/09/news/hispanic-ceo-fortune-500-companies; "Only 5 Black CEOs at 500 Biggest Companies," http://money.cnn.com/2015/01/29/news/economy/mcdonalds-ceo-diversity.

33. U.S. Census Bureau, "Historical Poverty Tables—Table 1, Weighted Average Poverty Thresholds for Families of Specified Size: 1959 to 2015."

34. U.S. Census Bureau, "Historical Poverty Tables—Table 2, Poverty Status of People by Family Relationship, Race, and Hispanic Origin: 1959 to 2008."

35. U.S. Census Bureau, "Historical Poverty Tables—Table 4, "Poverty Status of Families, by Type of Family, Presence of Related Children, Race, and Hispanic Origin: 1959 to 2008."

36. See Bradley R. Schiller, *The Economics of Poverty & Discrimination*, 6th ed. (Englewood Cliffs, NJ: Prentice-Hall, 1995), pp. 193–94; and U.S. General Accounting Office, *Women's Earnings: Work Patterns Partially Explain Difference Between Men's and Women's Earnings* GAO-04-35 (Washington, DC: U.S. General Accounting Office, 2003), p. 2.

37. Reskin and Padavic, *Women and Men at Work*, pp. 39–43. See also U.S. General Accounting Office, *Women's Earnings*, p. 2.

38. U.S. Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey, Household Data, Annual Averages—Table 39."
39. Jacob Mincer and Solomon W. Polachek, "Family Investments in Human Capital: Earnings of Women," *Journal of Political Economy* 82, no. 2 (March/April 1982), part 2, pp. s76–s108. See also Reskin and Padavic, *Women and Men at Work*, pp. 39–43.
40. See Mary Corcoran, Greg J. Duncan, and Martha S. Hill, "The Economic Fortunes of Women and Children," in *Black Women in America*, ed. Micheline R. Malson, Elisabeth Mudimbe-Boyi, Jean F. O'Barr, and Mary Wyer (Chicago: The University of Chicago Press, 1988), pp. 97–113; Mary Corcoran, "A Longitudinal Approach to White Women's Wages," *Journal of Human Resources* 18, no. 4 (Fall 1983): 497–520; and Paula England, "The Failure of Human Capital Theory to Explain Occupational Sex Segregation," *Journal of Human Resources* 17, no. 3 (Summer 1982): 358–70.
41. "Study Blames Barriers, Not Choices, for Sex Segregation," *San Jose Mercury News*, December 20, 1985, p. 21E.
42. Randall K. Filer, "Sexual Differences in Earnings: The Role of Individual Personalities and Tastes," *Journal of Human Resources* 18, no. 1 (Winter 1983).
43. Mary Corcoran and Greg J. Duncan, "Work History, Labor Force Attachment, and Earnings Differences between the Races and Sexes," *Journal of Human Resources* 19, no. 1 (Winter 1979): 3–20. See also Gerald Jaynes and Robin Williams, eds., *A Common Destiny: Blacks and American Society* (Washington, DC: National Academy Press, 1989), pp. 319–23.
44. Goldberg Dey and Catherine Hill, *Behind the Pay Gap*, pp. 17–18.
45. All of the studies in this paragraph are cited in Clint Bolick and Susan Nestleroth, *Opportunity 2000* (Indianapolis, IN: Hudson Institute, 1988), pp. 21–22.
46. Ibid., p. 67.
47. U.S. Census Bureau, Current Population Reports, Educational Attainment in the United States: 2007, Series P20-550.
48. Dick Lilly, "City Staff Survey Finds Harassment," *Seattle Times*, October 8, 1991, p. B3; "Female Execs See Marketing as Fastest Track," *Sales & Marketing Management*, August 1993, p. 10; "Survey Finds Most Women Rabbis Have Been Sexually Harassed on Job," *United Press International*, August 28, 1993; "Female Jail Guards Fight against Harassment by Male Colleagues," *Houston Chronicle*, October 17, 1993, p. A5.
49. Ibid.
50. Reported in Terry Halbert and Elaine Inguilli, eds., *Law and Ethics in the Business Environment* (St. Paul, MN: West Publishing Co., 1990), p. 298.
51. Eliza G. C. Collins and Timothy B. Blodgett, "Sexual Harassment . . . Some See It . . . Some Won't," *Harvard Business Review* 59, no. 2 (March/April 1981).
52. National Center for Education Statistics, "Fast Facts: Degrees Conferred by Race and Sex" https://nces.ed.gov/fastfacts/display.asp?id=72
53. Charlotte Lynn Rawlins Yates and Cheryl Jenkins Mathis v. Avco Corporation, 814 F. 2d 630 (1987), U.S. Court of Appeals, Sixth Circuit.
54. Gretchen Voss, "Women Harassing Men," *Marie Claire*, May 26, 2008, http://www.marieclaire.com/sex-love/advice/a1523/women-harassing-men-1/.
55. U.S. Equal Opportunity Employment Commission—Table, "Charges Alleging Sexual Harassment FY 2010 - FY 2015" https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm
56. Thomas Jefferson, *Declaration of Independence*.
57. Dred Scott v. Sanford, 60 U.S (19 How) (1857) at 407 and 421. See Don E. Fehrenbacher, *The Dred Scott Case* (New York: Oxford University Press, 1978).
58. Bradwell v. Illinois, 83 U.S. (16 Wall) (1873). See Leo Kanowitz, *Women and the Law* (Albuquerque, NM: University of New Mexico Press, 1969), p. 36.
59. Norman Daniels, "Merit and Meritocracy," *Philosophy and Public Affairs* 7, no. 3 (Spring 1978): 208–9.
60. For economic analyses of the costs and benefits associated with discrimination, see Gary S. Becker, *The Economics of Discrimination*, 2nd ed. (Chicago: The University of Chicago Press, 1971); and Janice Fanning Madden, *The Economics of Sex Discrimination* (Lexington, MA: D.C. Heath and Company, 1973). For a critical review of this literature, see Annette M. LaMond, "Economic Theories of Employment Discrimination," in *Women, Minorities, and Employment Discrimination*, ed. Phyllis A. Wallace and Annette M. LaMond (Lexington, MA: D.C. Heath and Company, 1977), pp. 1–11.
61. Richard Wasserstrom, "Rights, Human Rights, and Racial Discrimination," *Journal of Philosophy* 61 (October 1964): 628–41.
62. Richard Wasserstrom, "Racism, Sexism, and Preferential Treatment: An Approach to the Topics," *UCLA Law Review* 24 (1977): 581–622.
63. This is, for example, the underlying view in John C. Livingston, *Fair Game?* (San Francisco: W. H. Freeman and Company, 1979), pp. 74–76.
64. Richard M. Hare, *Freedom and Reason* (New York: Oxford University Press, 1963), pp. 217–19.
65. See the discussion of this view in Sharon Bishop Hill, "Self-Determination and Autonomy," in Richard Waserstrom, eds., *Today's Moral Problems*, 2nd ed. (New York: Macmillan, Inc., 1979), pp. 118–33.
66. On this issue, see Janet S. Chafetz, *Masculine, Feminine, or Human?: An Overview of the Sociology of Sex Roles* (Itasca, IL: Peacock, 1974); and Joyce Trebilcot, "Sex Roles: The Argument from Nature," *Ethics* 85, no. 3 (April 1975): 249–55.
67. See, for example, Thomas Nagel, "Equal Treatment and Compensatory Discrimination," *Philosophy and Public Affairs*, 1973, 2, p. 360; and Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), pp. 232–37.
68. Susan Haack, "On the Moral Relevance of Sex," *Philosophy*, 1974, 49, pp. 90–95; Jon J. Durkin, "The Potential of Women," in Bette Ann Stead, ed., *Women in Management* (Englewood Cliffs, NJ: Prentice Hall, 1978), pp. 42–46.
69. Becker, *The Economics of Discrimination,* p. 214.
70. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, Belknap Press, 1971), pp. 83–90.
71. Feagin and Feagin, *Discrimination American Style*, pp. 43–77.
72. Charles Perelman, *The Idea of Justice and the Problem of Argument* (London: Routledge and Kegan Paul, 1963).
73. Equal Employment Opportunity Commission, Title 29 Code of Federal Regulations, Section 1604.11, Sexual Harassment.
74. Deborah Merritt v. Old Dominion Freight Line, Inc., U.S. Court of Appeals for the 4th Circuit, no. 09-1498, April 9, 2010.
75. Rabidue v. Osceola Refining Company, 805 F. 2d 611 (1986), U.S. Court of Appeals, Sixth Circuit, Circuit Judge Keith, Dissenting in Part, quoted in Terry Halbert and Elaine Inguilli, eds., *Law and Ethics in the Business Environment* (St. Paul, MN: West Publishing Co., 1990), p. 301.
76. For example, this was the position of the majority opinion in Rabidue v. Osceola Refining Company.

