

ETHICAL DECISION-MAKING

SPRING 2000

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ETHICS AND DECISION-MAKING

Objectives: To review the basic conceptual tools for ethical decision making so that participants will be able to recognize a situation which calls for ethical decision-making, describe several commonly used ethical theories and second-level ethical principles, and use a seven-step decision procedure for applying these theories and principles in practical situations. Participants will be given a general overview of ethics and specific help in using a pluralistic approach to making ethical decisions.

INTRODUCTION

What is an "Ethical Decision?"

In the most general sense, "ethical" decisions (or "moral" decisions, since these terms will be used interchangeably) are decisions about what actions are right or wrong, good or bad. How can ethical decisions be distinguished from other decisions in business? How does a person know if it is necessary to ask ethical questions about a situation in addition to business questions about the risks and benefits, the reactions of customers and the potential long-term profits involved? One clue is that an ethical situation involves actual or potential harm: "Ethics is concerned with any situation in which there is actual or potential harm to an individual or group." (Cooke, 1990)

In a broader sense, ethics relates to some concept of human good: "...ethics ... includes the study of what people ought to pursue, that is, what the good is for people, or alternatively, the determination of which actions are the right actions for people to perform. ...The word ethics, then, refers generally to the study of whatever is right and good for humans. ...business ethics seeks to understand business practices, institutions, and actions in light of some concept of human value. ...business ethics looks at corporate profits not for their own sake but with respect to the achievement of some basic human good, perhaps increased investor satisfaction, higher levels of employment, or increased capacity to improve working conditions (Donaldson & Werhane, 1988).

Another clue would be that an ethical situation is one which affects human welfare or involves considerations of justice or rights. "... an ethical decision as distinguished from a nonethical decision is one that affects human welfare or human fulfillment in some significant manner. An ethical decision is one where somebody's welfare is at stake, where somebody will be positively or negatively affected by the decision. ...an ethical decision can be further defined as a decision where questions of justice and rights are serious and relevant moral considerations. ...Can the decision be defended on grounds of justice? ...Does the decision violate some basic human rights...? These are the kinds of questions that must be asked." (Buchholz, 1989)

Three Levels of Ethical Problems: systemic, corporate and individual

In analyzing ethical problems, it is helpful to distinguish three levels: systemic, corporate and individual. Systemic problems are problems arising at the most general level of a society or the world as a whole, which involve the rightness or wrongness of social, political, economic or legal institutions. Is American capitalism a just system? Are affirmative action preferences fair?

Should governments require all employers to offer health insurance coverage for their workers? Does the compensation system in the financial services industries for securities brokers and insurance salespeople encourage unethical behavior? Corporate or organizational problems are problems dealing with the actions or policies of individual firms or organizations. Are the actions or policies fair or just, do they violate anyone's rights, do they make for the greatest good? Does the culture of this firm make employees accountable for ethical behavior? Should the firm's salespeople give gifts to potential customers? Is company A's compensation system fair? Individual problems are ones which require decisions by an individual as to what actions he/she should take in a particular situation and what principles or policies he/she should adopt as guides to further action. These problems often arise within the firm or organization where the individual works and may arise from conflicts between the moral standards of the individual and the firm. Should I pad my expense account if the company's compensation policies encourage it? Should I make claims about my product that I know are not completely true? How should I divide my time between family and career?

The Seven Step Method for Analyzing Ethical Situations

Another tool for analyzing ethical situations is to follow the Seven Step Method for deciding what action to take in a situation. The method involves answering seven "what" questions:

1. The Facts
2. The Ethical Issues
3. The Alternatives
4. The Stakeholders
5. The Ethics of the Alternatives
6. The Practical Constraints
7. Actions to Take

One reason for using the seven-step method is to provide a **mental checklist to insure completeness in making the ethical analysis**. A person making an ethical decision needs a procedure to follow to insure that she makes her decision with rationality and respect--a decision procedure that can insure that she has considered all the relevant factors and has taken into account the interests of others as well as herself. Velasquez has developed a seven-step method for this purpose. Most decision-makers, when confronted with an ethical decision, would consider most of the relevant factors.

The method also provides a framework for locating difficulties and disagreements.

By separating facts from ethical issues, for example, the framework allows us to determine whether a disagreement is over the facts or over the ethical issues. In discussing a social policy to control violence with firearms, for example, the question of whether cheap handguns are used in a significant percentage of violent incidents is a factual question. The question of whether U.S. citizens have a right to bear arms and whether the society has a legitimate claim to limit that right are ethical issues. Factual questions and ethical issues require a different kind of investigative process to produce answers so it is important to be clear as to which kind of question we are asking.

Ethical decision-making is a dialectical process. The fact that the seven steps are listed in numerical order does not indicate a strict logical or chronological order. The presence of

certain facts will alert us to the need to consider certain ethical issues, but without some prior acquaintance of the ethical issues, these facts would not have any ethical significance. Determining what the alternatives are, who the stakeholders are, or what the practical constraints are may send us in search of additional facts. Considering who the stakeholders are may generate new alternatives. The insight generating capacity of the ethical principles used to determine the ethics of the alternatives may raise new ethical issues or point us toward additional stakeholders. Thus each step should be taken in progressive numerical order but each step remains open to revision by subsequent steps. The steps are related in a dialectical way in that the completion of one leads us to see inadequacies in a previous step which needs revision. The requirement to decide on a real time response to the situation sets a limit on how much of this dialectical thinking we can engage in. The proper response to a competitor's marketing program may allow very little time for consideration whereas a decision on an affirmative action hiring policy may allow quite a bit of time for consideration and revision.

A Description of the Seven Steps

The following example will be used in describing the seven steps:

Stern Products, Inc. has for the past 30 years paid the entire cost of health coverage for workers and their dependents. Recent increases in health insurance premiums on the order of 25% per year have made this coverage a significant cost item on the firm's income statement. The three members of the compensation committee are directed to review the health coverage policy and make recommendations at the next board meeting.

1. The Facts?

a. What facts make this an ethical situation? What are the significant features of the particular situation which make it an ethical situation? Is there some actual or potential harm involved for an individual or group? Does the situation relate to some basic human goods which are being created, distributed, denied or threatened? Does the situation affect human welfare in some significant way? Does it involve considerations of justice or rights?

Health coverage for workers involves deciding how to divide up the goods of the corporation which is not only an economic question of how to maximize the value of the firm but also an ethical question of what is the best distribution, the most just distribution, or the distribution which fulfills each group's rightful claims on the value of the firm.

b. What facts are relevant to making an ethical decision? What facts should we know in order to decide how to act in this situation? Steps 1 and 2 are closely related. What facts are relevant will depend on what the ethical issues are and the ethical issues will be determined by the presence of certain facts. Thus the initial assessment of facts will have to be augmented once the ethical issues have been determined.

The facts in the Stern case would include: the cost to the company of the various coverage options, the short and long term economic prospects for the firm, worker demographics such as age, health status, level of economic sophistication, availability and cost of individual coverage, the effects of a change or lack of a change in coverage on the employees and the firm.

2. The Ethical Issues?

a. What level of ethical issues are we dealing with: systemic, corporate, or individual?

Knowing the level of the problem will help us to decide who will be affected by the decision and will therefore qualify as stakeholders and who will be required to make the decision--the society as a whole, decision makers within the corporation, or myself as an individual.

The Stern case involves corporate level issues, though reflecting on the high number of uninsured persons in the society and how that impacts on the corporation's cost of coverage may prompt the firm to get involved with the issue on an systemic level.

b. What specific ethical issues does this situation raise? Is it a question of how to maximize benefits and minimize harms. Is it a question of whether an action can be universalized? Is it a question of whether individuals are being treated as ends and not merely as means? Is it a question of whether all rational persons would agree that a particular action is right or good? Is it a question of a possible violation of rights or a conflict between rights? Is it a question of the fair distribution of benefits and burdens? Is it a question of how or whether to apply some specific ethical principle?

The ethical issues could be stated as follows:

- (1) What level of health coverage do employees have a right to expect, given the history of the company?
- (2) What level of coverage will maximize worker productivity while contributing the most to the profitability of the firm?
- (3) Should the firm involve itself in the national debate on health care coverage?

c. What level of generality is required? The ethical issues need to be stated at a level of generality which will allow the issue to be discussed in as broad a term as possible, so as to see all the possible ramifications, while yet being specific enough to lead to alternative actions in the case at hand.

The issue of health benefits for a corporation's employees should allow reference to the standards of the society as a whole but should refer to a decision to be made by this particular corporation.

3. The Alternatives?

Given the facts and the ethical issues, what alternative actions are possible in this situation? Initially we should state as many alternatives as possible without making judgments as to their plausibility. Having generated as many as possible, the most plausible should be chosen for further examination.

The corporation can provide no health benefits, co-pay with the employee, provide full benefits for the employee only, provide family benefits, open an HMO, and so on.

3. The Stakeholders?

a. Who will be affected by the alternatives and to what degree? We must determine who will be affected to a degree significant enough to include them among the primary stakeholders worthy of consideration. For systemic issues, which individuals, groups, institutions, and aspects of the physical, economic and social environment will be affected? For corporate issues, who

and what inside and outside the corporation will be affected: stockholders, government, society, the environment, suppliers, customers, local community, employees, managers and so on. For individual issues, who will be affected by the decision, both inside the company such as peers, superiors, other departments, and outside the company such as customers and suppliers?

In the health care example, the stakeholders include the corporation as a viable economic entity, the stockholders, the employees, their families and the local community.

b. How to rank stakeholder claims? Part of the decision making process will be to establish how much weight each stakeholder's claim deserves. This weighing of claims is often done intuitively. For purposes of justifying why the decision is the right one, however, the process for weighing the competing claims should be spelled out as much as possible.

The firm's claim on resources in order to continue as a viable economic unit would have to be given the greatest weight, since without the firm none of the other stakeholders could receive any benefit. The competing claims of stockholders and workers would have to be given the next greatest weight since they contribute directly to the value of the firm and have legitimate claims on that value. Deciding on how much weight to give each group's claims would require an understanding of the capital structure of the firm (debt--equity balance, availability and relative cost of debt financing, and so on) and the history of the firm's relations with the employees (degree of worker contribution to finished product, loyalty and productivity of workers, average length of employment and rate of turnover, and so on). Families and the community would have less weight unless they have made equally important contributions to the firm.

5. The Ethics of the Alternatives?

a. Use ethical principles to decide on the best alternative. The ethics of each of the most plausible alternatives is assessed using ethical principles or rules. For each alternative, for example, we could ask the questions associated with the utilitarian, rights and justice principles to determine how the alternative is rated by each theory. When the alternatives have all been rated as right or wrong, good or bad, the object is to select the best alternative. In the ideal situation, all the ethical principles will point to the same alternative as the best one.

Utilitarian Principle: Given the relative importance of the firm, the stockholders and the employees, which alternative would provide the greatest benefit to the greatest number? How would costs and benefits be measured in this case?

Rights Principle: What does each stakeholder have a right to expect with regard to health coverage? What alternatives would you not want imposed on you if you were in the position of any of the other stakeholders?

Justice Principle: Which alternative distributes the burdens and benefits most fairly among the stakeholders? Which stakeholders carry the greatest burden under each alternative?

b. How to decide when the theories point to different alternatives: There are situations in which different ethical principles will recommend different alternatives. In a case where the principles provide a mixed recommendation, we must choose which recommendation to follow and be prepared to justify that choice as best we can. Justification can be provided by showing why the theory(ies) indicates that alternative as the best and how this fits better into our conception of what the good life is than the alternatives suggested by the other theories. It may come down to the simple fact that, after inspecting all the alternatives with rationality and

respect, I just do value one alternative, or one theoretical approach, or one point of view as highlighted by one theoretical approach, or one state of affairs provided by that alternative, or one value embodied by one alternative more than the others. I may not be able to say why I prefer that alternative except in terms of the way I choose to live my life and what my experience has shown me. Does the fact that I do not have another definite standard to appeal, to if two ethical theories should disagree, mean that my decision is irrational or unjustified? The decision is rational in that I have made it on the basis of the careful consideration required by the seven-step method and it is justified by showing why it is the best alternative according to at least one ethical theory. To say that I am willing to live by the decision is the only remaining justification.

6. The Practical Constraints?

a. Can the best alternative be put into effect? Having decided on one alternative, we need to see whether there are any practical constraints which might prevent that alternative from being acted upon. When practical constraints rule out an alternative, we must return to Step 5 to select the next best alternative and subject it to the practical constraints test.

The best alternative may be to pay employees the maximum practicable wages and let them provide for their own health benefits. There may be a state or federal law mandating some level of company provided health coverage which would prevent our adopting this alternative.

b. Distinguish ethical from practical constraints. Ethical decision-making involves ruling out alternatives on ethical grounds in Step 5 and on practical grounds in Step 6. In actual practice we often do not bother to distinguish the two kinds of reasons for rejecting an alternative. It is helpful to keep them distinct as far as possible in order to be clear as to what kind of reasons we are giving. The difference between practical constraints and ethical considerations can best be illustrated by example.

In deciding on the level of health coverage from a rights perspective, we would weigh the competing rights of employees and the stockholders to the benefits of the company's operations. This ethical consideration would be different, however, from asking the question of whether the stockholders or the workers would agree to accept a particular division of the benefits.

7. Actions to Take?

a. Implementing the best alternative: Having selected the best alternative which is not ruled out by practical constraints, we need to decide on the steps necessary to carry it out.

If a larger co-payment by employees is the best alternative, how will it be implemented?

b. A summary of the justification: We should also be prepared, at the close of this decision process, to provide a justification of why this course of action is the right or good one in this situation. Going through the seven steps justifies the decision in the fullest sense. We should be prepared, however, to respond in some briefer form to the legitimate requests of others--our superiors, our peers, the agents of society--for an explanation of why this alternative is the best approach to this situation. This summary based on the seven steps will also provide us with a briefer account to apply to similar situations in the future. The worst punishment would be to face the full seven-step process for each and every ethical decision we make in our lives. We would have no time for living.

CHAPTER II HOW PEOPLE DEVELOP THEIR MORAL CONSCIOUSNESS

How do people go about making ethical decisions? That is, what kind of reasoning process do they go through in deciding what is right or wrong, good or bad? How do they justify or give reasons for their actions? To answer this question, we examine one commonly discussed account of ethical decision making developed by Lawrence Kohlberg. [Kohlberg, L. (1973). The Claim to Moral Adequacy of a Highest Stage of Moral Judgment. *The Journal of Philosophy*, 70(1973), 630-646. Kohlberg, L. (1984). The Psychology of Moral Development. New York: Harper & Row.]

Kohlberg's Stages of Moral Development:

Based on research into how people actually do make moral decisions at various times in their lives, Kohlberg identified 3 levels of moral development that individuals may progress through in reaching adulthood: Preconventional, Conventional and Postconventional. Not all individuals reach the third level and all individuals continue to make some of their moral judgments based on the principles of the previous levels. Each level is characterized by its own perspective from which moral judgments are made--Preconventional = Self, Conventional = Group, and Postconventional = Universal. Each level has two different stages of motivation or justification for moral judgments. (See Figure 1)

Thus persons acting at the Preconventional level are "What's in it for Me-ers," in that right and wrong for them are determined by what avoids pain for them or what gives pleasure to them and those they care for. They do not recognize the value of others except as others affect them. Because level I decisions tend to cause harm to others over the long run, this level of development is not rewarded by society.