77. Gretchen Morgenson, "Watch That Leer, Stifle That Joke," *Forbes*, May 15, 1989, p. 72.
78. Barbara Lindemann Schlei and Paul Grossman, *Employment Discrimination Law*, 1979 Supplement (Washington, DC: The Bureau of National Affairs, Inc., 1979), pp. 109–20.
79. John Lawrie, "Subtle Discrimination Pervades Corporate America," *Personnel Journal* 69 (January 1990): 53–55.
80. See Smith v. Liberty Mutual Insurance Company, 395 F. Supp., 1098 (1975); and Sommers v. Budget Marketing Inc., 667 F. 2d 748 (1982).
81. Robert N. Webner, "Budding Movement Is Seeking to Stop Fat Discrimination," *Wall Street Journal*, October 8, 1979, p. 33.
82. See Richard D. Mohr, "Gay Rights," in *Philosophical Issues in Human Rights*, ed. Patricia H. Werhane, A. R. Gini, and David Ozar (New York: Random House, Inc., 1986), pp. 337–41; David Margolick, "Court Blocks Job Denials for Obesity," *New York Times*, May 8, 1985, p. 18; Cris Oppenheimer, "A Hostile Marketplace Shuts Out Older Workers," *San Jose Mercury News*, December 9, 1985.
83. Margaret Beale Spencer, "CNN Pilot Demonstration," April 28, 2010, accessed August 20, 2010, http://i2.cdn.turner.com/cnn/2010/images/05/13/expanded_results_methods_cnn.pdf.
84. United Steelworkers of America v. Weber, 99 S. Ct. 2721 (1979).
85. Rogene A. Buchholz, *Business Environment and Public Policy* (Englewood Cliffs, NJ: Prentice Hall, 1982), pp. 287–88.
86. Quoted in "High Court Dumps Quotas in Labor Case," *Washington Times*, June 13, 1984, p. 1.
87. "A Right Turn on Race"? *Newsweek*, June 25, 1984, pp. 29–31; Stuart Taylor, "Reagan Attack on Quotas in Jobs Goes to High Court," *New York Times*, August 6, 1985, p. 17.
88. Aaron Epstein, "Layoffs Can't Favor Minority Workers," *San Jose Mercury News*, May 20, 1986, p. 1a.
89. See, for example, "The New Politics of Race" and "A Crisis of Shattered Dreams," in *Newsweek*, May 6, 1991, pp. 22–26, 28–31.
90. Paul W. Taylor, "Reverse Discrimination and Compensatory Justice," *Analysis* 33 (1973): 177–82. See also Anne C. Minas, "How Reverse Discrimination Compensates Women," *Ethics* 88, no. 1 (October 1977): 74–79.
91. Bernard Boxhill, "The Morality of Reparations," *Social Theory and Practice* 2, no. 1 (1972): 113–22.
92. See, for example, Barry R. Gross, *Discrimination in Reverse: Is Turnabout Fair Play?* (n.p.: New York University Press, 1978); for a contrasting view, see Alan H. Goldman, *Justice and Reverse Discrimination* (Princeton, NJ: Princeton University Press, 1979).
93. Theodore V. Purcell and Gerald F. Cavanagh, *Blacks in the Industrial World* (New York: The Free Press, 1972), p. 164.
94. See Bernard Boxill, *Blacks and Social Justice* (Totowa, NJ: Rowman & Allanheld, 1984), pp. 147–72. See also the essays collected in Marshall Cohen, Thomas Nagel, and Thomas Scanlon, eds., *Equality and Preferential Treatment* (Princeton, NJ: Princeton University Press, 1977); and William T. Blackstone and Robert D. Heslep, eds., *Social Justice & Preferential Treatment* (Athens, GA: The University of Georgia Press, 1977).
95. George Sher, "Reverse Discrimination, the Future, and the Past," in *Ethics* 90 (October 1979): 81–87; and George Sher, "Preferential Hiring," in *Just Business*, Tom Regan, ed. (New York: Random House, Inc., 1984), pp. 32–59. An excellent discussion of affirmative action programs is Robert K. Fullinwider, *The Reverse Discrimination Controversy* (Totowa, NJ: Rowman and Littlefield, 1980).
96. Alan H. Goldman, "Limits to the Justification of Reverse Discrimination," *Social Theory and Practice* 3, no. 3 (1975): 289–306.
97. See Karst and Horowitz, "Affirmative Action and Equal Protection," *Virginia Law Review* 60 (1974).
98. There are innumerable discussions of this objection to the compensation justification; see, for example, the series Michael Bayles, "Reparations to Wronged Groups," *Analysis* 33, no. 6 (1973); L. J. Cowan, "Inverse Discrimination," *Analysis* 33, no. 10 (1972); Roger Shiner, "Individuals, Groups, and Inverse Discrimination," *Analysis* 33 (June 1973); Paul Taylor, "Reverse Discrimination and Compensatory Justice," *Analysis* 33 (June 1973); James W. Nickel, "Should Reparations Be to Individuals or Groups?" *Analysis* 34, no. 9 (April 1974): 154–60; Alan Goldman, "Reparations to Individuals or Groups?" *Analysis* 35, no. 5 (April 1975): 168–70.
99. Judith Jarvis Thomson, "Preferential Hiring," *Philosophy and Public Affairs* 2, no. 4 (Summer 1973): 381; for a similar claim with respect to blacks, see Graham Hughes, "Reparation for Blacks?" *New York University Law Review* 43 (1968): 1072–73.
100. Martin H. Redish, "Preferential Law School Admissions and the Equal Protection Clause: An Analysis of the Competing Arguments," *University of California at Los Angeles Review* 22, no. 2 (1974): 389. See also Bernard R. Boxill, "The Morality of Preferential Hiring," *Philosophy and Public Affairs* 7, no. 3 (Spring 1978): 246–68.
101. Robert Simon, "Preferential Hiring: A Reply to Judith Jarvis Thomson," *Philosophy and Public Affairs* 3, no. 3 (Spring 1974): 312–20; Gertrude Ezorsky, "It's Mine," *Philosophy and Public Affairs* 3, no. 3 (Spring 1974): 321–30; Robert K. Fullinwider, "Preferential Hiring and Compensation," *Social Theory and Practice* 3, no. 3 (Spring 1975): 307–20.
102. For examples of utilitarian arguments, see Thomas Nagel, "Equal Treatment and Compensatory Discrimination," *Philosophy and Public Affairs* 2, no. 4 (Spring 1973): 348–63; James W. Nickel, "Preferential Policies in Hiring and Admissions," *Columbia Law Review* 75, no. 3 (1975): 534–58; Ronald Dworkin, "The De Funis Case: The Right to Go to Law School," *New York Review of Books* 23, no. 1 (1976): 29–33.
103. Owen M. Fiss, "Groups and the Equal Protection Clause," *Philosophy and Public Affairs* 5, no. 2 (Winter 1976): 150–51.
104. James W. Nickel, "Classification of Race in Compensatory Programs," *Ethics* 84, no. 2 (1974): 146–50.
105. Virginia Black, "The Erosion of Legal Principles in the Creation of Legal Policies," *Ethics* 84, no. 3 (1974); William T. Blackstone, "Reverse Discrimination and Compensatory Justice," in *Social Justice and Preferential Treatment*, ed. William Blackstone and Robert Heslep (Athens, GA: University of Georgia Press, 1977).
106. Robert K. Fullinwider, "On Preferential Hiring," in *Feminism and Philosophy*, ed. Mary Vetterling-Braggin, Frederick A. Elliston, and Jane English (Totowa, NJ: Littlefield, Adams and Company, 1978), pp. 210–24.
107. See Nickel, "Preferential Policies."
108. Nagel, "Equal Treatment and Compensatory Discrimination."
109. Lawrence Crocker, "Preferential Treatment," in *Feminism and Philosophy*, ed. Vetterling-Braggin et al., pp. 190–204.
110. George Sher, "Justifying Reverse Discrimination in Employment," *Philosophy and Public Affairs* 4, no. 2 (Winter 1975): 159–70.
111. Earl L. Carl and Kenneth R. Callahan, "Negroes and the Law," *Journal of Legal Education* 17, no. 3 (1965): 254.
112. Kaplan, "Equal Justice in an Unequal World," *N.W.U. Law Review* 61 (1966): 365.
113. Purcell and Cavanagh, *Blacks in the Industrial World*, pp. 30–44. See also the articles on alternative feminist futures collected in Carol Gould, ed., *Beyond Domination* (Totowa, NJ: Rowman and Allenheld, 1983).

114. Carl Cohen, "Race and the Constitution," *Nation*, February 8, 1975; Lisa H. Newton, "Reverse Discrimination as Unjustified," *Ethics* 83 (1973): 308–12.
115. Ronald Dworkin, "Why Bakke Has No Case," *New York Review of Books* (November 10, 1977): 11–15.
116. Ibid.
117. For example, Glenn C. Loury, "Performing without a Net," in *Affirmative Action Debate*, ed. George E. Curry and Cornel West (Cambridge, MA: Perseus Press, 1996).
118. Shelby Steele, *The Content of Our Character: A New Vision of Race in America* (New York: St. Martin's Press, 1990), pp. 112–18.
119. Sonia L. Nazario, "Many Minorities Feel Torn by Experience of Affirmative Action," *Wall Street Journal*, June 27, 1989, pp. A1, A7.
120. Ibid.
121. Roper Center for Public Opinion, Question ID: USGALLUP. 1950317.R31. See also M. C. Taylor, "Impact of Affirmative Action on Beneficiary Groups: Evidence from the 1990 General social Survey," *Basic and Applied social Psychology* 15 (1994): 143–78.
122. Sidney Hook, "Discrimination against the Qualified?" *New York Times*, 1971.
123. See Nickel, "Preferential Policies," p. 546.
124. For example, Gross, *Discrimination in Reverse*, p. 108; for a reply to Gross, see Boxill, "The Morality of Preferential Hiring."
125. Theodore V. Purcell, "A Practical Way to Use Ethics in Management Decisions" (paper for the Drew-Allied Chemical Workshop, June 26–27, 1980); and Nickel, "Preferential Policies."
126. Felice N. Schwartz, "Management Women and the New Facts of Life," *Harvard Business Review* (January–February 1989): 65–76.
127. Bolick and Nestleroth, *Opportunity 2000*, pp. 28–50.
128. Ibid., pp. 65–94. See also Beverly Geber, "Managing Diversity," *Training* (July 1990): 23–30.

## Chapter 8

1. See James D. Thompson, *Organizations in Action* (New York: McGraw-Hill Book Company, 1967), pp. 4–6. See also John Ladd, "Morality and the Ideal of Rationality in Formal Organizations," *Monist* 54 (1970).
2. E. H. Schein, *Organizational Psychology*, 3rd ed. (Englewood Cliffs, NJ: Prentice Hall, 1988), p. 8.
3. The classic analysis of white-collar crime is Edwin H. Sutherland, *White Collar Crime* (New York: Holt, Rinehart and Winston, Inc., 1949). See also Marshall B. Clinard, Peter C. Veager, Jeanne Brissette, David Petrashek, and Elizabeth Harries, *Illegal Corporate Behavior* (Washington, DC: U.S. Government Printing Office, 1979).
4. See Philip I. Blumberg, "Corporate Responsibility and the Employee's Duty of Loyalty and Obedience: A Preliminary Inquiry," in *The Corporate Dilemma*, ed. Dow Votaw and S. Prakash Sethi (Englewood Cliffs, NJ: Prentice Hall, 1973), pp. 82–113.
5. Quoted in Ibid., pp. 87 and 88.
6. See Lawrence C. Becker, *Property Rights* (London: Routledge & Kegan Paul, 1977), p. 19.
7. Vincent Barry, *Moral Issues in Business* (Belmont, CA: Wadsworth Publishing Company, Inc., 1986), pp. 237–38.
8. For a more extended discussion of the ethics of trade secrets, see Richard T. DeGeorge, *Business Ethics*, 3rd ed. (New York: Macmillan Publishing Company, 1990), pp. 292–98.
9. This case is recounted in Michael S. Baram, "Trade Secrets: What Price Loyalty?" *Harvard Business Review* (November/December 1968): 66–74.
10. See, for example, Patricia H. Werhane, "The Ethics of Insider Trading," *Journal of Business Ethics* 8, no. 11 (November 1989): 841–45.
11. See Robert W. McGee, "Applying Ethics to Insider Trading," *Journal of Business Ethics* 77, no. 2 (2008): 205–17; Bill Shaw, "Should Insider Trading Be Outside The Law?" *Business and Society Review* (Summer 1988): 34–37; and Tibor R. Machan, "What Is Morally Right with Insider Trading?" *Public Affairs Quarterly* 10 (April 1996): 135–42; the classic defense of insider trading along the lines sketched later is Henry G. Manne, *Insider Trading and the Stock Market* (New York: The Free Press, 1966) and Henry G. Manne, "In Defense of Insider Trading," *Harvard Business Review* 44, no. 6 (November/December 1966): 113–22. A defense of insider trading that also provides a useful bibliography of Manne's work is Robert W. McGee, "Insider Trading: An Economic and Philosophical Analysis," *Mid-Atlantic Journal of Business* 25, no. 1 (November 1988): 35–48.
12. See H. Mendelson, "Random Competitive Exchange: Price Distributions and Gains from Trade," *Journal of Economic Theory* (December 1985): 254–80.
13. See L. R. Glosten and P. R. Milgrom, "Bid, Ask, and Transaction Prices in a Specialist Market with Heterogeneously Informed Traders," *Journal of Financial Economics* (March 1985): 71–100; T. Copeland and D. Galai, "Information Effects on the Bid-Ask Spread," *Journal of Finance* (December 1983): 1457–69; G. J. Bentson and R. Hagerman, "Determinants of Bid-Ask Spreads in the Over-the-Counter Market," *Journal of Financial Economics* (January/February 1974): 353–64; P. Venkatesh and R. Chiang, "Information Asymmetry and the Dealer's Bid-Ask Spread: A Case Study of Earnings and Dividend Announcements," *Journal of Finance* (December 1986): 1089–1102.
14. Gary L. Tidwell and Abdul Aziz, "Insider Trading: How Well Do You Understand the Current Status of the Law?" *California Management Review* 30, no. 4 (Summer 1988): 115–23.
15. The following analysis of wages and working conditions draws from Thomas M. Garrett, *Business Ethics*, 2nd ed. (Englewood Cliffs, NJ: Prentice Hall, 1986), pp. 53–62.
16. See Garrett, *Business Ethics*, pp. 38–40; and Barry, *Moral Issues in Business*, pp. 174–175.
17. James Mill, "Exposed: Sweatshop 'Slaves' Earning Just 44p an Hour Making 'Empowering' Beyoncé Clobber," *Sun*, May 7, 2016; and David Harsanyi, "Beyoncé's Ivy Park Sweatshop Labor Helps the Poor," *National Review*, May 20, 2016.
18. Bureau of Labor Statistics, "Employer-Reported Workplace Injury and Illness Summary," news release, October 29, 2015, http://www.bls.gov/news.release/osh.nr0.htm; and Bureau of Labor Statistics, "Census of Fatal Occupational Injuries Summary, 2014," news release, September 17, 2015, http://www.bls.gov/news.release/cfoi.nr0.htm.
19. National Safety Council, "Summary from Injury Facts, 2016 Edition," accessed August 18, 2010, http://www.nsc.org/news_resources/injury_and_death_statistics/Pages/InjuryDeathStatistics.aspx.
20. William W. Lowrance, *Of Acceptable Risk* (Los Altos, CA: William Kaufmann, Inc., 1976), p. 147.
21. Occupational Safety and Health Act of 1970, Public Law, 91-596.
22. Peter J. Sheridan, "1970–1976: America in Transition—Which Way Will the Pendulum Swing?" *Occupational Hazards*, September 1975, p. 97.
23. Numbers for 2009 are from the U.S. Department of Labor, Bureau of Labor Statistics, "Fatal Occupational Injuries by Industry and Event or Exposure, All United States, 2009," Table A-1, accessed August 20, 2010, http://www.bls.gov/iif/oshcfoi1.htm; and numbers for other years are from U.S. Department of Labor, Bureau of Labor Statistics, "Census of Fatal Occupational Injuries Charts,

1992–2009," Worker Fatalities in Charts to 2009, accessed August 20, 2010, http://stats.bls.gov/iif/oshcfoi1.htm#charts.

24. U.S. Census Bureau, *Statistical Abstract of the United States, 2010* (Washington, DC: U.S. Census Bureau, 2009), Table No. 641, "Workers Killed or Disabled on the Job: 1970 to 2007"; figures for 2008 are from National Safety Council, "Summary from Injury Facts, 2010 Edition," accessed August 18, 2010, http://www.nsc.org/news_resource/injury_and_death_statistics/Pages/InjuryDeathStatistics.aspx.

25. See Russell F. Settle and Burton A. Weisbrod, "Occupational Safety and Health and the Public Interest," in *Public Interest Law*, ed. Burton Weisbrod, Joel F. Handler, and Neil K. Komesar (Berkeley, CA: University of California Press, 1978), pp. 285–312.

26. For a compact contrast of rational and political behaviors, see Robert Miles, *Macro Organizational Behavior* (Santa Monica, CA: Good Year Publishing, 1980), pp. 156–61. A fuller and more historical discussion of the "rational" and "political" approaches to organization is Henry Mintzberg, *Power in and around Organizations* (Englewood Cliffs, NJ: Prentice Hall, 1983), pp. 8–21.

27. For some analyses of the firm based on the "political" model, see Mintzberg, *Power in and around Organizations*; Samuel B. Bacharach and Edward J. Lawler, *Power and Politics in Organizations* (San Francisco, CA: Jossey-Bass, Inc., Publishers, 1980); James G. March, "The Business Firm as a Political Coalition," *Journal of Politics* 24 (1962): 662–68; Tom Burns, "Micropolitics: Mechanisms of Institutional Change," *Administrative Science Quarterly* 6 (1962): 255–81; Michael L. Tushman, "A Political Approach to Organizations: A Review and Rationale," *Academy of Management Review* (April 1977): 206–16; Jeffrey Pfeffer, "The Micropolitics of Organizations," in *Environments and Organizations*, ed. Marshall W. Meyer et al. (San Francisco: Jossey-Bass, Inc., Publishers, 1978), pp. 29–50.

28. See R. M. Cyert and J. G. March, *A Behavioral Theory of the Firm* (Englewood Cliffs, NJ: Prentice Hall, 1963); H. Kaufman, "Organization Theory and Political Theory," *American Political Science Review* 58, no. 1 (1964): 5–14.

29. Walter R. Nord, "Dreams of Humanization and the Realities of Power," *Academy of Management Review* (July 1978): 674–79.

30. On the primacy of power in organizations, see Abraham Zaleznik, "Power and Politics in Organizational Life," *Harvard Business Review* (May1970): 47–60. The definition of *power* in the text is derived from Virginia E. Schein, "Individual Power and Political Behaviors in Organizations: An Inadequately Explored Reality," *Academy of Management Review* (January 1977): 64–72. Definitions of *power* are, of course, controversial.

31. For example, Richard Eells, *The Government of Corporations* (New York: The Free Press of Glencoe, 1962); and Arthur Selwyn Miller, *The Modern Corporate State* (Westport, CT: Greenwood Press, 1976).

32. See Earl Latham, "The Body Politic of the Corporation," in *The Corporation in Modern Society*, ed. Edward S. Mason (Cambridge, MA: Harvard University Press, 1960).

33. The classic exposition of this view is Adolf Berle and Gardner Means, *The Modern Corporation and Private Property* (New York: Macmillan, 1932).

34. Jack Stierber, "Protection against Unfair Dismissal," in *Individual Rights in the Corporation*, ed. Alan F. Westin and Stephen Salisbury (New York: Pantheon Books, Inc., 1980).

35. David W. Ewing, *Freedom Inside the Organization* (New York: McGraw-Hill Book Company, 1977), pp. 36–41.

36. This ownership and contract argument is the basis of traditional legal views on the employee's duty to obey and be loyal to his employer. See Blumberg, "Corporate Responsibility," pp. 82–113.

37. Donald L. Martin, "Is an Employee Bill of Rights Needed?" in *The Attack on Corporate America*, ed. M. Bruce Johnson (New York: McGraw-Hill Book Company, 1978).

38. Ibid.

39. U.S. Supreme Court decision in the case of City of Ontario, California et al., v. Jeff Quon et al., June 17, 2010.

40. See John Hoerr, "Privacy in the Workplace," *BusinessWeek*, March 28, 1988, pp. 61–65, 68; Susan Dentzer, "Can You Pass the Job Test?" *Newsweek*, May 5, 1986; Sandra N. Hurd, "Genetic Testing: Your Genes and Your Job," *Employee Responsibilities and Rights Journal* 3, no. 4 (1990): 239–52; U.S. Congress, Office of Technology Assessment, *Genetic Monitoring and Screening in the Workplace*, OTA-BA-455 (Washington, DC: U.S. Government Printing Office, October 1990); Arthur R. Miller, *The Assault on Privacy: Computers, Data Banks and Dossiers* (Ann Arbor, MI: University of Michigan Press, 1971).

41. See Garrett, *Business Ethics*, pp. 47–49, who distinguishes these two types of privacy (as well as a third kind, "social privacy").

42. The remarks that follow are based in part on Garrett, *Business Ethics*, pp. 49–53; for a more stringent view, which concludes that polygraphs, for example, should not be used at all by employers, see George G. Brenkert, "Privacy, Polygraphs, and Work," *Business and Professional Ethics Journal* 1, no. 1 (Fall 1981): 19–35.

43. For examples, see Alan F. Westin, *Whistle Blowing, Loyalty and Dissent in the Corporation* (New York: McGraw-Hill Book Company, 1981); and Frederick Elliston, John Keenan, Paula Lockhart, and Jane van Schaick, *Whistleblowing, Managing Dissent in the Workplace* (New York: Praeger Publishers, Inc., 1985).

44. For example, Ewing, *Freedom Inside the Organization*, pp. 115–27.

45. See John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pp. 205–11.

46. See Blumberg, "Corporate Responsibility."

47. For example, Ralph Nader, Peter J. Petkas, and Kate Blackwell, *Whistle Blowing* (New York: Grossman Publishers, 1972); and Charles Peters and Taylor Branch, *Blowing the Whistle: Dissent in the Public Interest* (New York: Praeger Publishers, Inc., 1972); for a comprehensive study of whistleblowing, see Frederick Elliston, John Keenan, Paula Lockhart, and Jane van Schaick, *Whistleblowing Research, Methodological and Moral Issues* (New York: Praeger Publishers, Inc., 1985).