Persons operating at the Conventional level are "Rule Followers" in that right and wrong for them is determined, not by their own decisions, but by the rules of their group, society or country. They follow rules out of group loyalty and recognition of the value of the group or country. Decision making at level II works well when standards are stable but not if the society is pluralistic or in transition

Persons at the Postconventional level are "Decision Makers" because right and wrong for them are determined by judgments which they make themselves based on universal values & principles which they take to be valid for all people in all societies. Decision making at level III requires thinking & tolerance for ambiguity.

Kohlberg's Model of Ethical Decision-Making

LEVELS	PERSPECTIVE	JUSTIFICATION
Preconventional	<ul style="list-style-type: none"> * Child " What's in it for me" 	<ul style="list-style-type: none"> * Authority * (1) pain/punishment * (2) pleasure/reward
Conventional	<ul style="list-style-type: none"> * Group "Follow the rules" 	<ul style="list-style-type: none"> * Group Norms * (3) role conformity * (4) laws of society
Postconventional	<ul style="list-style-type: none"> * Universal "Make your own judgments" 	<ul style="list-style-type: none"> * Moral Principles * (5) contract & individual rights * (6) rationally justified principles

An Alternative Model of Motivation: The Care Perspective of Carol Gilligan.

Critical of Kohlberg's model because his research subjects were all men, Carol Gilligan (1982) proposed a different model of moral development for men and women based on her research. Men deal with moral issues in terms of impersonal, impartial, abstract moral rules such as the principle of justice and rights. Women deal with morality primarily as a matter of caring and being responsible for others with whom one is involved in personal relationships. Thus women move from a Preconventional Stage of caring only for oneself, to a Conventional Stage of internalizing society's norms that women should care for others to the neglect of self, to a Post-Conventional Stage in which they become critical of conventional norms and achieve a balance between care for others and for self. Further research attempting to confirm Gilligan's findings indicate that this is not a women's view exclusively but an additional developmental scale for both women and men (Velasquez 1992).

KOHLBERG'S MODEL OF ETHICAL DEVELOPMENT

LEVEL I: PRECONVENTIONAL

External moral standards. Right and wrong are established by those with authority or power over me.

Primary motivation is self-interest. I see issues only from my own point of view.

Stage	Motive	Explanation
1. Punishment & Obedience Orientation	Pain	Fear or Punishment Fear of Authority
Do the right thing to avoid punishment. Little awareness that others have needs and desires similar to my own.		
2. Instrument and Relativity Orientation	Pleasure	Self-gratification, Mutual benefit

Right actions are those that satisfy my own needs or the needs of others who I care for. Realization that others have similar needs and that satisfying those needs will get me what I want.

LEVEL II: CONVENTIONAL

External moral standards. Right and wrong depend on standards of family, peer group or society.

Primary motivation is group loyalty--adherence to group norms regardless of consequences to self. See issues from the point of view of others in the group.

Stage	Motive	Explanation
3. Interpersonal Concordance Orientation	Role expectation	Approval from others
Right actions are those which fulfill the expectations of others for whom I feel loyalty, affection and trust. Conformity to role as good daughter, son or scout.		
4. Law & Order Orientation	Adherence to codes of law and order	

Right and wrong is determined by loyalty to my nation. Laws and other people are seen as part of larger social system that needs to be upheld and that defines individual roles and obligations. I can separate these obligations from those generated by my own interpersonal relationships and motives.

LEVEL III: POSTCONVENTIONAL, AUTONOMOUS OR PRINCIPLED

Autonomous, self-chosen moral standards, universally applied and rationally justified.

Stage	Motive	Explanation
5. Social Contract	Orientation	Concern for others and for broader social welfare

Realization that others may hold different moral views than my own leads to adoption of social consensus by agreement, contract or due process. Outside the established consensus, all values and norms are seen as relative.

6. Universal Ethical Principles	Orientation	Adherence to universal, rationally justified moral principles
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Right action is defined by universal moral principles which to apply to all persons in similar circumstances. These abstract moral principles are used to evaluate all other moral rules and arrangements including democratic consensus.

Strategies for explaining ethical decisions based on Kohlberg.

Using Kohlberg's stages to understand the different levels of moral maturity on which your supervisor, coworkers or subordinates may be operating will be very helpful in giving reasons for the ethical decisions you make in business. Because different members of your company are operating at different levels of moral maturity, they will have different motives for acting morally. Though one person may come to the same moral conclusions as another, the two may have very different reasons for reaching that conclusion (Shenkir 1990). Clarifying a person's thinking on his/her motivation and providing reasons which speak to that level of motivation will help you to justify your ethical decisions to others and to point out how your outlook may differ from theirs in the kinds of reasons you think are important.

Explain social responsibilities of the profession and the non-economic, social consequences of behavior prohibited by the professional code. Explain how provisions of the profession's code are justified by principles of religious or philosophical ethics (utility, rights, justice).

Responses to Albert Carr's "Is Business Bluffing Ethical?"

One explanation of why businesses sometimes treat their customers and employees in an unethical manner is that ethics at the conventional and post-convention levels have no place in business. This "Machiavellian view" is that business operates strictly on the pre-conventional level because business is concerned only with making a profit. A sophisticated presentation of this point of view is found in an article by Albert Carr, a professor in the Harvard School of Business, published in the Harvard Business Review (January/February, 1968). It is important to understand Carr's arguments in order to see why they are wrong.

The question is Carr asking has to do with the place of bluffing and truth telling in business transactions. Carr claims that all businesses practice some forms of deception, and gives the example of job candidates who lie about the magazines they read or about their age. Is

this wrong? The morality taught to individuals by "the churches" says that lying is always wrong. Should individuals feel guilty if business requires that they bluff or lie because of competitive pressures? So Carr is asking if lying has a legitimate place in business. He is not asking if lying happens in business but is it o.k. for businesspersons to lie.

In answer to this question, Carr claims that bluffing is allowed by the rules of business morality. Why? His answer is based on a game analogy: Business, like poker, has its own rules. Everyone understands and plays by those rules. Cheaters get put out of the game, but the rules of business, like poker, allow bluffing. Thus honesty is not required and the players know not to expect honesty. Individuals in business should play by the business rules and not feel guilty. The ethics of the churches do not apply in business.

What are the rules of business morality according to Carr?

(1.) The limits are set by law: as long as businesspersons follow the letter of the law, they have the right to operate their businesses as they see fit. Ex. mouthwash made with cheap alcohol is o.k. even if it harms the customers because it is not against the law.

(2.) Watch for changes in public opinion. As long as public opinion is favorable, the action is right.

How should the talk about the need for business ethics be understood, according to Carr? As an illusion, a necessary strategy to succeed in the long run, a self-serving set of calculations, as in the case of some industry codes of ethics which are promulgated only to satisfy the public and prevent government regulation. It is necessary to have a good reputation in order for a business person to succeed in the long run: "...the better his reputation for honesty, integrity and decency, the better his chances for victory in the long run."

What is wrong with Carr's arguments? One problem is that his analogy of business to poker is faulty on three counts:

- (1.) Poker is a form of individualistic competition with all other players in the game. Business is a more cooperative enterprise in which I am not competing with my customers, other members of my company, or my suppliers in a zero sum game.
- (2.) In poker you are free to withdraw from the game whenever you want, but most business relationships do not have this same freedom of entry and exit. Continuing relationships like business require trust.
- (3.) In poker all players agree to play by set of rules known to all. In business, bluffing can take advantage of persons who do not know what the rules are and who did not agree to accept them.

Another problem is his creation of a false dichotomy between personal ethics ("the ethics of the churches") and business ethics:

- (1.) People do not simply turn off their personal ethics when they enter a business setting. They operate with the same basic principles in both business and personal life, especially since a person's business career usually expresses who that person is in the most important sense.
- (2.) Personal ethics are not necessarily impractical, otherworldly, turn-the-other cheek. Ethical principles can be practical and serve my self-interest as long as they take others' interests into account as well. Carr's characterization of personal ethics as "church ethics" is inaccurate.

A third problem is the contradiction in Carr's argument that we should not be ethical in business in order to succeed but we do need to appear ethical: if we all know that business rules allow bluffing and other such unethical behavior, why should a business have to appear to be ethical in order to be successful? If the public knows and accepts that business rules allowing bluffing, why would they condemn a business when it is caught not telling the truth? If it is necessary to appear to be ethical, then the public must not be aware that the rules allow businesses to operate contrary to ethical standards. The fact that a business must appear to be ethical in order to succeed shows that the public does expect businesses to operate by the basic ethical rules of the society.

THE IMPORTANCE OF LEARNING SKILLS FOR ETHICAL DECISION MAKING

Just as in learning how to make decisions in finance or marketing or accounting, ethical decision making requires the mastering of certain key concepts and terms and requires practicing these skills on problems or cases. Why is it important to master these skills?

1. **The Myth of Amoral Business:** Because many business persons were never taught the skills of ethical decision making, they assume that all ethical decisions are simply matters of an individual's religion or personal morality and therefore have no place in the business world. By learning how to make ethical decisions, business people will learn that there are better and worse ways to make ethical decisions, that these decisions can and should be made within the context of business, and that there are ways of justifying those decisions which open them up to the rational scrutiny which all business decisions should undergo. (DeGeorge, 1990)

2. **The Changing Mandate for Business:** With the advent of the industrial revolution, the mandate given by society to business was to produce as many goods and services as possible at the lowest possible monetary cost so that society could benefit from the new machine technology. Business has been very successful, in the developed countries of the world, in fulfilling that mandate to create wealth. This wealth has not come, however, without costs to the society and to the environment. Because of these costs, society's mandate to business is changing. No longer can business simply worry about efficient production and profits and feel justified in the wealth it is creating. Society's mandate to business now requires that businesses not only create wealth for their shareholders but that they show concern for the environment, for social problems in the country at large as well as in the communities where their facilities are located, for the problems of their employees, their suppliers and their customers. The new business mandate requires that they balance the concern for profit with the concern for all of the stakeholders whose welfare is affected by the operation of the business. In order to

balance the competing demands of the new mandate, to know which demands are legitimate and which are not, to know which structures, policies, and actions the business should undertake, business persons need to know how to make ethical decisions and justify these decisions (DeGeorge, 1990).

CHAPTER III ETHICS BASED ON RELIGION

One of the most universal foundations for ethical judgments is provided by religious beliefs. Religion can help believers solve moral problems in several ways:

1. Religion can give rules or doctrines such as those found in the Bible and Koran which enjoin or direct certain behavior. Do not kill. Make a pilgrimage to Mecca. These rules will require interpretation by the individual to apply them to particular situations, with some believers receiving help or authoritative teaching from a worship group or official church institution. An example from Christianity is the Apostle Paul's letter to the Christian community in Colossae:

"Put to death whatever in your nature is rooted in earth: fornication, uncleanness, passion, evil desires, and that lust which idolatry. These are the sins which provoke God's wrath. Your own conduct was once of that sort, when these sins were your very life. You must put that aside now: all the anger and quick temper, the malice, the insults, the foul language. Stop lying to one another. What you have done is put aside your old self with its past deeds and put on a new man, one who grows in knowledge as he is formed anew in the image of his Creator. There is no Greek or Jew here, circumcised or uncircumcised, foreigner, Scythian, slave, or freeman. Rather, Christ is everything in all of you."

Because you are God's chosen ones, holy and beloved, clothe yourselves with heartfelt mercy, with kindness, humility, meekness, and patience. Bear with one another; forgive whatever grievances you have against one another. Forgive as the Lord has forgiven you. Over all these virtues put on love, which binds the rest together and makes them perfect." (New American Bible, 1991)

2. Religion can provide the motivation for being moral. e.g. the reward or punishment in the next life promised by Christianity & Islam, the vision of the more fully human life they both offer, or the avoidance of suffering in this life offered by the way of the Buddha. Paul again to the Colossians:

"Since you have been raised up in company with Christ, set your heart on what pertains to higher realms where Christ is seated at God's right hand. Be intent on things above rather than on things of earth. After all, you have died! Your life is hidden now with Christ in God. When Christ our life appears, then you shall appear with him in glory." (New American Bible, 1991)

3. The story of the life of the founder, like the Buddha or Jesus, gives the believer a vision of how to live life and a list of virtues to cultivate. E.g. Jesus as the suffering servant, sent to redeem humankind. The Buddha as the path of renouncing desire. The religious story gives pattern or meaning to life. It provides the context in which the rules and principles make sense. Different groups may interpret the same story differently. Within Christianity a Calvinist seeking justification will see a different pattern in the life of Jesus than a follower of liberation theology will. The founding story also gives insight into values (compassion) which can be

translated into ethical principles (care for others) which can be applied as rules or guidelines (give 10% to charity). The following list by Williams & Houck (1978) contrasts the values of the business world with those of a person in the American Catholic tradition.

Figure 3

Definition of Values	
Judeo-Christian Value	Contrasting Value
1. Value of power over individuals as service to help others develop their unique gifts.	1. Value of power over individuals as domination and control of others.
2. Value of power over nature as a stewardship over God's world.	2. Value of power over nature as a mandate by persons over God's world. Persons are to produce a maximum of consumer called to transform nature in harmony with goods and creature comforts. The whole of creation.
3. Value of wealth and property as an opportunity for increased service for humankind, yet as a possible obstacle to salvation.	3. Value of wealth and property as the measure of a person's worth.
4. Value of happiness as achieved through following God's intentions for humankind.	4. Value of happiness as achieved through acquiring possessions.
5. Value of justice as the right of each person to the means of leading a human life.	5. Value of justice as the protection of property already possessed.

The religious story can also give us a different controlling image or "master image" by which we direction our actions. The corporate manager may see herself as "King of the Mountain" whose goal is to wield absolute power over others through toughness and cleverness. Having heard the story of the prodigal son, however, which portrays a God whose chief attribute is love rather than justice, the manager may see herself as an "Heir to the Kingdom" whose role is to act with compassion as well as justice. Whereas the "King of the Mountain" would quickly fire an incompetent worker, the "Heir to the Kingdom" might try to find the worker a position that suits his abilities (Williams & Houck).

Religious Ethics from a Kohlberg perspective:

On what Kohlberg level of development do people who base their ethics on religion operate?

What's-in-it-for-me

Rule follower

Decision maker

Some critics of Religious Ethics:

Nietzsche: Christianity is a religion of revenge, a slave religion, in which the meek in this earth will be rewarded in heaven while the powerful in this world will be punished in hell.

Plato: The early Greek philosopher, Plato, asks a puzzling question of a young man who claims that the way to know what is ethical is to see what the gods have commanded:

Is something right because the God commands it? or
Does God command it because it is right?

If something is right because God commands it, then God is all-powerful but not all good because God is the one who defines what is good and can change that definition at any time. If God commands things because they are right, then what is right is right independently of God's commands, so God cannot change what is right and thereby is not all powerful. So according to this dilemma, the religious believer must either give up the notion that God is all good or the notion that God is all powerful.

An answer to Plato, Kierkegaard's "leap of faith."

Kierkegaard, a 20th century Danish philosopher, used the example the Abraham story to make this: God commands Abraham to kill his son. It is not ethical for Abraham to do so since killing of an innocent trusting child is one of the worse forms of murder. God certainly does not seem good in any sense that we can understand for ordering this crime. Nor can we excuse Abraham because he was prevented from carrying out the killing at the last minute. He had decided to do it and was in the act of carrying it out so, at the least, Abraham is an attempted murderer.

Kierkegaard's explanation is that the believer does not live at the level of ethics with its rules and justifications. The believer transcends ethics in a leap of faith to do what God commands. The only difficulty with Kierkegaard's explanation is that others besides Abraham have claimed to have direct commands from God which run counter to ethics and which hurt other people. So the person of faith who is willing to suspend ethical requirements to act on faith needs to recognize that David Koresh, Jim Jones and Charles Manson were also acting on what they took to be divine commands to do things that were unethical. The difficulty is in trying to tell which commands are legitimately from God and which are the productions of an unbalanced mind.