48. Mackowiak v. University Nuclear Systems, Inc., 753 F. 2d 1159 (9th Cir. 1984).

49. C. H. Farnsworth, "Survey of Whistleblowers Finds Retaliation but Few Regrets," *New York Times*, February 21, 1988.

50. DeGeorge, *Business Ethics*, p. 211. See also Richard DeGeorge, "Whistleblowing: Permitted, Prohibited, Required," in *Conflicting Loyalties in the Workplace*, ed. F. A. Elliston (Notre Dame, IN: University of Notre Dame Press, 1985). My discussion draws heavily on DeGeorge.

51. See Mary P. Rowe and Michael Baker, "Are You Hearing Enough Employee Concerns?" *Harvard Business Review* (May–June 1984).

52. For a description of these and other effective corporate ethics programs, see Manuel G. Velasquez, "Corporate Ethics: Losing It, Having It, Getting It," in *Essentials of Business Ethics*, ed. Peter Madsen and Jay M. Shafritz (New York: Meridian Books, 1990), pp. 228–44.

53. Robert G. Olson, *Ethics* (New York: Random House, Inc., 1978), pp. 83–84.

54. Martin Carnoy and Derek Shearer, *Economic Democracy, the Challenge of the 1980s* (White Plains, NY: M. E. Sharpe, Inc., 1980); Warren G. Bennis and Philip E. Slater, *The Temporary Society*

(New York: Harper & Row, Publishers, Inc., 1968); Vincent P. Mainelli, "Democracy in the Workplace," *America*, January 15, 1977, pp. 28–30. See also the essays in Ichak Adizes and Elizabeth Mann Borgese, eds., *Self-Management: New Dimensions to Democracy* (Santa Barbara, CA: Clio Books, 1975).

55. Marshall Sashkin, "Participative Management Is an Ethical Imperative," *Organizational Dynamics* 12, no. 4 (1984): 4–22.

56. David P. Baron, *Business and Its Environment*, 3rd ed. (Upper Saddle River, NJ: Prentice Hall, Inc., 2000) p. 472.

57. See Robert A. Dahl, *After the Revolution? Authority in a Good Society* (New Haven, CT: Yale University Press, 1970), pp. 117–18.

58. Douglas McGregor, *The Human Side of Enterprise* (New York: McGraw-Hill, 1960).

59. Raymond E. Miles, *Theories of Management: Implications for Organizational Behavior and Development* (New York: McGraw-Hill, 1975), p. 35.

60. Rensis Likert, "From Production- and Employee-Centeredness to Systems 1–4," *Journal of Management* 5 (1979): 147–56.

61. See David Vanderburg, "The Story of Semco: The Company That Humanized Work," *Bulletin of Science Technology and Society* 24, no. 5 (October 2004): 430–34; Gary Hamel and Bill Breen, "Building an Innovation Democracy: W. L. Gore: Management Innovation in Action," in *The Future of Management*, ed. Gary Hamel (Boston: Harvard Business School Press, 2007). See also William F. Dowling, "At General Motors: System 4 Builds Performance and Profits," *Organizational Dynamics* 3, no. 3 (1975): 26–30.

62. For studies that have measured positive outcomes from participative management, see Soonhee Kim, "Participative Management and Job Satisfaction: Lessons for Management Leadership," *Public Administration Review* 62, no. 2 (March/April 2002): 231–41.

63. For a 2010 assessment of research on participation in decision making, see John W. Budd, Paul J. Gollan, and Adrian Wilkinson, "New Approaches to Employee Voice and Participation in Organizations," *Human Relations* 63, no. 3 (March 2010): 303–10.

64. J. L. Kerr, "The Limits of Organizational Democracy," *Academy of Management Executive* 18, no. 3 (2004): 81–95.

65. R. L. Daft (2004). "Theory Z: Opening the Corporate Door for Participative Management," *Academy of Management Executive* 18, no. 4 (2004): 117–21; Does Participative Leadership Enhance Work Performance by Inducing Empowerment or Trust? The Differential Effects on Managerial and Non-managerial Subordinates," *Journal of Organizational Behavior* 31, no. 1 (January 2010): 122–43. See also C. Pateman, "A Contribution to the Political Theory of Organizational Democracy," *Administration and Society* 7 (1975): 5–26.

66. Quoted in Lawrence E. Blades, "Employment at Will versus Individual Freedom," *Columbia Law Review* 67 (1967): 1405.

67. Greg Conderacci, "Motorgate: How a Floating Corpse Led to a Fraud Inquiry and Ousters by GM," *Wall Street Journal*, April 24, 1982, pp. 1, 16.

68. See, for example, Patricia H. Werhane, *Persons, Rights, and Corporations* (Englewood Cliffs, NJ: Prentice-Hall, 1985), pp. 81–93; DeGeorge, *Business Ethics*, pp. 204–7.

69. Robert Ellis Smith, *Workrights* (New York: E. P. Dutton, 1983), pp. 209–15.

70. See T. M. Scanlon, "Due Process," in *Due Process*, ed. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1977), pp. 93–125.

71. National Right to Work, "Right to Work States," accessed December 5, 2016, http://www.nrtw.org/right-to-work-states/.

72. Esme E. Deprez, "Study Shows Psychological Impact of Unemployment," *BusinessWeek*, September 3, 2009; Margaret W. Linn, Richard Sandifer, and Shayna Stein, "Effects of Unemployment on Mental and Physical Health," *American Journal of Public Health* 75, no. 5 (May 1985): 502–6; Arthur H. Goldsmith, Jonathan R. Veum, and William Darity Jr., "Unemployment, Joblessness, Psychological Well-Being and Self-Esteem: Theory and Evidence," *Journal of SocioEconomics* 26, no. 2 (1997): 133–58.

73. These international labor statistics (and many other international statistics) can be found at the "Lists of Countries and Territories," *Wikipedia*, last modified August 29, 2016, http://en.wikipedia.org/wiki/Lists_of_countries_and_territories; the United Nations *Monthly Bulletin of Statistics Online*, at http://unstats.un.org/unsd/mbs; and for a select group of countries, including the United States, at the U.S. Department of Labor, Bureau of Labor Statistics, "International Labor Comparisons," accessed November 21, 2016, http://stats.bls.gov/fls/home.htm#laborforce.

74. Josh Bivens, "Shifting Blame for Manufacturing Job Loss," *Economic Policy Institute Briefing Paper*, April 8, 2004, http://www.epi.org/publication/briefingpapers_bp149/.

75. Robert H. McGuckin, "Can Manufacturing Survive in Advanced Countries?" *Executive Action* (Conference Board) 93 (March 2004), accessed August 17, 2004, at http://www.conference-board.org/pdf_free/EAReports/A-0093-04-EA.pdf.

76. Deborah Belle and Heather E. Bullock, "The Society for the Psychological Study of Social Issues Policy Statement: The Psychological Consequences of Unemployment," accessed June 4, 2016, https://www.spssi.org/index.cfm?fuseaction=page.viewpage&pageid=1457.

77. Don Stillman, "The Devastating Impact of Plant Relocations," in *The Big Business Reader*, Mark Green, ed. (New York: The Pilgrim Press, 1983), pp. 137–48.

78. See Peter J. Kuhn, ed., *Losing Work, Moving On: International Perspectives on Worker Displacement* (Kalamazoo, MI: W. E. Upjohn Institute for Employment Research, 2003).

79. Gerald F. Cavanagh, Dennis J. Moberg, and Manuel Velasquez, "The Ethics of Organizational Politics," *Academy of Management Review* (July 1980); Manuel Velasquez, Dennis J. Moberg, and Gerald F. Cavanagh, "Organizational Statesmanship and Dirty Politics: Ethical Guidelines for the Organizational Politician," *Organizational Dynamics* (Autumn 1983): 65–80.

80. William E. Diehl, *Plant Closings* (New York: Division for Mission in North America, Lutheran Church in America, 1985), pp. 14–16. For a discussion of the ethical issues involved in plant closings, see Judith Lichtenberg, "Workers, Owners, and Factory Closings," *Philosophy and Public Policy*, January 1985.

81. DeGeorge, *Business Ethics*, p. 192.

82. J. K. Galbraith, *American Capitalism: The Concept of Countervailing Power* (Boston: Houghton Mifflin, 1952).

83. Douglas Fraser, "Strikes: Friend or Foe of American Business and the Economy?" *Los Angeles Times*, November 3, 1985.

84. John Wright, ed., *The Universal Almanac* (Kansas City, MO: Andrews McMeel Publishing, 1996), p. 260.

85. "Beyond Unions," *Business Week*, July 8, 1985.

86. Ibid.

87. This definition is from Bronston T. Mayes and Robert W. Allen, "Toward a Definition of Organizational Politics," *Academy of Management Review* (October 1977): 672–78. For a popular overview of the issues raised by organizational politics, see "Playing Office Politics," *Newsweek*, September 16, 1985, pp. 54–59.

88. Miles, *Macro Organizational Behavior*, pp. 161–64.

89. Robert W. Allen, Dan L. Madison, Lyman W. Porter, Patricia A. Renwick, and Bronston T. Mayes, "Organizational Politics," *California Management Review* 22, no. 1 (Fall 1979): 77–83.

90. Schein, "Individual Power and Political Behaviors," p. 67.

91. These are culled from the pages of John P. Kotter, *Power in Management* (New York: American Management Association, 1979), a book that argues that "skillfully executed power-oriented behavior" is the mark of the "successful manager."

92. This account of the Agee-Cunningham incident is based on the following sources: Peter W. Bernstein, "Upheaval at Bendix," *Fortune*, November 3, 1980, pp 52ff., S. Freedberg, G. Storch, and C. Teegartin, "Two at the Top," *Detroit News*, October 5, 1980; Gail Sheehy, "Cunningham Encounters the Mildew of Envy," *Detroit Free Press*, October 13, 1980, p. 4B; Gail Sheehy, "Cunningham's Idealism Gets Lost in Corporate Jungle," *Detroit Free Press*, October 14, 1980, p. 3B.

93. See John R. S. Wilson, "In One Another's Power," *Ethics* 88, no. 4 (July 1978): 299–315; L. Blum, "Deceiving, Hurting, and Using," in *Philosophy and Personal Relations*, ed. A. Montefiore (London: Routledge and Kegan Paul, 1973).

94. Gerald F. Cavanagh, Dennis J. Moberg, and Manuel Velasquez, "The Ethics of Organizational Politics," *Academy of Management Review* (July 1980); Manuel Velasquez, Dennis J. Moberg, and Gerald F. Cavanagh, "Organizational Statesmanship and Dirty Politics: Ethical Guidelines for the Organizational Politician," *Organizational Dynamics* (Autumn 1983): 65–80.

95. David Kipnis, "Does Power Corrupt?" *Journal of Personality and Social Psychology* 24, no. 1 (1972): 33.

96. Chris Argyris, *Personality and Organization* (New York: Harper & Brothers, 1957), pp. 232–37.

97. Jeanne M. Liedtka, "Feminist Morality and Competitive Reality: A Role for an Ethic of Care?" *Business Ethics Quarterly* 6, no. 2 (April 1996): 185.

98. Thomas I. White, "Business, Ethics, and Carol Gilligan's 'Two Voices,'" *Business Ethics Quarterly* 2, no. 1 (January 1992): 51–61.

99. John Dobson and Judith White, "Toward the Feminine Firm: An Extension to Thomas White," *Business Ethics Quarterly* 5, no. 3 (July 1995): 466.

100. Ibid.

101. C. Bartlett and S. Ghoshal, "Changing the Role of Top Management: Beyond Strategy to Purpose," *Harvard Business Review* (November/December 1994): 81.

102. There are several case studies of W. L. Gore & Associates. See, for example, Frank Shipper and Charles C. Manz, "W. L. Gore & Associates, Inc.—1993," in *Strategic Management*, 2nd ed., ed. Alex Miller and Gregory G. Dess (New York: McGraw-Hill, 1996).

103. See Nell Noddings, *Caring, A Feminine Approach to Ethics and Moral Education* (Berkeley, CA: University of California Press, 1984), pp. 73ff.

104. For example, Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, 1982), chaps. 3 and 4.

105. R. Scott, A. Aiken, D. Mechanic, and S. Moravcsik, "Organizational Aspects of Caring," *Milbank Quarterly* 73, no. 1 (1995): 77–95.

106. An overview of the literature on this topic can be found in Marilyn Friedman, *What Are Friends For?* (Ithaca, NY: Cornell University Press, 1993), chap. 3.

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Michales, A Pragmatic Approach to Business Ethics (Thousand Oaks, CA: Sage Publications, 1995), p. 45; **P. 12:** Kati Cornell Smith, "Worldcon Gets 5; Testimony Wins Stoolie Sullivan Easy Jail Time," New York Post, August 12, 2005; **P. 13:** Richard Wachman, "Greek Deal Puts Goldman Sachs in the Firing Line–Again," Observer, February 28, 2010; **P. 14:** Harvard Classics, Thomas Hobbes, Vol. 34, Part 5, Of Man Being the First Part of Leviathan, Chapter XIII, 1909–14; **P. 15:** Qian Wang, Junsheng Dou, and Shenghua Jia, "A Meta-Analytic Review of Corporate Social Responsibility and Corporate Financial Performance: The Moderating Effect of Contextual Factors," Business & Society 54, no. 1 (May 2015): 1–39; **P. 15:** R. Edward Freeman and David L. Reed, "Stockholders and Stakeholders: A New Perspective on Corporate Governance," California Management Review 25, no. 3 (Spring 1983), p. 91; **P. 16:** Milton Friedman, "The Social Responsibility of Business Is to Increase Its Profits," New York Times Magazine, September 13, 1970; **P. 18:** Archie Carroll, "Corporate Social Responsibility: Evolution of a Definitional Construct" Business Society, (September 1999), vol. 38, no. 3, p. 283, Sage Publications; **P. 23:** William Ashford, "Genital Mutilators Protest Scandinavian Efforts to Crack Down on Trade," Scrape TV, September 27, 2009,; **P. 23:** William Ashford, "Genital Mutilators Protest Scandinavian Efforts to Crack Down on Trade," Scrape TV, September 27, 2009,; **P. 24:** James Rachels, "Can Ethics Provide Answers?" in Can Ethics Provide Answers? and Other Essays in Moral Philosophy (n.p.: Rowman and Littlefield, 1997), pp. 22–23. 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Gewirtz (New York: Wiley, 1984), p. 116; **P. 30:** Jeff Rossen and Avni Patel, "Some of JC Penney's big sales are misleading, say employees", Today News, July 24 2013 NBCUniversal Media, LLC; **P. 30:** Susan Thurston, "Fired St. Petersburg Worker Target of J.C. Penney Dispute," Tampa Bay Times, April 14, 2014; **P. 30:** Kadmy/Fotolia; **P. 31:** John M. Harlow, "Recovery from the Passage of an Iron Bar Through the Head", In The Massachusetts Medical Society, June 3, 1868"; **P. 32:** Based on Making Moral Decisions by Edward Stevens, pp. 123–125 1969 Paulist Press; **P. 35:** Based on Moral Development: Advances in Research and Theory by James Rest, New York: Praeger, 1986; **P. 35–36:** Based on "Ethical Decision Making by Individuals in Organizations: An Issue-Contingent Model," by T. M. Jones, Academy of Management Review, vol. 16 (1991), pp. 366–395; **P. 37:** Don A. Moore , Philip E. Tetlock, Lloyd Tanlu and Max H. Bazerman, "Conflicts of Interest and the Case of Auditor Independence: Moral Seduction and Strategic Issue Cycling" by in Academy of Management Review, Vol. 31, No. 1, p. 10–29, © January 2006 Academy of Management; **P. 38:** U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD , INVESTIGATION REPORT, March 2007; **P. 48:** Legnan Koula/EPA/Alamy Stock Photo; **P. 48:** Luc Gnago/Roger Bacon/Reuters/Alamy Stock Photo; **P. 48:** André Quillien/Alamy Stock Photo; **P. 48:** Luc Gnago/Roger Bacon/Reuters/Alamy Stock Photo; **P. 49:** Fourth Annual Report, Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labor in the Cocoa Sector in Cote d'Lvoire and Ghanda, Sep 30,2010, U.S. Department of Labor; **P. 49:** Fourth Annual Report, Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labor in the Cocoa Sector in Cote d'Lvoire and Ghanda, Sep 30,2010, U.S. Department of Labor; **P. 52:** Scrushy ordered to pay $2.9 billion, June 18, 2009, Published by Cable News Network (CNN); **P. 54:** John Williams RF/Alamy Stock Photo; **P. 55:** Exceprt from Unocal is Shifting Strategy to International Operations,The Wall Street Journal, © November 20, 1996 Dow Jones & Company, Inc; **P. 56:** Benedict Rogers,"Democratic Voice of Burma: The General must not be disturbed" April 12, 2010 BurmaNet News; **P. 56:** Benedict Rogers,"Democratic Voice of Burma: The General must not be disturbed" April 12, 2010 BurmaNet News; **P. 56:** Amnesty International, "Myanmar (Burma): Continuing Killings and Ill-treatment of Minority Peoples," August 1991; **P. 56:** U.S. State Department, Country Reports on Human Rights Practices for 1991 (Washington, DC: U.S. Government Printing Office, 1992), p. 786; **P. 56:** Control Risk Group report to Unocal Corp., dated May 1992,quoted by Judge Ronald S.W. Lew from the trial record in his decision of Aug. 31, 2000.Doe v. Unocal; **P. 57:** Doug Fraser, and Luc Zandvliet. Field Visit Report Yadana Gas Transportation Project Moattama Gas Transportation Company,November 22 – December 6, 2003 (Third Visit) ,Collaborative Learning Projects; **P. 57:** The Human Rights, Environmental, and Financial Impacts of Total and Chevron's Yadana Gas Project in MilitaryRuled Burma (Myanmar),Total Impact, © September 2009 EarthRights International; **P. 57:** Bureau of Democracy, Human Rights, and Labor 2004 February 28, 2005, U.S. Department of State; **P. 57:** Unocal in Burma, Nov 2, 2005.Santa Clara University; **P. 60:** John Stuart Mill, Utilitarianism (1863), chap. 2; **P. 62:** John Stuart Mill, Utilitarianism (1863), chap. 2; **P. 63:** Based on "Let Them Eat Pollution," The Economist, February 8, 1992; **P. 63:** Scott J. 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Cohen, "Stuck for Money," Wall Street Journal, November 14, 1996, p. 1; **P. 72:** John Dunlap,In Congress, July 4, 1776, a declaration by the representatives of the United States of America, in General Congress assembled; **P. 72:** United Nations, "Universal Declaration of Human Rights," December 10, 1948,; **P. 78:** Immanuel Kant, Groundwork of the Metaphysics of Morals, H. J. Paton, trans. (New York: Harper & Row, Publishers, Inc., 1964),