CHAPTER IV

A PLURALIST APPROACH TO MAKING ETHICAL DECISIONS

Applying principles of ethical conduct to business activities requires a vocabulary that can be spoken in the boardroom without the embarrassed silence that would attend the use of technical terms like 'deontology' or 'universalizing maxims.' What are needed are some easily remembered shorthand versions of ethics concepts which can be used by managers along with "return on investment" and "product life-cycle". Given appropriate translation, the ethical principles provided by the Western philosophical tradition in utilitarianism, Kant's three principles, rights and justice considerations, social contract theories, and character ethics can all be utilized to evaluate the objectives and tactics of business lobbying. These ethical theories, when operationalized for business, yield the following rules:

1. Maximize good and minimize harm for those affected.
2. Don't make exceptions for yourself.
3. Let others make their own choices.
4. Use the publicity test.
5. Respect the rights of those affected.
6. Insure a fair distribution of benefits and burdens.
7. Exercise caring.
8. Honor your contract with society and individuals.
9. Act in accordance with your character and the company's reputation.
10. Consult your religious beliefs.

In evaluating business activities, all ten rules should be considered. No one rule can screen for all aspects of what makes an action ethical. Each offers a different insight into the complexities of a situation, highlighting the importance of good outcomes, of holding everyone to the same standard, of respecting others' choices or rights, of justifying inequalities, and of recognizing the importance of society and character. One rule will often provide a corrective for another: the emphasis on good outcomes for the majority needs to be tempered by concern for the needs and rights of individuals, and vice-versa. In most instances the rules all yield a similar judgment.

There are instances, however, in which the rules conflict. An action which maximizes happiness may deny choice to some or unfairly distribute benefits and burdens. When the rules conflict there is no "super rule" to determine which will have priority. Individuals and institutions must recognize the conflict and continue the ethical dialogue with others who are affected. Ultimately, those acting must choose the values or principles they think most important to uphold in that situation. At the least, conflicts at this level will be principled and the choices grounded on ethical principles.

In order to give these principles credibility in a business discussion, it is not enough to indicate that they are translations of traditional ethical principles. Captivated as some are by the notion that ethics has no place in business (Carr, 1968), businesspersons may challenge the relevance of any ethical principles to their activities. Thus it is essential that these translated

principles be accompanied by a brief argument for their validity. When challenged as to why "happiness should be maximized" or "the choices of others respected," a proponent of ethical restraints must have a compact explanation of why these principles are applicable.

While not proving the validity of the principles in an absolute sense, these explanations show how the principles follow from some fundamental values which most businesspersons share, though they may have never realized their connection to rules of ethics for business. The recognition, for example, that everyone wants to be happy and that all persons have equal value makes it legitimate to act to create the most happiness and the least unhappiness for all those who are affected. Those who reject values such as the intrinsic equality of persons will remain unconvinced of the validity of the rules, though they should recognize that this rejection places them at odds with the rest of society.

Pluralism: saving the best from both relativism and absolutism.

This approach to ethical decision making, which we will be using this semester, is known as "Pluralism" because it relies not on a single ethical principle but on several principles. The basic tenets of Pluralism can be described as follows. In addition to religion-based ethics, there are several ethical theories developed within the western philosophical tradition which have been shown to be helpful in making ethical decisions. These theories guide decision-making and provide a justification for the decision. Four theories which have received the most attention in contemporary discussions of ethics are the Utilitarian theory, Kant's Deontological theory, Rights theory, and Justice Theory. Religion is also used quite often as a basis for moral decision making. Different ethical theories will often give the same answer to a moral problem. They often give different insights into the various dimensions of the problem, however, and can sometimes lead to different answers as to the right course of action. Since no single ethical theory has proven to be the best approach to making moral judgments, the best approach will be to use several ethical theories and compare the results.

What if two theories give different answers as to what is right or wrong, how can this conflict be resolved? For example, in trying to decide whether to initiate an affirmative action hiring policy, a manager might decide that the rights based and utilitarian approaches lead to conflicting answers. The rights based approach could suggest that every individual has the right to be treated equally in employment decisions and that affirmative action violates individual rights. On the other hand, the utilitarian answer could be that the greater happiness of a truly color blind and merit based society of the future can only be achieved by giving special preferences now to individuals who may not individually merit them. In this case the manager would be faced with deciding between two incompatible courses of action, both of which appear right according to a given theory.

If, as in this example, the ethical theories yield different answers to the problem, there is no higher level of principles to appeal to. The Pluralist must decide which answer to act on based on a judgment of which course of action is "best" in some global sense--which seems to fit best into the world as he/she would like it to be, or of which seems to have the most rational appeal in that case, or of which promotes the value or values which rank highest in his/her hierarchy of values. There is no way to demonstrate that this choice is the "best" except being

willing to act on it. There is the consolation that both alternatives appear to have good moral justification so that at least the person is attempting to act morally.

The Pluralist does reality checks with the moral norms of the group and the society in order to take advantage of the collective wisdom of the group or society. Differences between the individual and the group and society require special attention to the reasons for differing and an analysis of the consequences of differing. Given this information, the individual can decide whether to conform or to be a hero or a villain.

As an approach to solving ethical problems, Pluralism has some definite advantages. It retains the strength of Individual Relativism by emphasizing the need for individual moral responsibility in thinking through and making moral decisions. It retains the strength of Group and Cultural Relativism by requiring a dialectical relationship with the moral vision of the group and the society and retains the respect for cultural diversity by requiring the giving of reasons for moral decisions and being open evaluating the reasons given by those who differ. It retains the strength of Absolutism by maintaining the ideal that a thorough rational analysis of a moral problem should yield an answer which can be accepted by any other rational person who shares a similar view of the facts and maintains the ideal of an absolute standard by requiring that moral principles and moral judgments must be universalized in order to be "moral", that is, they must be applied to everyone in similar circumstances including myself.

CHAPTER V THE ETHICAL STANDARDS:

Remember that applying the ethical standards in a business setting requires being able to explain how to use the standard to determine what is right or wrong and being able to provide justifications for why the ethical principles should be accepted as guides to conduct. Here is a brief outline of the standards and their justifications.

The purpose of ethical standards:

1. **Insight.**

By focusing our attention on certain aspects of an ethical situation which are morally relevant to that particular theory, ethical theories give us additional insights into what merits consideration. For example, consider the question of abortion. The rights perspective focuses the debate on the competing rights of the woman to decide what happens to her own body, of the embryo or fetus to live and develop, of the father, and of her parents if the woman is under a certain age, and of the society to promote values such as life and family. We would have to consider questions regarding the nature of individual rights versus societal rights, of what constitutes a person, and of the biology of human development, to name only a few. The utilitarian perspective would focus our attention on the consequences to the woman of an unwanted pregnancy versus the consequences to the fetus of being born or not being born, and would place the issue of an individual abortion not in the context of a conflict of individual versus individual or individual rights versus societal rights but in the context of social policies which allow so many unwanted pregnancies to occur and which do not offer adequate support to women and families in terms of child care, health insurance and educational opportunities.

2. **Justification.**

Ethical theories also offer a framework for giving reasons to justify an ethical decision. A rights theory would offer the reason that a particular action respects the rights of those affected whereas utilitarian theory would offer the reason that the course of action chosen was the alternative which maximized the good for those affected. Ethical theories give us recognized forms of reasons to give for our action so that we can be confident that we have decided on a morally responsible basis and that others, though they may not agree with the decision we have made, at least will be willing to recognize that we have made it with rationality and respect.

Brief List of ethical standards for work place vocabulary:

1. Maximize good and minimize harm for all those affected.
2. Don't make exceptions for yourself: universalize and reverse.
3. Let others make their own choices: information and freedom.
4. Use the publicity test or smell test.
5. Respect rights of those affected.
6. Insure a fair distribution of benefits and burdens: veil of ignorance, liberty, opportunity, least advantaged.
7. Exercise caring.
8. Honor your contract with society and individuals.

9. Act in accordance with your character and the company's reputation.
10. Consult your religious beliefs.

Figure 4

STUDY GUIDE FOR ETHICAL STANDARDS

Utilitarian Standard:

Maximize good and minimize harm for all those affected.

Why is this principle a valid guide to conduct?

Everyone counts the same.

Everyone wants to be happy.

Therefore, good is what makes the most happiness or least unhappiness regardless of who is affected.

How are the costs and benefits measured?

pleasure & pain, \$-money,
preferences, or needs.

Decision Procedure: Do a Cost/Benefit Analysis of the Alternatives

1. Who is affected?
2. What are the consequences of each alternative?
3. Which alternative provides the greatest benefits and the least costs for all those affected? [Alternatives can be measured at the level of an individual action or at the level of rule or policy.]

Common Errors:

Limited stakeholder error - Cost/benefit only for my group or myself.

Single alternative error - Cost/benefits of only one alternative.

Short-term error - Cost/benefit considering only direct and immediate consequences.

The Exceptions Rule:

Don't make exceptions for yourself.

Universalize to see if action is self-destructive (strong sense) or unacceptable (weaker sense).

Reverse to see if action is acceptable if done to me.

Why is this principle a valid guide to conduct?

Everyone is worth the same.

So why should I be able to do what others cannot?

Decision Procedure:

1. Describe the action that is being proposed. Adjust level of generality or specificity in describing the action the make the most sense out of the situation.
2. Universalize: what would happen if everyone did the same?
Self-destructive or unacceptable?
3. Reverse: what if someone did that to me?
Would I consider the action ethical even if I did not like what was happening?

Informed Choices Rule:

Let others make their own choices.

Treat others as ends and never merely as means. Everyone has equal status as a value-giver: everyone can determine for himself or herself what has value for them and what they want to do.

Why is this principle a valid guide to conduct?

Each person knows best what is valuable to him/her.

If everyone is equal, why should some be able to choose for others?

Decision Procedure:

1. Freedom: Am I giving others the freedom to choose?
Am I respecting the choices they (or their chosen representatives) have already made?
2. Information: Am I giving others the information needed?

Smell Test:

The Publicity Test or Smell Test

How would rational people judge my action?

Why is this principle a valid guide to conduct?

If my action is ethical, I should be able to explain it to others who are ethical.

If action is ethical, why should I have to hide it?

Decision Procedure:

What if I read it in the papers? Could I explain my action publicly? Would others accept my explanation? Could I explain it to my grandmother?

Rights Standard:

Respect the rights of those affected.

Persons and other significant entity have value. Rights are what they need to have an existence which expresses that value.

Why is this principle a valid guide to conduct?

If I recognize value in myself then, unless others are different, they should have the same rights that I have.

For other interest bearing entities like animals, trees, mountains and bodies of water, if I recognize their intrinsic (as opposed to instrumental) value, then they have a right to what is required for an existence which expresses that value.

Decision Procedure:

1. To establish that something is a fundamental human right, show that it is essential to expressing the value in human life.
 - A. Do the persons affected have what they need to have an existence that expresses their value?
 - B. Why is this activity, ability, or provision so important to people? How does it promote dignity and self-worth or support freedom and well-being?
 - C. What happens to people who are denied this protection or provision? How does not having it affect their dignity and self-worth or their freedom and well-being?

2. For other entities, do they have what is needed for an existence that expresses their value?

Human rights are either Liberty Rights: privacy, free speech, freedom of conscience, freedom of self-determination; or Welfare Rights: food, housing, employment, education, health care.

Justice Standard:

Insure a fair distribution of benefits and burdens.

Fair distribution could be based on equality, effort, accomplishment, contribution or need. What would be most fair? We need a justice standard to show which distribution scheme is fair in each situation.

Valid because:

If everyone is worth the same, then everyone should receive a fair share.

Treat equals equally and unequals unequally.

Decision Procedure:

Which alternative distributes benefits and burdens most fairly?

Use "veil of ignorance" as quick and dirty test. For more precision, use:

1. Equal Liberty principle: does distribution allow maximum liberty compatible with the liberty of others?
2. Protection of Least Advantaged: do the inequalities benefit the least advantaged?
3. Equal Opportunity principle: are the means to qualify for benefits or burdens equally open to all?

Care Theory:

Exercise Caring

Social Contract Theory:

Honor your contract with society and individuals.

Valid because:

If we want to enjoy the benefits of commerce with others, we need to foster the conditions which make that commerce possible.

Character Ethics:

Act in accordance with your character and the company's reputation.

What kind of character/company reputation do I have? What kind do I want to have?

Valid because:

How we act affects who we are and how others think of our company and us.

Religious Ethics:

Consult your religious beliefs.

Does the action fit the vision of the religious life? Does it follow the rules and moral traditions of the believer's religion?

Valid because:

Religion offers unique insights into reality as the believer lives it.

One final check:

Compare my ethical judgment with the judgments of my group or society and with the judgments of the others who will be affected by it. Society's standards represent accumulated wisdom, so are presumed right unless I show otherwise. Do all those who are affected by it agree upon this decision? Have I actually heard their points of view or am I just supposing I know what they would think. Discussion with all those affected makes for a better decision.

The status of animals and other natural entities:

It is important to ask to what degree and in what ways animals and other natural entities such as trees, forests, rivers, wilderness areas, and the ecosystem as a whole have value and should be given consideration by these various ethical standards. What about artificial entities like buildings or works of art?

CHAPTER VI: MAXIMIZE HAPPINESS

WELFARE RECIPIENTS UNKNOWINGLY STUDIED

Some denied benefits to see effects.

DALLAS (AP) 1990 -- Thousands of poor people in Texas and four other states are unwitting subjects in a federal experiment that denies some aid to a portion of them to see how well they live without it, a newspaper said Sunday. Extra Medicaid and child-care benefits now go to about 8,000 people in five regions of Texas, while about 800 people -- selected at random by birth date -- are excluded. On April 1, those extra benefits will be available to more than 50,000 people statewide -- but not to the 800 unlucky Texans who face two more years without the help. The Dallas Morning News reported Sunday. The point of the federal study: to see how well the new expanded programs wean people off the welfare rolls.

The Texas pilot program targets welfare recipients who find jobs or job training. Traditionally, such recipients have received four months of free medical care, plus some childcare, after they leave the welfare rolls. The experimental program extended the benefits to one year of Medicaid coverage and subsidized childcare -- to all but the 800.

The theory is that the extended benefits will encourage people to take and stay with entry-level jobs that are unlikely to offer medical insurance or childcare immediately. And the tax money saved by getting those people off welfare will more than balance the cost of the new program. Similar experiments are being conducted in Ohio, Washington state, New York and Wisconsin, federal officials said last week. Federal officials say this kind of experiment -- denying benefits to small, so-called control groups -- is vital to determine whether new programs work. But it has drawn critics.

"People ought not to be treated like things, even if what you get is good information," said Philip Broyle, associate director for medical ethics of the Hastings Center, a New York based think tank concerned with the ethics of experiments on people. Broyle said this kind of study violates the kinds of federal standards that medical experiments must meet. Those standards include informed consent -- that anyone in an experiment must be aware of it and of all of its consequences. And they must have the option to refuse participation. Neither informed consent nor the right of refusal was offered to participants in the welfare study, officials said.

Federal officials always have been aware of the ethical question involved the experiment. "That issue was recognized and considered in his review of the Texas proposal," said Sidney Trieger, director of the federal division of health systems and special studies of the Health Care Financing Administration. He is in charge of evaluating the experimental results. "It was worth proceeding," he said.

Texas officials agreed to participate in the experiment a year ago. They got federal money for pilot programs in five urban areas but were required to exclude about 10 percent of those eligible -- the control group -- to see if they stay off welfare without the extra benefits.

State officials said last week that they would try to break their contract with the federal government and provide the benefits to the 800. "We're planning to argue with them," said Claudia Langguth, deputy commissioner for the client self-support division of the Texas Department of Human Services.

In the next several years, thousands of people across the country are to deny access to new job-training programs so federal officials can evaluate them, the newspapers said. Federal officials say the reason is not to cause suffering but to prevent it.

The alternative could be bad programs that waste tax money and unreasonably raise hopes, said Peter Germanis, staff director for the federal Low Income Opportunity Board. Using controls "is the only way we can do experiments that give meaningful results."

In 1988, Congress decreed that people receiving benefits from Aid to Families with Dependent Children and Medicaid and who get a job or job training would be eligible for the extended benefits beginning April 1, 1990. Texas officials decided they wanted to try offering the new benefits a year early on a small scale.

FDA ORDERS BLOOD BANKS TO USE TEST

(Associated Press 1995) Washington -- The government has told blood banks to begin using a new test to screen for the AIDS virus and to recall blood donated by patients with a rare, fatal brain disease.

The first of the new Food and Drug Administration recommendations concern a new test for HIV, the AIDS virus that is nearing the market. Currently blood donors are tested for an immune reaction to HIV, but it can take up to 25 days after HIV infection for that reaction to occur. Colter Corp. of Miami has created a test that will detect the virus itself about six days earlier, and the FDA said it is just about to approve the test as soon as some details are worked out.

Meanwhile, the FDA wrote the American Red Cross and other blood centers this week that they should be ready to begin using the new tests within three months of their sale. Blood centers could not be reached for comment, but they had supported the change.

Although getting HIV from a blood transfusion today is extremely rare, about 40 cases from 18 million units of blood, closing the testing "window period" will prevent five to 10 such infections each year, the FDA said. An FDA panel of scientific advisers last month recommended the agency not push the new tests, when some voiced concern that they could cost the blood industry up to \$200 million a year to implement. But the FDA disagreed.

In another decision late Thursday, the FDA told blood banks to recall all blood products donated by people later discovered to have Creutzfeldt-Jakob disease. Scientists have no proof that the rare, fatal brain disease is transmitted through blood. But it can be transmitted through tissue.

Utilitarian Theory: the Greatest Happiness Principle

That action is right or good which produces the greatest happiness for the greatest number or the least unhappiness for the least number. As with any ethical theory, the purpose of the utilitarian theory is to provide a criterion by which we can judge which actions are right or wrong, good or bad. Utilitarian theory is a consequentialist theory. An action in and of itself has no value. What gives an action value is its consequences--the amount of happiness it produces compared to the other possible actions. For utilitarian theory, the ends do justify the means since the means have no value except in terms of the results which they produce. No one's happiness is to be counted as more important than anyone else's. Each person's welfare is equally important. So right or good actions are those which produce the greatest balance of happiness over unhappiness, with each person's happiness counted as equally important.

Applying the utilitarian criterion: net benefits & harms (A. Andersen, 1990)

1. Identify the alternatives. Since the utilitarian approach is to compare the relative harms and benefits of all the alternatives, the first step is to determine what actions (including not acting at all) are possible in the situation. It is important to identify as many alternatives as possible and to state the alternatives more clearly as your understanding of the situation develops.

2. Determine the costs and benefits for each stakeholder. Different individuals may be affected by the alternatives in different ways. Determine who will benefit and who will be harmed by each alternative. Determine in what ways the individuals will be affected and to what degree or by what amount they will be affected.

3. Select the best alternative: the one which produces the greatest balance of benefits over harms for all those affected. If harms outweigh benefits for all the alternatives, the best is the one with the least harms and the greatest benefits.

4. Universalize the best alternative as a rule or policy. Some utilitarians are concerned only with the consequences of the alternatives in a particular situation. These Act Utilitarians would stop with step three because they are interested in deciding which action will produce the greatest happiness or the least unhappiness. Rule Utilitarians, on the other hand, would suggest a further question regarding the consequences of making the best alternative in this situation into a rule or policy to be applied in all similar situations. What if everyone would do likewise in similar situations? Would universalizing the best alternative as a rule or policy make for the greatest happiness of the greatest number?

Some difficulties in applying utilitarianism

1. The first question is how to define benefits and harms so that they can be measured. Only by having a clear standard for determining benefits and harms can we determine which alternative produces the greatest balance of benefits over harms.

Bentham (1789) and Mill (1861), the authors of the modern form of utilitarianism, proposed measuring benefits and harms in terms of pleasure and pain. Whatever alternative produced the greatest amount of pleasure for the most people and the least amount of pain for the least people was the best alternative. Defining happiness in terms of pleasure has the benefit of providing a uniform standard by which we can measure the affects of alternatives on individuals.

This hedonistic or pleasure standard has been criticized, however, for overlooking the fact that there are some things we seem to value whether or not they give us pleasure. Some value freedom, for example, even if they must give up enjoying it by dying to defend it. In spite of these difficulties, the pleasure/pain standard can be a useful shorthand in calculating the outcome of alternatives.

To overcome the criticisms of hedonism, some utilitarians have proposed that we use the preferences of individuals as the basic standard of costs and benefits. To the extent that an alternative prevents an individual from fulfilling his preferences, it imposes a cost on him. To the extent that the alternative facilitates his fulfilling his preferences, it provides him with a benefit. The amount of the cost or benefit would depend not only on the amount that his preferences were frustrated or advanced but also on how high on his hierarchy of preferences that particular preference was. The best alternative, according to the preferences standard, would be that which maximized the fulfillment of higher order preferences.

Cost-Benefit Analysis as practiced by economists and social planners proposes that all costs and benefits be expressed in monetary terms. This method can be helpful in aggregating the costs and benefits of social policies as long as the means for arriving at the value of non-monetary factors such as life and health are open to scrutiny.

These points regarding what standards to use for judging utility may seem to make utilitarianism hopelessly complicated. Human affairs are complicated but not hopelessly so. In determining what is the greatest happiness of the greatest number we must make judgments based on the best available data. We must be willing to explain these judgments and give reasons for them. Some of the moral judgments we make will be relatively simple and easy to justify, whereas others will be very complicated and difficult to defend. In this way morals are not so different from other areas of human life in which we make judgments as a routine matter of course. Driving in my neighborhood requires rather easy judgments regarding the correct placement of my car and the speed and distance of approaching cars. Driving on the freeway, however, may require more complicated judgments regarding speed and distance with more disastrous consequences if I make a mistake. Yet I accept these challenges as part of living. With moral matters I have the advantage that even regarding my individual life I can check my judgments with others in my group or society so that I will not get too far off. With moral matters having broader social consequences, I can be assured that like it or not my reasoning will be evaluated by others interested in the question and a lively public debate will ensue.

Figure 5

Utilitarian Standard = Cost Benefit Analysis

- (1) Identify alternatives

(2) Determine costs and benefits to each stakeholder

- ** Pleasure/Pain Standard
- ** Stakeholder Preferences Standard
- ** Monetary Standard

(3) Select best alternative action or rule

- ** Make judgments based on best available data.
- ** For Act Utilitarian, make judgment on basis of Individual Action.
- ** For Rule Utilitarian, judge consequences as policy or rule

2. A second question raised in all ethical theories is what sorts of entities have standing to be considered. Using the pleasure/pain standard directs our attention to the status of higher animals. Since many animals experience pleasure and pain in much the same way as humans do, then using them as experimental subjects, for example, would require a benefit sufficient to outweigh the suffering they would undergo. Using the preferences standard might seem to exclude many animals but no more so than it would exclude newborns and the unborn humans since the preferences of both groups for comfort, nutrition and the avoidance of pain are subject to scientific determination.

3. The most common objection to utilitarianism concerns its use of consequences to judge whether an action is right or wrong. Are there not some actions which, no matter their good consequences, offend some value or right which has its status independent of consequences--the requirement of justice or of the need to respect the rights of others, for example? Would it be morally acceptable to painlessly execute a severely retarded person for a brutal murder he did not commit, if the victim's family and community thought him guilty and would feel a great satisfaction his death? Is it morally good for a peeping Tom to be able to enjoy his voyeuristic pleasure if his subject has no way of ever finding out that she is being observed?

The utilitarian would answer in several ways: (1) that as a matter of fact, these sorts of cases are very unlikely to occur without the truth being discovered and are therefore no grounds for discarding the theory; (2) that a society whose rules or policies approved such happenings would cause its members distress and would thereby not be the best alternative society; and (3) that, in the highly unlikely event such an action did occur, consistency with the theory would require us to say the action was right or good however much that disagreed with our ordinary moral sense.

Strengths of utilitarian theory

1. It focuses our attention on results and not simply on following the right rules or policies. Because of this emphasis on results, utilitarian theory is good on judging the value of social policies for the future (Brady, 1990).
2. It focuses our attention on how others and we are affected by these results. It challenges us to determine in what ways and to what degree the actions will affect all of the stakeholders in the situation. It emphasizes the importance of factual data in determining how stakeholders will be affected and of giving reasons for our judgments based on that data.

3. It reinforces the importance of respect or impartiality by treating everyone's interests equally and by even extending consideration to other species in some cases.

4. Utilitarian theory warns us that our common moral sense of what is right or wrong cannot always be trusted since it is sometimes based on prejudices, feelings or social customs which the consistent application of a theory like utilitarianism can show to be wrong. E.g. denial of a woman's right to vote before the 19th Amendment.

CHAPTER VII

The Exceptions Rule, the Informed Choices Rule, and the Smell Test

Non-consequentialist moral theories: the deontological theories

Recall that the utilitarian theory is concerned with the consequences of an action. That action is good or right which has the greatest balance of good consequences over bad consequences. The means used are to be judged according to the ends or results produced.

There is another set of theories which count consequences as much less important in determining the morality of an action. These theories are called deontological theories because of their emphasis on duty or on doing what is required. According to these theories, human beings have an obligation to do what is right regardless of the consequences. Rights theory claims, for example, that society cannot violate the fundamental rights of an individual no matter how much good will be produced by such an action. Even if it means losing their whole island and the lives of the whole community, the group would not be morally right in violating an individual's right to life by throwing him into the volcano.

Thus, for deontological theories, the end does not justify the means. The action being done must be in accord with what is required by moral duty, obligation, or the moral law. What deontological theories focus on is telling us how we can know what the moral law, duty or obligation requires.

Kant's three criteria

One of the most influential deontological theories was developed by the German philosopher Immanuel Kant (1724-1804). According to Kant, the basic form of morality is based on rationality. To choose to be moral is to choose to be rational, and an understanding of what it means to be rational in our actions can show us how to distinguish moral from immoral. According to Kant, an analysis of reason shows us three criteria which an action must fulfill in order to be moral.

I. The Exceptions Rule: Don't make exceptions for yourself.

The strong sense of universalizability--Can my action be universalized without becoming self-defeating or self-destructive? This rule requires that I be able to universalize the rule which describes what I am doing. Since I can think of no reason why I should be given any special privileges that other do not have, rationality requires that if an action is right for me in a particular circumstance, it must be right for everyone else in similar circumstances. If I imagine what it would be like if everyone did the same in similar circumstances, I will discover that certain actions will become self-defeating or self-destructive. That is, the fact that everyone does the action will make it impossible for anyone to do that kind of action. If everyone engaged in bid rigging, then the practice of bid rigging would become impossible because everyone would know everyone else's prices and no one would be able to use this information to gain an advantage.

So this test for the morality of an action is to describe as accurately as possible what I am doing and see whether this rule could be applied by all other persons in similar situations. Only Act if the Principle of Your Action Applied Universally Is Not Self-Defeating. (A.A.)

For example, if I borrow money that I know I will not be able to repay, is it right for all persons in my situation to borrow money that they will be unable to repay? To make borrowing when one is unable to repay a universal principle of action, then, it would be self-defeating because no one would be willing to lend and borrowing would become impossible. The same sort of self-defeating result would occur if I try to universalize the principle that it is right to break contracts when it suits me or to lie when I can profit by not telling the truth.

The requirement to universalize my moral principles to see what effect this will have may sound very much like the utilitarian concern with results or consequences. The Rule Utilitarian is using a universalizability criterion by asking what will be the consequences of universalizing my action--what will the world be like if everyone does what I am doing. There is a crucial difference, however, in that Kant is not concerned with whether the consequences make for the greatest happiness--if everyone lies, will we all be better off or not. Nor is Kant asking us whether I would like the results if all others did the same as I am doing, as the Golden Rule "Do unto others" suggests. Kant's concern is whether if everyone does it, will the practice destroy itself so that no one will be able to do it. If everyone lies, will it be impossible for anyone to lie? If everyone lies, then no one will expect the truth so that it will be impossible for anyone to lie, that is, to intentionally deceive someone else. Thus it would go against reason--be a self-contradiction--for me to say that everyone should be able to do an action when the fact that everyone was doing it would mean that no one would be able to do it.

The weaker sense of universalizability--would it be unacceptable for everyone to do the proposed action? Kant's insight that if something is ethical for one it should be ethical for all can be extended to a weaker sense of universalizability. Some actions may not be self-destructive if everyone did them but the situation created by universal adoption of the practice would be unacceptable to everyone. It would be possible to argue (in the strong sense of universalizability) that if all companies dumped their wastes into the environment, that everyone would die and thereby render the practice self-destructive. The more probable result is that some would die, some would have shortened lives, and all would have a much lower quality existence. Thus the strong sense of universalizability would not make pollution unethical. But if the resulting lower quality of life were unacceptable to everyone (or to reasonable people), then universalizability in a weaker sense would show that the action was wrong. If the result of the action done by all is unacceptable, then it is not right to make an exception for myself.

Reversibility--would it be unacceptable if others did the proposed action to me? Another test which can be applied under the "Don't make exceptions for yourself" rule is to ask if it would be acceptable if the action were directed at me rather than at others. What if I were one of the customers buying a dangerous or low quality item? What if I were being deceived about the relative merits of this type of insurance or investment vehicle? This is the Golden Rule test of doing to others only what I would be willing to have them do to me. A sophisticated application of this test requires that I ask not simply whether I would like to be on the receiving end but whether I would think it was right if I were being treated that way. If a lottery is held to

determine who fights in a war or if housemates are scheduled to cook on alternate nights, then I may not like it if my number is drawn or if tonight is my night but I know that the procedure is fair and therefore it is right if I have to fight or cook.

The "free rider" problem--what if I am the only one who does it?

Universability speaks directly to the "free rider" problem. If everyone else refrains from a self-destructive practice such as lying or unacceptable practice such as polluting, then can one or some individuals or companies engage in those practices as long as their example does not lead others to do the same? The answer is no, as long as all the moral agents are equal whatever sense is relevant. If all are equal, then even if one or a few engaging in lying or polluting does not make communication impossible or life on the planet unbearable, they still have no basis for claiming that they should be able to get away with something that others are not able to do.

Adjust the level of specificity to fit the situation. Part of the art of applying this rule is to decide how specific to be in describing the action that is being tested to see whether it is ethical. The aim is to find the level of specificity which brings the force of the basic moral equality of each of us to bear in the case. In the case of Kant's enquiring murderer who is asking you where your brother is so he can kill him, the most general level would be to say that you are lying if you fail to divulge his whereabouts. Since lying cannot be universalized because it is self-destructive, then it would be wrong to lie. However a more specific description would be that you are lying to save a life, and that action would not be self-destructive if everyone did it.

II. The Informed Choice Rule: Let others make their own choices.

Am I treating people as ends and not merely as means? This rule requires that I treat all persons as ends in themselves and not simply as a means to some end I wish to accomplish.