p. 70; **P. 78:** A biblical principle. Luke 6:31; **P. 79:** Immanuel Kant, Groundwork of the Metaphysics of Morals, H. J. Paton, trans. (New York: Harper & Row, Publishers, Inc., 1964), p. 70; **P. 79:** Fred Feldman, Introductory Ethics (Englewood Cliffs, NJ: Prentice Hall, 1978), pp. 119–28; and Rawls, A Theory of Justice, pp. 179–80; **P. 83:** Kant, Immanuel. The Metaphysical Elements of Justice; Part I of the Metaphysics of Morals. 1st ed. Translated by John Ladd.1999 Hackett Publishing; **P. 83:** Robert Nozick,Anarchy, State, and Utopia (Nueva York: Basic Books, Inc., Publishers, 1974), p. 30–31; **P. 83:** Steven Greenhouse,With Day of Protests, Fast-Food Workers Seek More Pay © Nov 29, 2012 The New York Times Company; **P. 83:** Paul Korn, "Fast Food Workers Seek Justice, Respect, and a Living Wage to Lift Them Out of Poverty," Huffington Post, September 9, 2013; **P. 84:** Josh Sanburn, "Fast Food Strikes: Unable to Unionize, Workers Borrow Tactics from 'Occupy,'" July 30, 2013; **P. 84:** Posts on McDonald's employee site bash fast food, Monday, 23 Dec 2013. CNBC.com; **P. 84:** William Finnegan, "Fast-Food Workers and a New Form of Labor Activism," New Yorker, September 15, 2014; **P. 84:** Gilda Valdez, "LA's Fast Food Workers Demanding Justice," LA Progressive; **P. 84:** Susan Brooks Thistlewaite, "Demand Justice for Fast Food Workers," OnFaith, September 2013; **P. 84:** Fast Food Workers Striking across America," Jobs with Justice, December 5, 2013; **P. 84:** Catherine Ruetschlin, Fast Food Failure: How CEO-to-Worker Pay Disparity Undermines the Industry and the Overall Economy (New York: Demos, 2014); **P. 84:** Unequal Wages Are an Injustice," Brownsville Herald, July 25, 2014; **P. 89:** Karl Marx, Critique of the Gotha Programme, 1890–91; **P. 90:** Robert Nozick,Anarchy, State, and Utopia (Nueva York: Basic Books, Inc., Publishers, 2013), p. 160; **P. 91–92:** J.Rawls, A Theory of Justice (Revised Edition),1971 p. 72. Harvard University Press; **P. 92:** Bhanumurthy, Politics, Ethics and Social Responsibility of Business, Pearson Education India; **P. 96:** Aaron Feuerstein,1996. Parade Magazine; **P. 102:** Manuel Velasquez, Business Ethics: Concepts and Cases, 8e, © 2017, Pearson Education, Inc., New York, NY; **P. 103:** Robert H. Rosen, Just Enough Anxiety: The Hidden Driver of Business Success (New York: Penguin Group, 2008), pp. 112–13; **P. 103:** U.S. Securities and Exchange Commission, "SEC Charges Former Qwest CEO Joseph Nacchio and Eight Others with Massive Financial Disclosure Fraud," news release, March 15, 2005; **P. 103:** John Stuart Mill, Utilitarianism (1863), chap. 2; **P. 103–104:** Kris Hudson, "Nacchio an Icon of Guts, Hubris," Denver Post, March 16, 2005; **P. 104:** Kris Hudson and Tom McGhee, "12 Qwest ex-execs sued—Nacchio among Defendants; 'Massive Financial Fraud' alleged—'Culture of Fear' detailed," Denver Post, March 16, 2005; **P. 105:** Robert H. Rosen, Just Enough Anxiety: The Hidden Driver of Business Success (New York: Penguin Group, 2008), pp. 112–13; **P. 105:** Aristotle,Ethics and the Virtues; **P. 107:** Edmund L. Pincoffs, Quandaries and Virtues (Lawrence, KS: University Press of Kansas, 1986); **P. 107:** Edmund L. Pincoffs, Quandaries and Virtues (Lawrence, KS: University Press of Kansas, 1986); **P. 114:** Jonathan Haidt, "The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment," Psychological Review 108 (2001): 814–34; **P. 115:** Fiery Cushman, Liane Young & Marc Hauser (2006). The Role of Conscious Reasoning and Intuition in Moral Judgment. Psychological Science 17 (12):1082–1089; **P. 118:** Excerpts from Traidos Bank web site, accessed January 14, 2010 at www.triodos.com/en/about-triodos-bank/news/newsletters/newsletter-sustainability-research/pharmaceutical-company; **P. 119:** Based on http://docslide.us/documents/analisis-kasus-csr-traidos-bank-and-roche-drugstore.html; **P. 120:** Department of Health and Human Services; **P. 121:** Al Caplan, "Clinical Trials of Drugs and Vaccines Among the Desperately Poor in Poor Nations: Ethical Challenges and Ethical Solutions," Clinical Pharmacology & Therapeutics 88, no. 5 (November 2010): 583–84; **P. 121:** Wemos Foundation, The Globalization of Clinical Trials: Testimonies from Human Subjects (Amsterdam, The Netherlands: Wemos Foundation, 2010), pp. 14–15; **P. 121:** Wemos Foundation, The Globalization of Clinical Trials: Testimonies from Human Subjects (Amsterdam, The Netherlands: Wemos Foundation, 2010), pp. 14–15; **P. 121:** Sue Lloyd-Roberts,Have India's poor become human guinea pigs? 1 November 2012 BBC News; **P. 121:** Mary Pat Flaherty, Deborah Nelson, and Joe Stephens, "The Body Hunters: Overwhelming the Watchdogs," Washington Post, December 18, 2000; **P. 122:** Evarlste Lodi,Doctors Without Borders physician; **P. 123:** siraphol/Fotolia; **P. 127:** John MacArthur, The Selling of "Free Trade": NAFTA, Washington, and the Subversion of American Democracy (Berkeley, CA: University of California Press, 2001), p. 54; **P. 128:** "AIDS Healthcare Foundation 'Horrified' as Abbott Blacklists Thailand From New Drugs", news release, March 13, 2007, (c) PR Newswire; **P. 128:** DOHA WTO MINISTERIAL 2001: TRIPS "eclaration on the TRIPS agreement and public health", (c) World Trade Organization; **P. 129:** Nicholas Zamiska, "Abbott Escalates Thai Patent Rift: Firm Pulls Plans to Offer New Drugs in Spat with Regime," Wall Street Journal, March 14, 2007; **P. 129:** John Locke, Two Treatises of Civil Government, (London: George Routledge and Sons, 1887), pp. 192, 193 and 194; **P. 130:** Nicholas Zamiska, "Thai Move to Trim Drug Costs Highlights Growing Patent Rift," Wall Street Journal, January 30, 2007; **P. 133:** Edward N. Wolff, "Household Wealth Trends in the United States, 1962–2013: What Happened over the Great Recession" (working paper 20733 in the National Bureau of Economic Research Working Paper Series, December 2014), accessed June 2, 2015; **P. 135–136:** Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations [1776] (New York: The Modern Library, n.d.), p. 423; **P. 137:** Thomas Aquinas, Summa Theologica, II–II, q. 66, a. 2; **P. 141:** Charles Darwin, The Origin of Species by Means of Natural-Selection (New York: D. Appleton and Company, 1883), p. 63; **P. 141:** Herbert Spencer, Social Statics, Abridged and Revised (New York: D. Appleton and Company, 1893), pp. 204–205; for an account of Spencerism in America, see Richard Hofstadter, Social Darwinism in American Thought (Boston, MA: Beacon Press, 1955). 70 Adam Smith, The Wealth of Nations, p. 424; **P. 142:** Adam Smith, The Wealth of Nations, p. 424; **P. 143:** David Ricardo, On the Principles of Political Economy and Taxation (Georgetown, DC: Joseph Milligan, 1819), pp. 115–16; **P. 146:** Karl Marx, "Estranged Labor," in Dirk Struik, ed., The Economic and Philosophic Manuscripts of 1844, Martin Milligan, trans. (New York: International Publishers, 1964), pp. 106–19; **P. 146:** Karl Marx, "Estranged Labor," in Dirk Struik, ed., The Economic and Philosophic Manuscripts of 1844, Martin Milligan, trans. (New York: International Publishers, 1964), pp. 110–11; **P. 146:** Karl Marx and Friedrich Engels, Manifesto of the Communist Party (New York: International Publishers, 1948), p. 9; **P. 148:** "Press release of Global March on World Cup Campaign, Tuesday, 01, 2002, (c) Global March International Secretariat; **P. 148:** Thinkstock Images/ Getty Images; **P. 148:** Md.Huzzatul Mursalin/ Moment Open/ Getty Images; **P. 148:** Paul Morigi/Getty Images; **P. 148:** Imran Hassan/ Moment/ Getty images; **P. 148:** Philippe Lissac/Godong/ Corbis; **P. 149:** Karl Marx, The Poverty of Philosophy, trans. The Institute of Marxism Leninism (Moscow: Progress Publishers, 1955), chap. 2, "Second Observation."; **P. 149:** Karl Marx and Engels, Manifesto; Karl Marx, The German Ideology (Amherst, NY: Prometheus Books, 1998 [1845]), part I: Feuerbach, s. C, "The Real Basis of Ideology."; **P. 149:** Karl Marx, A Contribution to the Critique of Political Economy, ed. N. I. Stone (New York: The International Library Publishing Co., 1904), pp. 11–13; **P. 150:** Karl Marx and Engels, The Communist Manifesto, p. 30; **P. 150:** Karl Marx and Engels, The Communist Manifesto, p. 49; **P. 150:** Karl Marx, The German Ideology; **P. 153:** Paul Steidlmeier, "The Moral Legitimacy of Intellectual Property Claims: American Business and Developing Country Perspectives," Journal of Business Ethics 12, no. 2 (1993): 161–62; **P. 158:** "Motor Trend", Magazine; **P. 158:** Michael Mandel, "Economists against the plan" (c) 2008, Published in Bloomberg Press; **P. 159:** "Financing Assistance to Facilitate the Restructuring of Auto Manufacturers to Attain Financial Viability", (c) 2008 by The White House Office of the Press Secretary; **P. 159:** Michael D. Shear and Peter Whoriskey, "Obama Touts Auto Bailout during Michigan Trip," Washington Post, July 31, 2010; **P. 159:** Molly Henneberg, "Resolution Opposing Bailouts as 'socialism' Airs Rift in GOP," Fox News, December 31, 2008; **P. 159:** Steven Ratner, "The Auto Bailout: How We Did It," Fortune Magazine, October 21, 2009. Reprinted by permission of Steven Rattner; **P. 160:** Steven Ratner, "The Auto Bailout: How We Did It," Fortune Magazine, October 21, 2009. Reprinted by permission of Steven Rattner; **P. 160:** "The Great Bailout Brouhaha, Free Market Economists Weigh in on Paulson's Plan," Reason Magazine, September 25, 2008; **P. 161–162:** Richard