Rationality tells us that every person is a value giver and deserves respect as such. According to Kant, nothing in the universe has value unless it means something to some person. A neutron bomb which cleared the universe of all people while leaving everything else untouched would leave behind an absolutely meaningless universe. Since on this view, each person gives value to all the other things in the universe, including other people, then the value givers themselves are ends and not simply means to others' ends. To use another person simply to get what I want without respecting what she may want is to deny her the equal status of a value giver. Always Act With Recognition of Every Person's Right, Including Self, to Be Treated With Respect. (A.A.)

If I borrow money I know I will be unable to repay, by not telling the lender that I will be unable to repay I deny her the right to use her money according to how she values it. If she knows I cannot repay, she may value the money as a means to help me out and give it to me anyway or she might value the money for the interest it can earn and so invest it in a more credit worthy way. But not to tell her is to treat her as a means to my values rather than as an equal value giver worthy of respect.

III. The Publicity Test or Smell Test.

Act as if You Were a Member of a Moral Community Governed by Moral Principles of Universality and Respect for Persons. This rule requires that I ask whether the principle I am acting on would be accepted by rational people. One way to apply this rule is to imagine the reaction if my action were published in the newspaper (the publicity test) or if I had to explain it to my grandmother (the grandmother test).

Kant's third criterion is not based on what other persons do happen to accept, since there have been times when whole societies of people accepted principles which were immoral, such as the principle that slavery was morally right. Rational persons, however, who consider not only what it would be like to live as a slave owner but also as a slave would see that having slavery as a universal moral principle would be unacceptable.

According to Kant, to be morally right, an action must fulfill all three criteria: it must be universalizable, must show respect for others, and must be acceptable to all rational persons. These criteria, and especially the second criterion requiring respect for other persons, has sometimes been stated in terms of rights.

CHAPTER VII RIGHTS AS A JUSTIFICATION FOR ETHICAL DECISIONS

Cases involving rights:

1. Do stores have a right to observe customers in dressing rooms or do customers have a right to try on clothes in private?
2. Do companies have a right to put listening devices in company locker rooms or to check lockers for drugs, or do workers have a right to privacy? When K-Mart hired informants to become friends with workers at a distribution center not only at work but also after hours in pubs and bowling lanes, did the company violate the workers' right to privacy?
3. Is it okay for the boss to monitor an employee's e-mail at work? Is it okay for government to monitor e-mail at home?
4. Does everyone have a right to vote? Do felons have a right to vote?
5. Do workers have a right to organize unions to bargain collectively? Do police and nurses have a right to strike? Can the society restrict this right in order to protect public safety?
6. Does a person have a right to food assistance or does society feed needy people out of a sense of charity?
7. Do persons have a right to health care and, if so, at what level? Does a convicted murderer have a right to a heart transplant?
8. Can a company fire a worker for publicly expressing political views which go contrary to the interests of the company? For example, could an oil exploration company fire a worker who wrote a letter to the newspaper opposing the opening of Alaskan wildlife refuges to oil drilling?

What are human rights?

As with any ethical theory, a rights theory seeks to provide criteria for determining what is good or bad, right or wrong. So how do rights help you to make ethical decisions? You are already familiar with rights--human rights, constitutional rights, voting rights, the right to work, the right to educational opportunities--but how would you explain what a right is?

The first philosophical explanation of human rights was made in the 17th century by the English philosopher John Locke (1632-1704). Locke's maintained that rights are something which, by definition, is possessed by all rational adult human beings. By understanding what it is to be a rational adult human being, we understand that each such individual has certain human rights. Locke's discussion laid the groundwork for the inclusion of human rights in the founding documents of the United States.

Three approaches to defining human rights. Since Locke's introduction of the notion of rights, there have been three general approaches to defining what human rights are (Donaldson & Werhane, 1988):

(1) Rights are a justified claim. The right to private ownership of property, for example, can be explained on the basis that an individual owns his own body and owns what he produces from the labor of that body. Thus the fact that I have worked for my wages justifies my claim to have a right to be paid according to the terms of my employment contract.

2) Rights are an entitlement to something held against someone else. For example, the right to equal protection under the law requires that if the society provides safeguards for all individuals rather than just for some. If others are protected from harassment by the K.K.K., then I am entitled to the same protections.

(3) Rights are an individual's protection against a society's collective goals (a "trump" over the claims of the society). Thus, Japanese Americans living on the west coast during WWII had the right to personal freedom and to their property which should have prevented their detention by society in order to promote national security.

Distinguish legal rights from moral rights or human rights.

Legal rights are those claims recognized in law or the Constitution, such as the right to vote and the right of free speech. Some legal rights are intended to give legal standing to moral rights, such as the 14th Amendment protection of the right to vote. Some legal rights are not related to moral rights but give legal standing to social custom or rules of convenience. My right to drive unimpeded on the right hand side of the road rather than on the left is an example of a legal right based on custom and convenience rather than on a moral right.

Moral rights are ones which everyone has or should have simply in virtue of being a human being. These are not necessarily protected by law and may not be recognized by all members of the society. For example, the moral right to end one's own life under certain medical conditions is currently subject to debate and steps are underway in some states to give legal standing to this right. Citizens of different countries may have different legal rights but they all have the same moral rights by virtue of being human.

Justification for human rights: humans have intrinsic value.

We are so familiar with the notion of human rights that we forget that rights are not an obvious fact of human life. Humans are not born with a boilerplate list of rights printed on them anywhere, nor can we discover rights existing in the human environment the same way we can discover that humans sometimes eat bananas. Rights are a concept, a category of thought that we use to organize our thinking so that we can understand the significant features of our environment.

We cannot prove that rights exist by pointing to them like we can point to certain facts of human nature. Proving that human have rights is not like proving that human have emotions.,

Nor can the existence of rights be established by showing that certain rights are respected by most societies. The proof that rights should be accepted as valid is that rights allow us to understand and foster something about human life that we could not recognize without this concept.

What is it that the concept of right allows us to recognize that otherwise might be overlooked? We know it must be something that humans can exist without recognizing or at least without recognizing in the particular form that the concept of rights would have us see it. After all, rights were not proposed until the 17th century and humans had gotten along without the idea of rights before that.

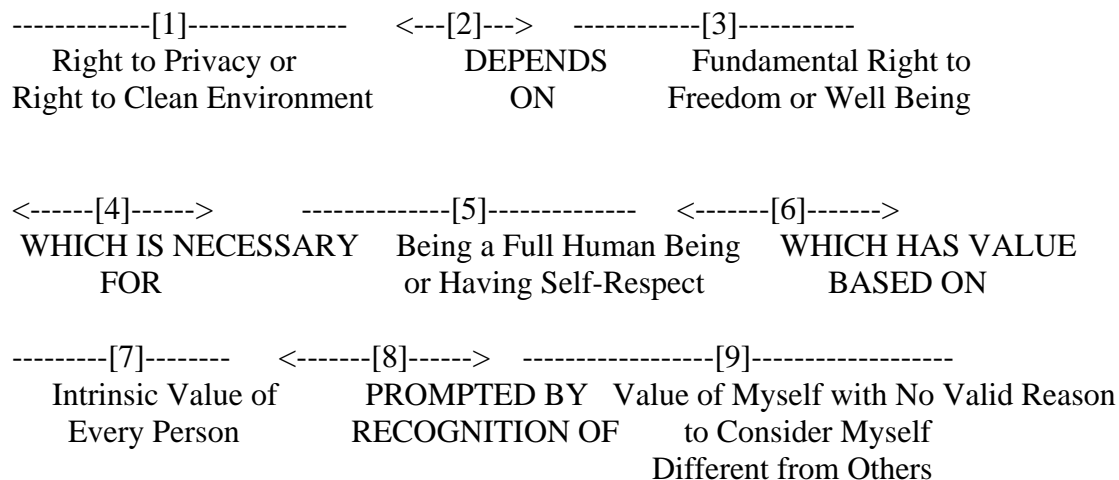
The central insight that the concept of rights gives us is that human beings are valuable somehow, in and of themselves, regardless of their physical and mental attributes or position in society. If we recognize this intrinsic value in human beings, then rights are what is necessary for this value to be expressed or to continue to exist. Without freedom of self-determination or freedom of expression and without an education of some kind, an individual human cannot be an embodiment of the value we recognize in individuals who are given these rights. Without food, clothing and health care, an individual cannot continue to live to be an embodiment of that value. None of these rights have any validity, however, if we do not recognize the basic value in human beings.

Thus on a practical level, if your boss directs you to write up the basic employment guidelines for the company's new chemical plant in Mexico, you might include provisions for payment of a living wage, for basic health coverage, for merit based employment and promotion, and for full disclosure of workplace hazards. If challenged on any of these provisions, you could argue that they are necessary to the protection of the basic human rights of the workers and explain in each instance how they make possible the sort of life necessary to what is valuable in every person. If your boss denied that there was anything particularly valuable about Mexican workers except that they will work hard for very low wages, she would be denying the intrinsic value of the workers as humans and would be focusing on their instrumental value to the company. For her, a rights argument would have no validity.

Is there any way to prove to her that individuals have intrinsic value? You could point out that most people recognize that individuals have value beyond their strictly instrumental value. She might reply that most people are also too sentimental to run a profitable business. You could ask if she thinks of herself as valuable over and above what she contributes to her work, family and friends. If she recognizes some intrinsic value in herself, then can she find any rational grounds for denying that same value to other humans, who though different from her in culture, history and economic standing, are similar to her in their basic humanity? This argument, based on the value of oneself, may get a person to recognize the value of others. If a person refuses to recognize the intrinsic value in humans, however, there is no ultimate proof that the value exists. And without a recognition of that intrinsic value, no arguments for rights will make any sense.

Figure 7

HOW TO ARGUE FOR BASIC RIGHTS



What kinds of human rights are there?

1. **Liberty Rights:** Privacy, Free Speech, Freedom of Conscience, and Free Consent.

These are rights that other individuals and the society have a duty not to interfere with.

2. **Welfare Rights:** Employment, Food, Housing, and Education.

These are rights that society or other individuals have a duty to provide the opportunity for

Duties correspond to rights

1. Duty Not to Interfere applies to liberty rights.

2. Duty to Provide applies to welfare rights.

Two ways to justify a particular fundamental human right:

The claim that individuals have human rights and claims that a particular right deserves to be included in the list of fundamental human rights must be justified or defended. Two general reasons are used to argue for human rights:

(1) that a particular right is necessary for an individual to have self-respect. This argument maintains that no individual can be really human without having self-respect. Thus a society that denied an individual the right to earn the basic food, clothing and shelter necessary to self-respect would be denying that individual her basic human rights.

(2) that a particular right is necessary to support freedom and well-being. This argument maintains that the basic requirements for a human life are freedom and well-being and that whatever can be shown to be essential to freedom and well-being is a basic human right. Thus, for example, since my freedom is limited by the kind of society I live in, I have the right to vote and express my opinions in order to determine what kind of society that will be.

Questions to ask in applying rights criteria:

In deciding whether something is a right or not, you can ask in a negative sense:

(1) what happens to people who are denied this protection or provision? How does not having it affect their dignity and self-worth or their freedom and well-being?

You can also ask in a positive sense:

(2) why is this activity, ability, or provision so important to people? How does it promote dignity and self-worth or support freedom and well-being?

To apply the Rights standard, the Arthur Andersen project suggests two questions:

1. What does each stakeholder have a right to expect? This question will focus on what rights are at stake in the situation.
2. What alternatives would you not want imposed on you if you were in the position of any of the other stakeholders? Since we are usually most sensitive to infringements on our own rights, this question may help us to see rights at stake which are not immediately apparent. The question also focuses our attention on the universal feature of rights--that for a right to have a moral claim, it must apply to all others in similar situations.

How far can rights theory be extended?

1. To include additional rights?

Since rights are something we must justify by giving good reasons, and since others must recognize these rights in order that they be effectively protected, the only limit on the number of rights is our ability to find good justifications and the willingness of society to accept them (though we might argue that a right may have validity even though society does not recognize its existence).

One example of an argument for the inclusion of additional rights is Blackstone's argument (1974) that the right to a decent environment is a basic human right. The kind of environmental conditions you live in are crucial to the realization of other basic human rights such as liberty and equality. When environmental conditions are simply dependent on nature, it makes little sense to talk about right to a decent environment. Human actions have come to influence environmental conditions to such a degree, however, that it can be argued plausibly that corporations and societies have a duty to respect the rights of others to a decent environment.

2. To include other bearers of rights?

Some of the most interesting extensions of rights theory have come from those wanting to extend the bearers of rights to include animals, other species such as trees, and even natural formations like rivers and mountains.

The argument for rights given in figure 6 does not provide a basis for arguing that animals and other non-human objects such as trees, bodies of water and other entities in nature have rights which have a legitimate claim to be respected. It makes no sense to suggest that their rights are what are necessary to their self-respect (step 5) since the notion of self-respect is unique to humans. Nor does it make sense to claim that they possess intrinsic value because they are similar to the value I recognize in myself (step 9) since animals and other natural objects may be quite dissimilar from humans (though some would argue that they are similar in important respects). To extend rights to animals, an argument can be made that any interest bearing creature has intrinsic value and therefore rights worthy of respect. An interest bearing creature is one which (a) has preferences, such as lying in the shade rather than the sun, and (b) has the capacity to suffer and so a preference for not suffering. Trees, rivers and other natural objects are not interest bearing creatures in the sense just defined but it is possible that they have a level of consciousness we do not comprehend. It can also be argued that such natural objects have an intrinsic value, a value in and of themselves which is separate from their instrumental value to humans. This intrinsic value is something that we simply recognize rather than prove, in the same way that we recognize the fundamental value in ourselves and other humans.

Difficulties with rights approach

1. Most useful at the extremes and less useful in the moderate cases

Since rights arguments depend on showing a fundamental threat to being able to live a truly human life, they are most convincing in extreme cases. To deny a whole segment of the population the right to vote on the basis of an irrelevant characteristic such as race is a clear denial of the basic right to free consent. The U.S. civil rights movement and the anti-apartheid movement have been able to use rights theory very successfully when voting rights are concerned. The question of whether the right to employment includes the requirement for affirmative action hiring has been more difficult to establish.

2. How to handle conflicts between rights?

If two or more rights are in conflict, how can we decide which one takes precedence? How can my right to use my property as I see fit be reconciled with the right of society to a decent environment in a case where I decide to use my property for a solid waste dump?

Rights theorists maintain that an individual's rights can be restricted if that restriction is necessary to insure equal enjoyment of the rights of others. When your exercise of freedom conflicts with the general exercise of freedom by others, then your freedom can be limited in order to provide equal freedom for all.

This requirement for equal exercise of rights by others can be difficult to specify when the rights being enjoyed are different in kind. At what point should my right to profit by the timber growing on my land be restricted by the right of the public to enjoy the old growth forests?

CHAPTER VII JUSTICE PRINCIPLES AS A JUSTIFICATION FOR ETHICAL DECISIONS

Justice as the fair distribution of benefits and burdens

Justice is generally thought of as giving every person what he or she deserves. We are concerned to be fair or just in both the distribution of benefits and of burdens. What a person deserves or is due, however, can be decided by a number of different criteria. Distribution of wages can be made, for example, on the basis of equality, merit, the amount of work done, the effort expended, the value of the contribution to the common good, the uniqueness of the individual or of her contribution, the needs of the individual, or on the basis of whatever criteria will maximize the common good. All of these criteria can make some claim to be a just form of distribution. The minimum standard, which all of these criteria would have to incorporate in order to be considered just, is that we must treat people the same except when they differ in relevant ways. Two relevant ways in which individuals can differ is in characteristics related to the task and in terms of need.

Other kinds of justice besides distributive justice include compensatory justice which seeks to repay a person for some past harm and retributive justice which is concerned with appropriate punishment for a wrong doer.

John Rawls' Theory of Justice: The original position--behind the veil of ignorance.

Rawls (1971) suggests that the true test for the justice of a society's principles can be made by imagining that the members of the society must choose those principles from behind a veil of ignorance. That is, no individual will know what place he will occupy in the society or what physical, racial, social or whatever characteristics he will possess. It can even be suggested that our worst enemy will be given the task of picking a place for us in that society. Given this inability to build any special considerations for ourselves into the laws, we should be guaranteed that the distribution of benefits and burdens will be as just as rational people can make them (Boatright 1993 & Velasquez 1992 pp. 98-101).

Three principles of justice.

Rawls maintains that rational persons behind the veil of ignorance would choose three principles as the foundations for distributive justice:

"First: each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others." This principle of maximum liberty guarantees that all individuals will be given equal respect and the full measure of liberty compatible with the liberty of others.

"Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all." This difference principle contains two parts. The (a) part, which we will call the "least advantaged" principle, recognizes that a just distribution system does not require that all

individuals share equally. Justice is compatible with some having more than others as long as the least advantaged are better off with the inequalities than they would be without. Rawls is arguing that a rational individual would rather live in a country where income varies from \$7,000 to \$700,000 per year than in a country where everyone earns an equal \$5,000 per year, as long as everyone has an equal chance to earn the higher figures. (This assumption runs counter to the "goat" principle operating in some societies like Russia where individuals would rather share poverty equally than have an unequal distribution in which even the poorest are better off.)

The (b) part which we will call the "equal opportunity principle" requires that these inequalities are assigned by a process of free and open competition. This principle does not require equality of outcomes in order for a distribution to be just. As long as all parties had equal access to the means necessary to earn a share of the outcomes, the distribution is just. For example, in the high tech world of today's employment, the fact that some workers will earn much more than others because of their technical skills is just so long as all workers had access to the education necessary to get those skills.

Justice of process versus justice of outcomes:

When asking questions concerning justice, we need to be clear about whether we are concerned with insuring a just process or a just outcome. Concern for the justice of the process is compatible with unequal results. Concern for the justice of the outcome is also compatible with unequal results as long as long as we follow the principle of treating people the same except when they differ in relevant ways.

Justice criteria: the questions to ask

1. How are the benefits and burden being distributed in this situation? Do those who get the benefits also share the burdens and do those who have the burdens also share some of the benefits? These are factual questions. Once you know the distribution, then you must decide whether it is fair.

2. Use veil of ignorance as a quick test to decide fair distribution. What would I decide if I did not know what my position in the society would be? The veil of ignorance will allow me to see more clearly which alternative distributes benefits and burdens most fairly and which stakeholders carry the greatest burden under each alternative?

Rawls' three principles are more complicated to apply but give a richer picture of the fairness of the distribution:

3. Maximum Liberty principle requires maximum liberty compatible with the liberty of others. Which decision affords maximum liberty for all?

4. Least Advantaged principle: inequalities are o.k. if benefit least advantaged. Do the inequalities benefit the least advantaged?

5. Equal Opportunity principle requires that benefits are equally open to all. Does everyone have an equal chance to receive benefits and/or burdens?

CHAPTER VIII MORAL RESPONSIBILITY AND THE USE OF EXCUSES

In a recent survey, 48% of American workers admitted to illegal or unethical actions in the past year. The top five types of unethical/illegal activities mentioned were: cutting corners on quality control, covering up incidents, abusing or lying about sick days, deceiving or lying to customers, putting inappropriate pressure on others. Others mentioned included cheating on an expense account, discriminating against co-workers, paying or accepting kick-backs, secretly forging signatures, trading sex for sales, and ignoring violations of environmental laws. What possible excuses could be used by workers to explain why they did these actions?

The top ten factors that workers reported as triggering their unethical activities are: balancing work and family, poor internal communications, poor leadership, work hours and workload, lack of management support, need to meet sales, budget or profit goals, little or no recognition of achievements, company politics, personal financial worries, and insufficient resources. What excuses can be identified in these reasons.

Moral Responsibility:

When is a person morally responsible? When is a person accountable or liable? When should he/she be praised and rewarded or blamed, punished or have to make restitution?

Morally Responsible if:

- (1) knowingly and freely do (or refrain from doing) the action.
- (2) knowingly & freely fail to prevent.

Excusing Conditions:

- (1) ignorance of facts or moral standards unless deliberate or negligent.
- (2) inability because of internal or external circumstances, physical, psychological, or organizational constraints.
- (3) unless person creates or fails to reasonably anticipate.

Mitigating Conditions (lessen responsibility):

- (1) uncertainty about facts, moral standards or seriousness.
- (2) difficulty because of threats, duress or high cost.
- (3) minimal involvement unless special (assigned) responsibility.
- (4) above factors depend on seriousness of wrong

Excuses

Vitell and Grove (1987) find in the literature on deviance and social disorganization a list of excuses which are often given for departing from recognized norms in a particular situation. While not wanting to challenge the ethical consensus of the society or peers, or to threaten their self-concept as moral individuals, people often carve out an exception for themselves using reasons which, if applied properly, would be legitimate grounds for exceptions. These misapplied justifications are called "techniques of neutralization" (Sykes and Matza, 1957),

because they are used to neutralize the force of recognized norms in a particular instance rather than to deny the validity of the norm.

These excuses can be described as follows:

(1) Denial of Responsibility -- the person is not responsible because of factors beyond his/her control. "I had no choice but to do it." "The computers were down." "The higher-ups made that decision." "It was company policy." "The justice system requires that someone defend them."

(2) Denial of Injury -- there was actually no wrongdoing because no one suffered directly as a result of the action. "It won't really matter if I take a few supplies." "The government has plenty of money so they won't miss this extra deduction." "A fraudulent workers comp claim isn't really bad. The company has deep pockets."

(3) Denial of Victim -- the action was legitimate because the injured party deserved the injury. "If they hadn't overcharged me, I would never have done it." "As little as they pay me, I'm entitled to some extra days off." "As much money as the government wastes, they don't deserve my taxes."

(4) Condemning the Condemners -- denial that those who might accuse the person of wrongdoing have any right to criticize because of their own misconduct. "They certainly don't have any right to talk about my affairs. This town is a little Peyton Place." Larry Flynt's claim that congresspersons who had affairs were in no position to condemn President Clinton. "The higher-ups can't complain about the perks we take. You should see what they do at the home office."

(5) Appeal to Higher Loyalties -- explanation that the wrongdoing was necessary in order to preserve some more important value which was being threatened. "After all, the survival of my company was at stake." "Integrity doesn't make mortgage payments." "The whole department would have been hurt if I had told the truth."

(6) It could have been worse -- what I did wasn't bad compared to what I could have done. A recent Southern Governor perfected this excuse throughout his career. Running in an election against an even more unsavory candidate, he claimed that the only way he could lose was to be found in bed with a boy or a dead girl. When accused of taking a \$400,000 payoff to aid in obtaining a casino license, he replied that if it were a payoff he would have asked for much more.

When are excuses valid?

It is important to note these techniques for our purposes because you will hear them in discussions of business ethics cases. You should be able to recognize, name and describe the technique. Rather than just club the user over the head with a pejorative psychological term, however, realize that the user is engaged in ethical reasoning--that these excuses are plausible because they are legitimate reasons to make exceptions in some cases. Thus inviting the user to

see whether the reason is legitimate in the case at hand will encourage him to develop his/her powers of ethical reasoning even further.

The following are some questions which can be asked to determine whether excuses are legitimate in the circumstances:

(1) Denial of Responsibility -- factors beyond my control.

- a. Was the situation really beyond my control, or would it just have been difficult to do otherwise?
- b. Was I responsible for putting myself in the situation? Would a prudent person have foreseen?

(2) Denial of Injury -- no one really suffered.

- a. Would the cumulative effect of others doing the same be harmful? Will I be the only one to do it? Do I deserve to be the only one to be able to do it?
- b. Would the symbolic effect be harmful? Might it encourage others? E.g. litter
- c. What will be the effect on me? Will I be less sensitive next time?

(3) Denial of Victim -- injured party deserved the injury.

- a. Do two wrongs make a right in this instance? For example, will my action correct the other party's misconduct or prevent it from happening in the future?
- b. Is my response appropriate to the injury? Insurance fraud for premium overcharges?
- c. Are other more appropriate responses available? Reporting the injury to an authority?
- d. Does my contract with the other party include remedies for injury?

(4) Condemning the Condemners -- accusers are just as bad.

- a. What would a legitimate assessment of my conduct be? Could I explain it to my grandmother? Would I be comfortable reading about it in the papers?
- b. Do I have any responsibility for the conduct of my critics? Or only for my own?

(5) Appeal to Higher Loyalties -- necessary to preserve a higher value.

- a. Are no alternatives available which would preserve both values?
- b. Was the preserved value really at risk? Would my company have failed without that deal?
- c. Was the preserved value really more important?
- d. Is there anything I would not be willing to sacrifice for that higher value? How is what I did sacrifice different from what I would not?

Excuses in the professions

Ninety-seven percent of cases of unethical conduct involve clear violations of accepted moral standards and 3% involve moral dilemmas in which disagreement is possible over what is the moral action. In the cases of clear violations of accepted standards, one of the mechanisms by which people allow themselves an exception or claim that others should allow them an exception is by giving an excuse. An excuse is a set of conditions which suspend the accepted standard in a particular case without threatening the validity of the standard in other cases. Understanding the excuses that are commonly given and the circumstances in which these excuses do constitute legitimate reasons for an exception is critical to holding ourselves and

others to the accepted standards while avoiding the moral rigidity of insisting on compliance when it is inappropriate.

According to Banks McDowell, Washburn University School of Law (1994), the following excuses are often offered by professionals for conduct which violates accepted moral standards. It is important to be able to recognize these excuses in order to decide whether they should be accepted.

1. I did not know (was not aware of) the ethical requirement.
2. The other guy did it (in a large organization).
3. I did not have the power to act ethically, or the cost was too high.
 - I (or my company) would have been put at a competitive disadvantage by ethical action.
 - If I don't do it, someone else will so the effect will be the same but they will get the reward instead of me.
 - My employer told me to do it, or expected me to do it. My job was at stake.
4. I acted out of loyalty to my group.
5. Financially I had no choice. I would have been bankrupt.
6. We are really overworked at the lower levels so we can't pay attention to all the ethical details (Law or medical residents and interns).
7. Technology caused it.
8. I did what was required. I don't have to go beyond that. (The law or rule provides the minimum required or the maximum that cannot be exceeded. The person gets as close to this requirement as possible without aspiring to anything better.)
9. After all, we all make mistakes so I am not really responsible for this one. I was acting in good faith. (How serious a mistake can be excused on the basis of good faith action? How can we know if the action was done in good faith?)
10. It is the job of the system to produce justice or right. All I have to do is fulfill my role or follow the rules in the system.
11. My malpractice insurance or Errors and Omissions policy will cover that. (Does the possibility of financial compensation for those affected excuse the action?)
12. Looked at from my point of view, it seemed like the right thing to do. (Should actions be considered from the point of view of the actor, those affected, or an ideal observer?)

13. At the time, it seemed like the right thing to do. (What is the appropriate time frame for judging actions? Is this a claim that my earlier view was valid given what I knew at the time or a claim that I should be excused because I did not consider all the available facts at the time?)

CHAPTER IX

ORGANIZATIONAL BLOCKS TO ETHICAL BEHAVIOR BY INDIVIDUALS

In a recent survey, 48% of American workers admitted to illegal or unethical actions in the past year. The top five types of unethical/illegal activities mentioned were: cutting corners on quality control, covering up incidents, abusing or lying about sick days, deceiving or lying to customers, putting inappropriate pressure on others. Others mentioned included cheating on an expense account, discriminating against co-workers, paying or accepting kick-backs, secretly forging signatures, trading sex for sales, and ignoring violations of environmental laws. What possible organizational blocks could be used by workers to explain why they did these actions? What could be done to remedy these abuses?

The top ten factors that workers reported as triggering their unethical activities are: balancing work and family, poor internal communications, poor leadership, work hours and workload, lack of management support, need to meet sales, budget or profit goals, little or no recognition of achievements, company politics, personal financial worries, and insufficient resources. What organizational blocks can be identified in these reasons and what remedies are available?

Mid-level managers most often reported a high level of pressure to act unethically or illegally (20%). Employees of large companies cited such pressure more often than those at small businesses (21% versus. 14%). High levels of pressure were reported more often by high school graduates than by college graduates (21% versus. 13%). Workers say the best remedies would be better communications and more open dialogue and serious commitment by management to address the issue of ethics. Use organizational blocks and their remedies to explain these findings.

An Organizational focus is as important as an Individual focus for understanding ethical behavior.

By focusing on structure, it is possible to identify certain common features of business organizations which act as organizational blocks to ethical behavior (Kerr, 1975; Mander, 1992). These ways of organizing business activity can make it difficult for individuals to act in an ethical way, even if the corporation's ethics code requires ethical behavior. Waters (1978) identifies seven such blocks to ethical action. Strong role models who follow unethical practices make it difficult for new employees trained by them to imagine how the assigned tasks could be done without unethical practices. Corporations must pay careful attention to the messages which new employees get during their training about the importance of following the firm's ethics code.

The strict line of command followed in many organizations makes it difficult for individuals down the chain to resist an immediate supervisor's order to do something unethical. Given the chain of command, the employee must assume that the order has come from higher up the chain and therefore represents company policy. Since there are no channels of communication for questioning the ethics of an action without going to the very higher ups who presumably originated the order, the employee is unlikely to risk retribution by going above his/her supervisor's head. Thus compliance in unethical activities can often be enforced by lower level supervisors without the higher company officials ever knowing about it. There is a

separation of decisions (separation of policy and implementation) in most organizations in which policy is set by upper management without discussion with lower level employees. Lower level employees are then forced to resort to unethical activities in order to carry out unreasonable policies or goals set by the top management or risk losing their jobs. The division of work necessary to accomplish the goals of large organizations also makes reporting unethical activities difficult. Employees in one channel do not see it as their responsibility to report wrongdoing in other channels nor do they usually have enough information about what is going on throughout the organization to be certain that the activities are unethical.

To overcome these organizational blocks, corporate ethics codes should include definite concrete procedures for internal whistleblowers to follow in reporting perceived ethics violations. The failure of the Dow Corning reporting procedures to alert the public or the company ethics auditors of the possible health risks of silicone gel breast implants shows the difficulty of insuring that all perceived violations are reported (Byrne, 1992). The loss of reputation when such violations are made public and the expense associated with repaying damages for some violations makes it imperative that employees be provided with channels to report unethical actions internally. Laws providing substantial monetary rewards for whistleblowers who go public make effective internal reporting mechanisms even more imperative (Kates, 1992). Others have suggested that corporations respond to these potential organizational blocks by having more open communication and decision making within the organization (Collins, 1990).

Task group cohesiveness can frustrate even well structured internal reporting procedures. Members of a working group who are engaged in unethical activities will exert strong pressure on every member to be loyal to the group rather than report the activities to the company. Loyalty to the company can lead to protection from outside intervention by the law or adverse public opinion. Employees can avoid investigating reported unethical activities for fear that word will get out that wrongdoing has occurred. To deal with such misplaced loyalties, corporations must remove the further organizational block constituted by ambiguity about priorities. Corporate ethics codes must make it clear to employees how conflicts between performance criteria and ethical criteria should be resolved. Ethical principles such as "tell the truth" should be accompanied in the code or in the firm's educational program with concrete examples of how conflicts between hard criteria such as monthly sales goals or market share and soft criteria such as truth telling are to be resolved.