A. Spinello, "Software Compatibility and Reverse Engineering," Case Studies in Information and Computer Ethics (Upper Saddle River, NJ: Prentice Hall, 1997), pp. 142–45; **P. 163:** Benjamin Stansall/Alamy Stock Photo; **P. 164:** Department of Justice, "Third Ocean Shipping Executive Pleads Guilty to Price Fixing on Ocean Shipping Services for Cars and Trucks," news release, March 10, 2015, accessed September 5, 2015; **P. 164:** Department of Justice Office of Public Affairs, "Nine Automobile Parts Manufacturers and Two Executives Agree to Plead Guilty to Fixing Prices on Automobile Parts Sold to U.S. Car Manufacturers and Installed in U.S. Cars," news release, September 26, 2013; **P. 176:** Lightpoet/ Panther Media GmbH/ Alamy Stock Photo; **P. 176:** Mark Higgins/Alamy Stock Photo; **P. 176:** Hans Eick/ Doc-stock/Alamy Stock Photo; **P. 176:** ZUMA Press, Inc./Alamy Stock Photo; **P. 176:** Bernhard Classen/Vario images GmbH & Co.KG/ Alamy Stock Photo; **P. 179:** U.S. Census bureau, concentration ratios: 2002, may 2006, table 3. An industry with a 4-firm combined share above 80 percent is considered to be highly concentrated,. Census Bureau; **P. 181:** Kermit Vandivier,Rambus Case Puts Rivals on Defensive, March 08, 2004.Associated Press; **P. 181:** U.S. Department of Justice, Four Infineon Technologies Executives Agree To Plead Guilty In International Dram Price-Fixing Conspiracy, Thursday, December 2, 2004; **P. 184:** U.S. Code § 13 - Discrimination in price, services, or facilities, United States Code; **P. 184:** 1911 the U.S Supreme Court ruled, Supreme Court of the United States; **P. 187:** The Sherman Antitrust Act (1890), United States Code; **P. 187:** United States v. Topco Assocs., Inc., 405 U.S. 596, 610 (1972); **P. 188:** J. Fred Weston, "Big Corporations: The Arguments For and Against Breaking Them Up," Business and Its Changing Environment, proceedings of a conference held by the Graduate School of Management at UCLA, July 24–August 3, 1977, pp. 232–233; see also John M. Blair, Economic Concentration: Structure, Behavior, and Public Policy (New York: Harcourt Brace Jovanovich, 1972); **P. 189:** U.S. Department of Justice; **P. 190:** David Goldman, "Intel and AMD Reach $1.25B Settlement," CNNMoney.com, November 12, 2009; **P. 191–192:** Roger Parloff, "Intel's Worst Nightmare: Dwindling Market Share Isn't the No. 1 Chipmaker's only Problem, says Fortune's Roger Parloff. It needs to Mount a Fierce Defense to AMD's Epic Antitrust Lawsuit," Fortune, November 16, 2006; **P. 192:** David Goldman, "FTC Sues Intel over Chip Dominance," CNNMoney.com, December 16, 2009; **P. 192:** State of New York, by Attorney General Andrew W. M. Cuomo, Plaintiff, vs. Intel Corporation, a Delaware Corporation, Defendant, Complaint in the United States District Court for the District of Delaware, November 3, 2009, para. 90; **P. 192:** Roger Parloff, "Intel Settlement: The Power of Emails," Fortune, November 13, 2009; **P. 193:** State of New York, para. 27; **P. 193:** State of New York, para. 105; **P. 193:** Federal Trade Commission, "FTC Settles Charges of Anticompetitive Conduct against Intel," news release, August 4, 2010; **P. 193:** State of New York, by Attorney General Andrew W. M. Cuomo, Plaintiff, vs. Intel Corporation, a Delaware Corporation, Defendant, Complaint in the United States District Court for the District of Delaware, November 3, 2009; **P. 196:** U.S. v. Michael D. Andreas, Mark E. Whitacre, and Terrance S. Wilson, Brief for Appellee; **P. 198:** Eoghan Hanrahan/Alamy Stock Photo; **P. 199:** "The State of the World 2015" by The Worldwatch Institute. Copyright © 2015 The Worldwatch Institute. Reproduced by permission of Island Press, Washington, D.C.; **P. 199–200:** William G. Pollard, "The Uniqueness of the Earth," in Earth Might Be Fair, ed. Ian G. Barbour (Englewood Cliffs, NJ: Prentice Hall, 1972), pp. 95–96; **P. 201:** U.S. National Oceanic and Atmospheric Administration; **P. 201:** Global Climate change Impacts in the United States 2009 report; **P. 201:** Intergovernmental Panel on Climate Change, Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R. K. Pachauri and L. A. Meyer (eds.)] (Geneva: Intergovernmental Panel on Climate Change, 2014), p. v; **P. 202:** Global Climate change Impacts in the united states 2009 report,U.S. Global Change Research Program; **P. 202:** U.S. National Oceanic and Atmospheric Administration; **P. 202:** U.S. Environmental Protection Agency, "Causes of Climate Change," accessed November24,2016,https://www.epa.gov/climate-change-science/causes-climate-change; **P. 203–204:** Ford Motor to begin paint sludge cleanup in Torne Valley, Hillburn - The Journal News, LoHud.com; **P. 206:** U.S. Environmental Protection Agency, Our Nation's Air: Status and Trends Through 2008, February 2010; **P. 207:** U.S. Environmental Protection Agency, Air Quality - National Summary, 2015; **P. 207:** R. Gino Santa Maria/Shutterstock; **P. 207:** Glayan/Shutterstock; **P. 207:** Elena Elisseeva/Shutterstock; **P. 207:** Stefan Redel/Shutterstock; **P. 207:** Gregory Kramer/Shutterstock; **P. 207:** Arena Creative/Shutterstock; **P. 215:** Robert B. Gordon, et al., Toward a New Iron Age? (Cambridge, MA: Harvard University Press, 1987, p. 153); **P. 217:** Andrew Wong/Roger Bacon/Reuters/Alamy Stock Photo; **P. 217:** Lou Linwei/Alamy Stock Photo; **P. 217:** Lou Linwei/Alamy Stock Photo; **P. 217:** Roger Bacon/Claro Cortes IV CC/LA/Reuters/Alamy Stock Photo; **P. 217:** Lou Linwei/Alamy Stock Photo; **P. 218:** Deep Ecology by Bill Devall, reprinted by permission of Gibbs Smith Publisher; **P. 220:** Albert Schweitzer, Out of My Life and Thought, trans. A. B. Lemke (New York: Holt, 1990), p. 130; **P. 220:** Taylor, Paul W. (1986). Respect for nature : a theory of environmental ethics. Princeton, N.J. :Princeton University Press; **P. 221:** Pennsylvania Constitution. Article I, Section 27, Commonwealth of Pennsylvania; **P. 221:** Pub. L. 91–190, title I, §101, Jan. 1, 1970, 83 Stat. 852; **P. 221:** Quoted in Keith Davis and William C. Frederick, Business and Society (New York: McGraw-Hill Book Company, 1984), pp. 403–4; **P. 228:** Thomas A. Klein, Social Costs and Benefits of Business (Englewood Cliffs, NJ: Prentice Hall, 1977); **P. 229:** U.S. General Accounting Office, The Nation's Nuclear Waste (Washington, DC: U.S. Government Printing Office, 1979); **P. 231:** Murray Bookchin, Defending the Earth: A Dialogue between Murray Bookchin and Dave Foreman, ed. Steve Chase (Boston: South End Press, 1991), p. 58; **P. 232–233:** John Rawls, A Theory of Justice (Cambridge, MA: Harvard University Press, 1971), p. 289; **P. 233:** John Rawls, A Theory of Justice (Cambridge, MA: Harvard University Press, 1971),pp 285 and 288; **P. 234:** World Commission on Environment and Development, Our Common Future (London: Oxford University Press, 1987); **P. 235:** Herman E. Daly, "Valuing the Earth: Economics, Ecology" Ethics 2nd Edition,, pp. 267–274. Published by The MIT Press, © 1993; **P. 239–240:** Sources used throughout this case include: International Institute for Environment and Development, "Ok Tedi Riverine Disposal Case" in Mining for the Future, ed. Dirk van Zyl, et al., a report commissioned by the Mining, Minerals and Sustainable Development Project of the International Institute for Environment and Development, accessed June 2, 2004, http://www.iied.org/mmsd/mmsd_pdfs/068a_mftf-h.pdf; Polly Ghazi, "Ok Tedi Mine: Unearthing Controversy," in World Resources 2002–2004: Decisions for the Earth: Balance, Voice and Power, ed. World Resources Institute (Washington, DC: World Resources Institute, 2003), http://www.wri.org/sites/default/files/pdf/wr2002_fullreport.pdf; World Bank, Ok Tedi Mining Ltd. Mine Waste Management Project Risk Assessment and Supporting Documents, 1999, accessed June 2, 2004, http://www.mpi.org.au/oktedi/world_bank_full_report.html; and the Ok Tedi Mining website, http://www.oktedi.com, accessed April 15, 2011; **P. 241–242:** Stuart Kirsch, "An Incomplete Victory at Ok Tedi," accessed June 15, 2004; **P. 244:** Julie Cart, "Bird's Fate Tied to Future of Drilling," Los Angeles Times, June 10, 2004, p. 11; **P. 246:** Matthew Brown and Gosia Wozniacka, "Ag secretary promises more sage grouse spending across West," Butler County Times-Gazette, August 27, 2015; **P. 248:** Lou-Foto/Alamy Stock Photo; **P. 249:** Federal Trade Commission, "Cramming on Wireless Phone Bills: A Review of Consumer Pro-tection Practices and Gaps, July 30, 2014; Federal Trade Commission, "Cramming on Wireless Phone Bills: A Review of Consumer Protection Practices and Gaps" (prepared statement of the Federal Trade Commission before the Senate Committee on Commerce, Science, and Transportation United States Senate, Washington, DC, July 30, 2014); **P. 250:** U.S. District Court, Southern District of California, The Guardian Corporation et. al. v. AT&T Services, Inc., Case no. 10 CV 1846 WQH CAB, September 3, 2010; **P. 254:** Copyright © 2011 by The American Law Institute and the National Conference of Commissioners on Uniform State Laws. Reproduced with the permission of the permanent Editorial Board for the Uniform Commercial Code. All rights Reserved; **P. 254:** Copyright © 2011 by The American Law Institute and the National Conference of Commissioners on Uniform State Laws. Reproduced with the permission of the permanent Editorial Board for the Uniform Commercial Code. All rights Reserved; **P. 255:** National Commission on Product Safety, U.S. Government, 1970; **P. 257:** Henningsen v. Bloomfield Motors, Inc. 32 N.J. 358 , The Supreme Court of New Jersey, 1960; **P. 257:** Copyright © 2011 by The American Law Institute and the National Conference of Commissioners on Uniform State Laws. Reproduced with the permission of the permanent Editorial Board for the Uniform Commercial Code. All rights Reserved; **P. 260:** Codling v. Paglia, 32 New York 2d 330, Court of Appeals of New York , 1973; **P. 260–261:** Based on United States of America v. Philip Morris Incorporated, et. al, Civil Action No. 99-CV-02496 (GK), U.S. District Court for the District of Columbia, 2006; **P. 263–264:** Based on company websites; Sivan Tamir, "Direct-to-Consumer Genetic Testing: Ethical-Legal Perspectives and Practical Considerations," Medical Law Review 18 (Spring 2010): 213–238; Andelka M. Phillips, "Only a Click Away—DTC Genetics for Ancestry, Health, Love … and More: A View of the Business and Regulatory Landscape," Applied and Translational Genomics 8 (2016): 16–22; **P. 267:** Angela Hampton/Bubbles Photolibrary/Alamy Stock Photo; **P. 267:** Handout/MCT/Newscom; **P. 267:** Ezio Petersen UPI Photo Service/Newscom; **P. 267:** Diego Cervo/Fotolia; **P. 267–268:** Based on Meg Riordan, Tobacco Industry Continues to Market to Kids (Washington, DC: Campaign for Tobacco-Free Kids, 2010); **P. 278:** Frances Mason, Kathryn Rawe, and Simon Wright, Superfood For Babies: How Overcoming Barriers to Breastfeeding Will Save Children's Lives (London: Save the Children, 2013); **P. 279:** "World trends in infant feeding" from American Journal of Clinical Nutrition by D. B. Jelliffe, Vol 29: 1227. Copyright © 1976 by D. B. Jelliffe. Reprinted by permission of American Society for Nutrition; **P. 280:** Marketing and promotion of infant formula in the developing nations, p. 127, May 23, 1978,, U.S. Government Printing Office; **P. 280:** Marketing and promotion of infant formula in the developing nations, pp. 263–68, May 23, 1978, U.S. Government Printing Office; **P. 280:** Marketing and promotion of infant formula in the developing nations, pp. 887–88 May 23, 1978, U.S. Government Printing Office; **P. 280:** Marketing and promotion of infant formula in the developing nations, pp. 206–7, May 23, 1978, U.S. Government Printing Office; **P. 284:** District court of travis county, texas; **P. 285:** Consumer's comment, Published by ConsumerAffairs.com; **P. 285:** Consumer's comment, Published by ConsumerAffairs.com; **P. 285:** Consumer's comment, Published by ConsumerAffairs.com; **P. 285:** Consumer's comment, Published by ConsumerAffairs.com; **P. 285:** Consumer's comment, Published by ConsumerAffairs.com; **P. 288:** Ariel Skelley/Blend Images/Alamy Stock Photo; **P. 289–290:** Grutter v. Bollinger, 539 U.S. (2003) Docket Number: 02-241; **P. 290:** Amici auriae of 3M and other Leading Businessesm, United States District Court for the Eastern District of Michigan, 2003; **P. 290:** Grutter v. Bollinger, 539 U.S. (2003) Docket Number: 02-241; **P. 290:** Grutter v. Bollinger, 539 U.S. (2003) Docket Number: 02-241; **P. 294:** U.S. Equal Employment Opportunity Commission, Affirmative Action and Equal Employment: A Guidebook for Employers, II (Washington, DC: Government Printing Office, 1974), p. D-28; **P. 296:** United States Statutes At Large, Volume 88, 93rd Congress, 2nd Session, p. 610, U.S. Government Printing Office, 1974; **P. 298:** Brenda Chaney v. Plainfield Healthcare Center, U.S. Court of Appeals for the 7th Circuit, no. 09-3661, July 20, 2010; **P. 300:** U.S. Census Bureau, "Historical Income Tables: Families—Table F-23, Families by Total Money Income, Race, and Hispanic Origin of Householder, 1967–2014 (Income in 2014 Dollars)," accessed November 11, 2016; **P. 301:** U.S. Census Bureau, "Historical Income Tables: People—Table P-39, Full-Time, Year-Round Workers by Mean Earnings and Sex: 1967 to 2014 (15 Years Old and Over)"; and "Table P-43, Full-Time, Year-Round Workers (Both Sexes Combined) by Median and Mean Earnings: 1974 to 2014 (15 Years Old and Over)."; **P. 301:** U.S. Census Bureau, Table P-32. "Educational Attainment—Full-Time Year-Round Workers 18 Years Old and Over, by Mean Earnings, Age, and Sex: 1991–2014; **P. 302:** U.S. Census Bureau, Table PINC-04. "Educational Attainment—People 18 Years Old and Over, by Total Money Earnings in 2014, Work Experience in 2014, Age, Race, Hispanic Origin, and Sex; **P. 303:** U.S. Bureau Of Labor Statistics, Current Population Survey, Household Data, Annual Averages, Table 39. Median Weekly Earnings Of Full-Time Wage And Salary Workers By Detailed Occupation And Sex, 2015; **P. 304:** U.S. Census Bureau, "Historical Poverty Tables—Table 2, Poverty Status of People by Family Relationship, Race, and Hispanic Origin: 1959 to 2008."; **P. 304:** U.S. Census Bureau, Historical Poverty Tables, Table 4. "Poverty Status of Families, by Type of Family, Presence of Related Children, Race, and Hispanic Origin: 1959 to 2008; **P. 305:** U.S. Bureau of Labor Statistics, Table 39. Median Weekly Earnings of Full-Time Wage and Salary Workers by Detailed Occupation and Sex, 2014, Household Data Annual Averages; **P. 305–306:** Judy Goldberg Dey and Catherine Hill, "Behind the Pay Gap" , 2007 pp. 17–18, American Association of University Women Educational Foundation; **P. 306:** From "Sexual Harassment… Some See It…Some Won't" by Eliza G.C. Collins and Timothy B. Blodgett. Published by Harvard Business Review (HBR); **P. 307:** Charlotte Lynn Rawlins Yates and Cheryl Jenkins Mathis v. Avco Corporation, 819 F. 2d 630 (1987), U.S. Court of Appeals, Sixth Circuit; **P. 308:** Thomas Jefferson, Declaration of Independence IN CONGRESS, July 4, 1776; **P. 308:** Dred Scott v. Sanford, 60 U.S (19 How) (1857) at 407 and 421. See Don E. Fehrenbacher, The Dred Scott Case (New York: Oxford University Press, 1978); **P. 308:** Bradwell v. Illinois, 83 U.S. (16 Wall) (1873). See Leo Kanowitz, Women and the Law (Albuquerque, NM: University of New Mexico Press, 1969), p. 36; **P. 309:** John Rawls, A Theory of Justice (Cambridge, MA: Harvard University Press, Belknap Press, 1971), pp. 83–90; **P. 311:** Equal Employment Opportunity Commission, Title 29 Code of Federal Regulations, Section 1604.11, Sexual Harassment; **P. 312:** Deborah Merritt v. Old Dominion Freight Line, Inc., U.S. Court of Appeals for the 4th Circuit, no. 09-1498, April 9, 2010; **P. 313:** Rabidue v. Osceola Refining Company, 805 F. 2d 611 (1986), U.S. Court of Appeals, Sixth Circuit, Circuit Judge Keith, Dissenting in Part, quoted in Terry Halbert and Elaine Inguilli, eds., Law and Ethics in the Business Environment (St. Paul, MN: West Publishing Co., 1990), p. 301; **P. 315:** Pat Canova/Alamy Stock Photo; **P. 315:** Alex Wong/Getty Images; **P. 315:** James Steidl/Shutterstock; **P. 318:** Fred Barbash," High Court Rules For Seniority, Not Affirmative Action, 1984 Washington Post; **P. 318:** United States Supreme Court; **P. 319:** Theodore V. Purcell and Gerald F. Cavanagh, Blacks in the Industrial World (New York: The Free Press, 1972), p. 164; **P. 320:** Martin H. Redish, "Preferential Law School Admissions and the Equal Protection Clause: An Analysis of the Competing Arguments," University of California at Los Angeles Review 22, no. 2 (1974): 389; **P. 320:** Judith Jarvis Thomson, "Preferential Hiring," Philosophy and Public Affairs 2, no. 4 (Summer 1973): 381; for a similar claim with respect to blacks, see Graham Hughes, "Reparation for Blacks?" New York University Law Review 43 (1968): 1072–73. Reprinted by permission of John Wiley and Sons, Inc; **P. 331–332:** William T. Bielby, "Expert Report of William T. Bielby, Ph.D.," February 3, 2003, accessed August 1, 2004, a report filed in U.S. Federal court; **P. 334:** Fotog/ Tetra Images/ Alamy Stock Photo **P. 335:** E. H. Schein, Organizational Psychology, 3rd ed, ©1980. 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Schein, "Individual Power and Political Behaviors in Organizations: An Inadequately Explored Reality," Academy of Management Review (January 1977): 64–72. Copyright © 1972 by Virginia E. Schein. Reprinted by permission of Academy of Management Review; **P. 380:** Christopher A. Bartlett and Sumantra Ghoshal, "Beyond Strategy to Purpose, 1994 Harvard Business Review; **P. 384:** The