A further step to assure that corporate ethics codes can establish order within the corporation is to develop an appropriate business ethics vocabulary (Waters, 1978; Bird, 1989). An ethics vocabulary is necessary for ethical concerns to be able to compete with bottom line concerns. Employees at all levels of the corporation operate with the business vocabulary appropriate to the tasks at that level, whether it is "return on investment" for the manager or "maximum torque" for the plant mechanic. These shared vocabularies allow them to understand the work at hand and make decisions about how best to accomplish it. Corporate ethics codes need to assure that there is an equally rich and commonly held ethics vocabulary that employees at any level can use in understanding ethical situations and making decisions about the right way to handle them. Without such a vocabulary, employees are unwilling or unable to express their ethical concerns as a component in making business decisions. A good example of the

development of an ethics vocabulary is the development of safety language to be used in making workplace efficiency decisions. Minimum cost per unit and maximum output per worker are joined in the decision process by such concerns as hours lost to accident and injury, worker's compensation insurance cost and employee morale. These latter concepts are accepted as legitimate cost factors and expressions of corporate concern for the well being of its workforce.

Summary of organizational blocks to ethical behavior by individuals

1. Strong Role Models

Trainee has no idea of alternatives to unethical behavior.

2. Strict Line of Command

- a. No way to report wrong doing.
- b. Assumption that superiors ordered unethical behavior.
- c. Compliance forced without higher-ups knowing.

3. Task Group Cohesiveness

- a. Group versus. Organization.
- b. Continuing support for unethical activity.
- c. Group loyalty prevents exposure.

4. Ambiguity About Priorities

- a. Conflict of performance (hard) versus. Ethical (soft) criteria.
- b. Employee caught in middle by ambiguity.

5. Separation of Decisions (Policy from Implementation)

- a. Strategy set by upper management.
- b. Lower levels can't question ethical implications of strategies because no channels of communication and no ethical vocabulary.

6. Division of Work

- a. Can't expose wrongdoing in other divisions of organization.
- b. Insufficient information to be sure activity is really unethical or illegal.

7. Protection from Outside Intervention

Avoid internal investigation because may bring about outside intervention.

What is the appropriate organizational response: tighten down or loosen up?

Waters suggests that formalized controls are easier to circumvent. Need to release employees natural ethical instincts. So make the organization looser, not tighter.

- 1. Remove Ambiguity About Priorities.
- 2. Give Concrete Examples, Not Generalities. Strong Ethics Code.
- 3. Provide Concrete Steps for Internal Whistleblowers.
- 4. Develop Appropriate Organizational Vocabulary.
- 5. Launch Sensitive Investigative Efforts.

Compliance versus Integrity Strategies for Managing a Company Ethics Program:

Lynn Sharp Payne (Harvard Business Review, 72 (2), p.107-117) contrasts two approaches to insuring that employees behave in an ethical manner: a compliance approach and an integrity approach. To make the point of how important it is for companies to have an active ethics program aimed to insure ethical conduct among their employees, Payne shows how the presence or absence of such a program can have a tremendous effect on the level of fine which a company may have to pay under the Federal Uniform Sentencing Guidelines: What Fine Can Acme Expect?

Before 1991 Federal Sentencing Guidelines:

Restitution to customers	\$13,700,000
Criminal fine by judge	6,850,000
Total:	\$20,550,000

After Federal Sentencing Guidelines:

	Maximum	Minimum
Program, reporting, cooperation, responsibility	\$2,740,000	\$685,000
Program only	10,960,000	5,480,000
No program, no reporting, no cooperation, reporting, no cooperation, no responsibility	27,400,000	13,700,000
No program, no reporting, no cooperation, nor responsibility, involvement of high level personnel	54,800,000	27,400,000

Payne's point is that having a company ethics program is very cost effective.

ETHICAL STANDARDS FOR MULTINATIONAL CORPORATIONS

Ethics Cases involving multinationals:

1. In the 1980's the 21-nation Arab League maintained an economic boycott of Israel. Firms trading with Arab countries could not do business with Israel or with other firms doing business with Israel and had to provide information on their and other companies operations to the League. Would it be ethical for a French multinational to comply with this boycott and refuse to do business with Israel or with other firms doing business with Israel?

2. A large U.S. based multinational clothing company verified information that the shirts and pants it was outsourcing from China were being made by political prisoners who were paid nothing for their work. Is it ethical for the company to continue outsourcing clothing made under these circumstances?

3. General Motors and other U.S. multinationals operate "Maquiladoras" plants across the border in Mexico.

(a) Is it ethical for these companies to pay the lower prevailing wage rate in Mexico rather than the higher wage rate paid for comparable work in the U.S.?

(b) If economic conditions in Mexico were to worsen so that job competition allowed paying even lower wages, is there a level below which the company could not ethically go?

(c) If Mexico had more permissive air and water pollution standards, would it be ethical for the U.S. firms to follow these standards rather than stricter U.S. standards?

4. Until the repeal of apartheid laws in South Africa, multinational firms operating there had to follow laws which discriminated in employment, wages and promotion against coloreds and blacks and in favor of whites. Given the rich natural resources and well developed state of the country's economy, there were ample opportunities for multinationals to profit by the operations there. Was it ethical for multinational firms to comply with apartheid laws?

5. A Japanese multinational company operating in a Latin American country is informed by the government that union organizing, though permitted by the constitution, is considered dangerous to the stability of the country. Company officials are not required to harass or fire workers they suspect of being sympathetic to the union but are simply to inform the government of who these workers are. The workers will disappear and never be heard of again. Is it ethical for the company to provide the government with the names?

6. An American multinational is considering a large land purchase in a Central American country. The land is currently owned by wealthy families but is occupied by tenant farmers who subsistence farming in addition to growing beans and corn which provide the basic foodstuffs for the country. The multinational will convert the land to coffee growing which will employ only a small percentage of the farmers with work, with the rest being pushed off the land into the already overcrowded cities where jobs are scarce. (a) Is it ethical for the multinational to make

the purchase? (b) Would the situation be different if the landowners had displaced the peasants and were growing the coffee for sale?

7. Would the questionable payments made by Lockheed aircraft to the office of the Prime Minister of Japan and to the President of ANA airlines be ethical?

8. Tired of waiting, a salesperson offers the Cayman Island customs official a \$20 bill so that she can make a three o'clock tee time with a potential client. Is this payment ethical?

a) If, given the British colonial history of the island, there is a strong civil service tradition which forbids government officials from taking payments for performing their official duties, is the \$20 payment ethical?

b) Given the strong laws against drug use in the Caymans, would a drug dealer's offer of \$500 to a customs official to "forget to search" one of her bags which contains drugs be ethical?
Ethics for Multinational Corporations: The Donaldson Approach

A good example of ethical principles which can be used to guide international businesses in cases like the ones given above is the "ethical algorithm" developed by Tom Donaldson (1985) to help multinational businesses resolve conflicts between home and host country moral standards. Assuming that the corporation's home country moral standards regarding worker safety or truth telling, for example, are different from that in the host country, Donaldson suggests the following series of questions: Are the standards different because of different levels of economic development (Type 1 situation) or are the differences independent of the two countries' levels of economic development--caused by cultural differences or different factual beliefs (Type 2 situation)?

(Type 1) If the moral differences depend on economic development differences, then the corporation should ask whether, if their home country were at a similar level of economic development, would the proposed action or practice be acceptable to them? (Ethical theories might help to resolve difficult issues here.)

(Type 2) If the moral differences are not dependent on economic differences, the corporations should ask:

- (a.) whether it is possible to do business in the host country without engaging in the questionable practice?, and, if the answer is "no," then ask
- (b.) whether the questionable practice violates any fundamental human rights?

A "no" answer to both questions means that the corporation is justified in undertaking the practice. A "yes" answer to either would rule out the practice as morally unacceptable.

Donaldson argues, on the basis of a social contract model of ethics, that international ethical issues should be solved by appealing to a "minimalist" ethic consisting of ten "fundamental international rights" that are obligatory across all nations provided the rights are "affordable in relation to resources, other obligations, and fairness in the distribution of burdens." Donaldson's provides a list of what he considers the minimal fundamental international rights

which multinationals must respect and discusses the level of duties which the companies have in relationship to the protection of those rights:

Minimal Rights & the Correlative Duties of Multinational Corporations

	To Avoid Depriving	To Help Protect From Deprivation	To Aid the Deprived
Fundamental Rights:			
(1) freedom of physical movement	X		
(2) ownership of property	X		
(3) freedom from torture	X		
(4) a fair trial	X		
(5) nondiscriminatory treatment	X	X	
(6) physical security	X	X	
(7) freedom of speech and association	X	X	
(8) minimal education	X	X	
(9) political participation	X	X	
(10) subsistence	X	X	

Donaldson does not think that businesses have a positive duty to secure these rights for people or even to aid those who have been deprived of these rights. He suggests that it would be "unfair, not to mention unreasonable" to expect "the profit-making corporation, in contrast (to government)" to secure these rights. So the corporation has only the negative duty to avoid doing things that would deprive others of these rights and in some instances to help protect individuals from being deprived of these rights. (Velasquez, 1994)

DeGeorge Ethical Criteria for Multinational Corporations

Richard DeGeorge (1986) offers a set of moral principles for international organizations to follow in less developed countries:

1. MNC's should do no intentional direct harm.
2. MNC's should produce more good than bad for the host country.
3. MNC's should contribute by their activities to the host country's development.
4. MNC's should respect the human rights of its employees.
5. MNC's should pay their fair share of taxes.
6. To the extent that local culture does not violate moral norms, MNC's should respect the local culture and work with it, not against it.
7. MNC's should cooperate with local government in the development and enforcement of just background institutions.

International Business Ethics and Incipient Capitalism: A Double Standard?

Richard T. DeGeorge, Society for Business Ethics, 1994 (on reserve).

DeGeorge discusses the ethical obligations of U.S. firms operating in post-communist Russia:

What is ethical varies depending on the country's background institutions:

political system and existing laws
level of economic development
local beliefs, traditions, expectations

Example: in 1970's, Japan insider trading ethical; in the U.S., insider trading is unethical.
In 1990's Japan, insider trading is unethical because of new participants in the stock market.

So American business must respect norms and values of the host country and take into account the background institutions of the country.

U.S. background institutions:

- _ democratic society with free press.
- _ highly developed system of laws & regulations to control negative tendencies of capitalism.
- _ educated citizenry conscious of rights.
- _ critical consumers with choice of products & companies.
- _ strong environmental advocacy groups
- _ tradition of business contributing to local community development.

Background institutions developed slowly & in response to abuses.

Will be different in countries with different history from U.S.

Decisions are difficult when background institutions are in transition (socialism to capitalism)

Some ethical requirements are universal:

- _no child labor even if local custom
- _no discrimination on gender or race

- _no purchase of goods made by slave labor
- _no failure to provide safe working conditions
- _no dumping of toxic waste
- _no murdering competitors
- _must respect rights of workers
- _must honor contracts
- _gov't officials must not solicit bribes for prohibited activities
- _must not ignore violations of law

Russia can adopt conditions for free market:

- _respect for private property
- _honoring of contracts
- _rules, trust, enforcement mechanisms, & penalties for failure to perform.

Easier to control illegal & unethical practices before they become entrenched, so no justification in terms of market development to allow unethical practices if can be prevented.

What is the problem being proposed for solution? Do managers of Multinational Corporations (MNCs) operating in Russia have different ethical obligations than Russian nationals doing business in their country?

4 case examples:

DeGeorge offers four examples of business conduct in Russia in which nationals and for MNCs face difficult ethical decisions. The puzzles in these situations arise because the economy in Russia is in transition from a socialist economy to a capitalist economy. The laws, political system, values and expectations in a socialist Russia were different from those which will be present in a capitalist Russia, if the transition is made successfully. Because these background institutions which are formed by and make possible the values and norms implicit in these two economic systems will be somewhat different, the ethical obligations of business persons will also be somewhat different from one system to the other.

The first example involves a factory manager who hides his company's profits from the stockholders in order to provide benefits for the workers. Under the socialist system, the central government provided cradle to grave economic security for all citizens. Workers could expect to have employment, housing, medical care and retirement security. Under the capitalist system, however, these benefits must be negotiated with employers or provided by government safety nets. The factory manager, knowing that workers' retirement benefits have evaporated with the demise of the socialist system, chooses to continue with the socialist value of meeting the needs of the workers rather than generating profits for the owners. Seen from the point of view of the background institutions of socialism, the manager's conduct is ethically correct. Seen from the point of view of the laws and values of a capitalist economy, however, this conduct is illegal and unethical. But in a period when neither system is in full sway in the country, what would be the ethical course for the manager to take? A justice argument suggests that it is unfair to give the benefits of the company's profits to the new owners and allow the burdens of retirement to fall on the workers for whom a state safety net has not been created. A utilitarian argument, however,

suggests that the manager's conduct slows the development of capitalism by not rewarding the stockholders for their ownership and therefore sacrifices a long term benefit for everyone in the economy in order to protect a smaller number of current workers who will suffer in the transition and that the conduct is therefore wrong because it fails to maximize benefits.

The second example recounts a situation in which managers at a state subsidized aluminum plant form an export company to buy the aluminum for resale on the world market and bank their profits in overseas accounts. The factory and its workers do not share in these profits nor does the state which subsidized production in order for the sales to bring badly needed hard currency back into the country. Under socialist values and institutions this conduct clearly would be wrong. Under capitalism, however, aside from the possibility that the managers are in a conflict of interest, their arrangement is a valued entrepreneurial activity of exploiting market differentials for personal gain.

The third example is another situation of entrepreneurial activity. Because the control of many goods still remains in state controlled enterprises, an electrician starting his own company must buy his materials on the grey market. He also must pay protection money to the Russian mafia in order to stay in business because the background institution of effective police protection has not yet developed. In a fully developed capitalist economy, buying stolen goods and making extortion payments would both be illegal and unethical. In a transitional economy where the background institutions are lacking or contradictory, however, this conduct may be ethical. Utilitarian considerations argue for greater benefit of the long term development of independent businesses over the short term cost of contributing to corruption in the economy. Ethical criteria which value good actions over good results and reject the end justifying the means would show these actions to be unethical.

The fourth example contrasts the situation of the Russian managers with the MNC manager. Would it be ethical, DeGeorge asks, for a MNC operating under the same economic conditions as the Russian managers to pay bribes in order to operate their business? Should multinationals which are used to operating with ethical principles supported and enforced by fully developed capitalist background institutions adopt different standards for conducting business in countries where these institutions are not present?

DeGeorge's answer is that MNC managers have an obligation to maintain higher ethical standards than the Russian managers because they have the power to do so. Multinationals, he contends, are not forced to engage in corrupt practices such as paying bribes because they have the power to resist demands for such payments and still remain in business. MNCs are bringing much needed hard currency into the Russian economy, so they can demand government protection from corrupt demands. U.S. firms can point to the Foreign Corrupt Practices Act as forbidding such conduct. The MNCs also have greater power because they can leave, taking with them the value which they were adding to the country's economy. Russian firms do not have the same access to hard currency, are not protected by anti-corruption laws, and do not enjoy the same freedom to leave. Because of these advantages of power in the economy, MNCs should follow their home country standards rather than Russian standards. Their obligation to do so is justified both by the fact that they can and by the claim that they will there by help long term development of more efficient capitalist institutions.

DeGeorge's Criteria for MNC Managers

The criteria which DeGeorge seems to be suggesting for MNC managers to use to decide whether to act according to the MNC's own higher moral standards or withdraw from the economy (or follow the host country standards) are these:

- (1) Host country has lower or less ethical standards than the MNC's standards.
- (2) The ethically questionable practice in the host country does not fall below ethical minimums which cannot be violated.
- (3) MNC has leverage based on access to hard currency needed in host country, based on legal requirements from home country, or based on the MNC's ability to exit from the market in the host country.
- (4) Host country background institutions have prospects for improvement.