Upper Big Branch Mine Tragedy, Field Hearing Before the Committee on Education and Labor, U.S. House of Representatives, 111th Cong., 2nd Session (May 24, 2010), Serial No. 111–65, p. 34; **P. 386:** Don L. Blankenship, Chair and CEO, Massey Energy, Testimony before the Subcommittee on Labor, Health and Human Services and Education and Related Agencies, Committee on Ap-propriations, United States Senate, May 20, 2010; **P. 386:** Don L. Blankenship, Chair and CEO, Massey Energy, Testimony before the Subcommittee on Labor, Health and Human Services and Education and Related Agencies, Committee on Ap-propriations, United States Senate, May 20, 2010; **P. 386:** Ian Urbina and Michael Cooper, "Deaths at West Virginia Mine Raise Issues about Safety," New York Times, April 6, 2010; **P. 386:** The Upper Big Branch Mine Tragedy, Field Hearing. May 24, 2010, pp. 34–35, U.S. Government Printing Office; **P. 386:** The Upper Big Branch Mine Tragedy, Field Hearing. May 24, 2010, p. 28, U.S. Government Printing Office; **P. 386:** The Upper Big Branch Mine Tragedy, Field Hearing. May 24, 2010, p. 66, U.S. Government Printing Office; **P. 387:** MSHA letter to Rick Hodge, U.S. Department of Labor, 2011; **P. 387:** The Upper Big Branch Mine Tragedy, Field Hearing. May 24, 2010, p. 23, U.S. Government Printing Office; **P. 387–388:** The Upper Big Branch Mine Tragedy, Field Hearing. May 24, 2010, p. 27, U.S. Government Printing Office; **P. 388:** The Upper Big Branch Mine Tragedy, Field Hearing. May 24, 2010, p. 36, U.S. Government Printing Office; **P. 389–390:** Based on Eugene Elliot v. Turner Construction Company and B&C Steel, United States Court of Appeals, Tenth Circuit, August 24, 2004, case no. 03-1209

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