Generalizations from cases:

1. Some actions wrong no matter the background institutions.
2. Ethical judgments difficult in Russia because socialist and capitalist background institutions are both partially operative & inoperative.
3. Socialist holdovers like subsidies can be exploited by some. Laws aimed at common good are required.
4. Plight of workers is worsening & may require firms to continue services not justified by market forces.
5. Multinational firms can help by following home standards rather than Russian standards to help long term market development. "Ought implies can" means different standards for foreign & local businesses.

The Cummins Engine Company's Policy regarding Questionable Foreign Payments is as follows:

"The key element which distinguishes ethically unacceptable payments is the corruption of a relationship of trust. When a company pays an agent of a buyer in order to influence that agent's purchasing decision, and when that payment is not known to the buyer, the company corrupts a relationship of trust between buyer and agent. The buyer's expectation that his agent will act with only the buyer's interest in mind is betrayed. Similarly, when a company pays a government agent in order to influence that agent's official decisions, the company corrupts a relationship of trust between the public and that official. The corruption of such a relationship of trust not only violates fundamental principles of fair dealing but also hampers efficient economic development and undermines social cohesion." Thus an employee should ask: "Does this payment undermine a relationship of trust? What expectations does the principal have of his agent in the particular transaction at issue? Is the payment known to the principal or is it not?"

Payments are allowable under the following conditions:

- "a. The payment is required to induce the official to perform a routine act which he is already under a duty to perform . . . and
- b. The payment is consistent with local practice. If the payment is consistent with local practice, it is reasonable to assume that it is consistent with public expectations of official behavior, and
- c. There is no reasonable alternative available for obtaining the official act or service at issue."

"Where there is question as the propriety of a particular payment, the payment should not be made. No employee will be put at a career disadvantage because of his or her willingness to raise a question about a corporate practice or unwillingness to pursue a course of action which seems inappropriate or morally dubious." If a given practice does not meet its moral standards, Cummins will "accept the loss of business." Faced with continuing demands, Cummins will notify the government to see how it should respond and if the pattern persists, Cummins will give up the business. (Cummins Practices, Oct. 1, 1980; Baron, David P., Business and Its Environment, 1993)

A payment is allowed when:

- a) the service is within the agent's normal duties
- b) payment is consistent with local practice (is not introducing a new practice)
- c) no alternative is available for obtaining the service

CHAPTER XI ETHICS OF CONSUMER PROTECTION

Standards of Care:

Given its susceptibility to fires in rear end collisions at low speeds, did the Ford Pinto meet the standard of care laid out in the contract model? In the due care model? Would the car have been produced as designed under the 2-2-2 constraints if the social costs model were in effect? Would your answer be different if Ford could prove that no more fire related deaths occurred in Pintos than in any other comparable sized car? If Ford knew of an inexpensive fix to shield the gas tank from the bolts on the differential and thereby lessen the risk of fire, would they be required to offer it to the public under the three standards of care? By placing a warning regarding the rollover tendencies of the Bronco II in the owner's manual and on the passenger side sun visor, has Ford met the requirements of the three standards of care?

Prudential Securities sold highly risky real estate and oil drilling limited partnerships to older clients whose primary goal was maintenance of capital for retirement income. What would the sales persons have to do to meet the three standards of care in making these sales?

Prudential Insurance sold paid up life insurance policies to nurses as retirement plans. The policies did accumulate cash values, but some of the payments went to pay for the life insurance component and the possibilities for moving the cash value to other retirement vehicles was severely limited. Did this sales program meet the standards of care?

General Electric sold coffee makers with timers to start the brewing at a preset time. A number of the appliances were blamed for fires which caused property damage and loss of life. Investigators blamed the fires on a small electrical part which could have been upgraded at a cost of 10 to 15 cents to eliminate the fire potential. What should G.E. do under each of the standards of care?

Pacific Bell Telephone Company marketed a number of extra features to its new customers for a combined monthly fee of \$22.20 per month but failed to mention that basic service without the extras was available for \$9.95 per month (see Velasquez pp. 272-73 for details). What would the company's obligations be in regard to disclosure of the cheaper rate under the contract and due care standards?

What would ATV makers in the 1980 have had to do to meet the standards of care under each of the three approaches (see Velasquez p. 271 for facts)?

Free Market Approach to Consumer Protection:

Each year 34 million people injured in accidents involving consumer items. 28,000 are killed and 100,000 are permanently disabled. Total cost estimated at \$12 billion per year. Product related accidents are the major cause of death between ages of one and 36 (Velasquez, 1992 p.270-292). The free market approach maintains that consumers will be protected from injury by the operations of free and competitive markets. Consumer choices will drive

dangerous products from the markets. Sellers will be rewarded for providing what consumers want. Government regulation or business paternalism introduces inefficiencies into the market.

Limitations of Free Market Approach:

Critics say free markets work only when:

- (1) numerous buyers and sellers
- (2) free entry and exit from market
- (3) everyone has full and perfect information
- (4) all goods are exactly similar
- (5) no external costs
- (6) all buyers and sellers are rational utility maximizers
- (7) the market is unregulated.

But these conditions are very rarely present. Consumers do not have full and perfect information (3): products are too complicated; information gathering is expensive. Consumers are not rational utility maximizers (6): inept, irrational and inconsistent when choices are based on probability estimates, especially of future costs and payoffs. So free markets fail to adequately protect consumers because of inadequate consumer information and irrationality in consumer choices.

Responsibilities of manufacturers and sellers: Consumers bear part of the responsibility to use products carefully but how much responsibility do manufacturers and sellers have to protect consumers from injuries resulting from flaws in product design, materials or manufacturing processes?

I. Contract View of Manufacturer's Duties to Consumers:

Relationship between consumer and seller is a contract in which seller agrees to provide a product with certain characteristics and buyer agrees to pay a certain amount for a product with those characteristics. The moral duties of the seller and the rights of the consumer come from that contract. According to the Contract View, business has four main duties:

(1) to comply with terms of contract: any express claims about the product or any implied claims that product is safe for any purposes which seller has led customer to believe it can be used. Express or implied claims cover (a) reliability, (b) service life, (c) maintainability, and (d) product safety. Product safety requires acceptable known levels of risk. Preventable risk is reasonable when the risk is known and judged to be acceptable to the consumer given the benefits the consumer expects to gain from use of the product. Preventable risk is not reasonable when consumers (a) do not know it exists; (b) cannot estimate frequency or severity; (c) do not know how to cope with it so could be injured unnecessarily; and (d) the risk is unnecessary in that it could be eliminated at level of cost or performance consumers would accept if they knew the facts and were given a choice.

(2) to disclose nature of product: at minimum disclose any facts that would affect the decision to buy the product.

(3) avoid misrepresentation

(4) avoid duress and undue influence: avoid using fear or emotional distress.

Problems with Contractual Theory:

1. Disclaimers can nullify all contractual duties of the manufacturer. Consumer does not have time or expertise to evaluate the product and disclaimers when making purchase.
2. Contract assumes equality in knowledge and bargaining power between consumer and manufacturer.

II. Due Care View of Manufacturer's Duties to Consumers:

Consumers and manufacturers are not equal. Manufacturers have knowledge and expertise and thus a duty to live up to express and implied claims but also exercise due care to prevent any injury by the product, even if manufacturer explicitly disclaims and customer accepts such disclaimer.

Manufacturer must anticipate harms from use of product and any reasonably foreseeable misuse of the product--take all reasonable steps to protect the consumer and inform consumer of any irremovable risks in using product. Due care exercised in (1) design, (2) production and (3) information.

Problems with Due Care:

1. No way to determine how much care is enough.
2. Assumes that manufacturer can discover the risks
3. Paternalistic view in that manufacturer must decide for consumer what levels of risk are proper for consumers to bear and at what cost.

III. Social Costs View of Manufacturer's Duties to Consumers:

Manufacturer should pay costs for any injuries caused by defects in the product even when the manufacturer exercised all due care in the design and manufacture of product and has taken all reasonable precautions to warn users of every foreseen danger. Manufacturer has duty to assume risks even for injuries arising out of defects no one could reasonably have foreseen or eliminated so that no negligence was involved and for injuries in which no contractual relationship existed between manufacturer and user.

This "strict liability" view is based on utilitarian arguments for efficiency. All the external costs of injuries will be added to the cost of the product along with the internal costs of producing it. This pricing will lead to a more efficient use of society's resources because the product will reflect the true cost to society's resources of producing and using it. Manufacturers will strive to reduce injuries in order to keep the price of their products as competitive as possible and fewer of society's dollars will be spent on injuries. Also, internalizing the costs of injuries will spread the costs for injuries over all users of the products instead of having them fall on individuals who may not be able to sustain the loss by themselves.

Problems with Social Costs view:

1. Unfair to require manufacturers to pay for injuries they could neither foresee nor prevent. Unfair to other consumers to make them share the costs of injuries that did not happen to them.
2. Relieving individual consumer from having to pay for injuries raises social costs by increasing consumer carelessness.
3. Increasing lawsuits and escalating damage awards threatens manufacturers and insurers, reduces global competitiveness and has chilling effect on new product development.

Duties of Manufacturers and Sellers to ConsumersContract View

Buyer & Seller are equal.

Obligation to fulfill contract:
express and implied.

Safety requires

"acceptable known levels of risk:"

- (a) know risk
- (b) estimate frequency & severity
- (c) know how to cope with
- (d) necessary given cost

Seller can disclaim liability for misuse or unforeseen risk in the warranty.

Due Care View

Buyer & Seller not equal.

Obligation to fulfill contract.

Because of superior knowledge, seller should anticipate "reasonably foreseeable" misuses and try to prevent.

Seller cannot disclaim liability even if buyer agrees.

Social Costs View

Greatest good requires seller to be liable for all injuries

Product cost will reflect external costs of injuries.

Manufacturers will try to reduce injuries to be competitive so less \$ spent on damages.

Costs of injuries will be spread over all users.

Seller cannot disclaim liability because is responsible for all injuries.

CHAPTER X

TRUTH TELLING & FULL DISCLOSURE IN BUSINESS

In order to provide business persons with concrete guidance in dealing with the truth-telling and disclosure questions which are an everyday part of their work, company training programs and corporate codes of ethics should include more than absolute prescriptions to tell the truth and fully disclose. Five factors need to be considered to sensitize the business person to the need to consider not only the content of the presentation and his/her own goals in the sales relationship but also the expectations of the customer, the effects on the customer, and the effects on the character and reputation of the professional, his/her firm, industry and society. An understanding of the ethical principles which express society's shared concern for utility, rights, justice and character is necessary to appreciate why all five factors are important.

For the everyday use in business, however, this five factor analysis is too complicated. What are needed are some practical guides or rules of thumb for what truth value and disclosure level is required by ethics in any given situation. The expectations of the customer and the reputation of the business person and his/her firm can serve as these guides. The expectation rule is to tell the truth and disclose information consistent with the actual or reasonable expectations of the customer. The reputation rule is to tell the truth and disclose consistent with the professional's actual and desired reputation and the actual and desired reputation of his/her firm. Both of these aspects of the sales encounter are concrete enough to give specific guidance and are already a part of most business persons' vocabulary and way of thinking. Both are also simple enough to be included in the ongoing literature and training which are essential to sales success in business but both lead on to profound questions of obligation and character.

CHAPTER XI APPLYING ETHICAL STANDARDS TO LOBBYING

As one example of applying ethical standards to business, consider what would be required to apply ethics to the activities of businesses which lobby the federal, state and local governments for favorable treatment through laws, tax regulations and subsidies. How could a business person decide which lobbying activities, both objectives and tactics used to obtain those objectives, would be ethical and which would be unethical?

The utilitarian approach, based as it is on balancing costs and benefits, is most akin to decision making approaches which businesses already employ. It requires that the action chosen maximizes good and minimizes harm for all those affected. This rule makes it legitimate to consider the good of others as well as the good of the individual corporation and its inside stakeholders. If all those affected are equally valuable and they all want happiness, then the ethical alternative is the one that maximizes happiness.

A corporate officer devising a lobbying strategy for the Timber Salvage Act, therefore, should ask what position would produce the greatest good for the greatest number. The good outcomes for external stakeholders who will be affected by the law (citizens, salmon, commercial fishers, etc) should be calculated as well as for the corporate stakeholders (stockholders, loggers, communities). Long-term as well as short-term consequences need to be considered. It is legitimate to argue for a transfer of benefits from others to corporate stakeholders as long as the transfer does not decrease the amount of good being produced or harm being avoided. To argue for a policy which benefits internal stakeholders (through timber harvesting) but produces an overall loss (through environmental degradation) would not be ethical. Setting a value in these calculations on the recreational uses of resources can be a straight forward process of determining what people would likely pay for such usage. Setting a value on a given level of species diversity or assigning a value to old growth forests which some claim to have intrinsic rather than instrumental value are processes over which ethical individuals can disagree. If the alternative which produces the greatest company benefits is unethical on a cost/benefit basis, then management should exercise moral imagination to determine other uses for company resources that will increase, rather than decrease, the overall good. Harvesting genuinely diseased or dying timber, for example, might increase the overall good if environmental safeguards were respected. Likewise the tactics used must pass utilitarian muster. The use of advertising to raise the anxiety level of a large block of older voters in order to benefit internal corporate stakeholders would be difficult to justify.

Kant's first principle, which requires universalizability, can be operationalized as don't make exceptions for yourself. If all moral actors are equal, why should it be ethical for one company to do something that it is unethical for others to do? Why should Company A consider it ethical to harm the fisheries industry by suspending environmental protections when it would oppose another company doing the same to it? If a tactic used by one corporation, such as purchasing "grass roots" mailings to legislators, would destroy the usefulness of grass roots responses as a gauge of public sentiment, if the tactic were used by all political organizations, then it is unethical.

Kant's second principle that one should always treat others as ends and never merely as means can be translated as let others make their own choices. Those affected should have the information and freedom necessary to choose. Individually, we each know best what is valuable to us, and for the society, the most desirable political and economic outcomes occur when all have information and choice. On this principle, lobbying for laws which limit consumer information and choice would be unethical, as would suspending environmental laws which reflect the wishes of the public.

Kant's third principle to act as a universal legislator is often translated as the publicity test. What would be the reaction if a description of the company's lobbying activities were to appear in the Wall Street Journal? If the society is made up largely of ethical individuals, then their collective judgement regarding the rightness or wrongness of a course of action should carry some weight.

Human rights are the minimum liberties or welfare which persons must have access to in order to live a life which expresses their value. Recognizing the rights of all those involved is seen to be legitimate when a person recognizes the value in his/her life and the essential similarity of himself/herself to others. To apply the rights principle in regard to lobbying, one should ask whether the substance or tactics in question infringe upon or promote basic rights. Especially in regards to environmental issues, arguments have been made to extend the notion of rights to animals and other interest-bearing entities (Hoch, 1995).

Justice has to do with a fair distribution of benefits and burdens. Do those who receive the benefits also share the burdens, and do those who shoulder the burdens also share the benefits? The initial assumption is that if everyone is equal, then everyone deserves equal shares. When various stakeholders deserve unequal shares, because of their contributions, sacrifices, needs, or effort expended, then an unequal distribution of benefits and burdens can be made based on these inequalities. Justice requires an explanation of why the unequal distribution is fair. Does the Timber Salvage Act give all of the benefits to the timber interests and leave all of the burdens to the environment and others dependent upon it? If so, why this is fair? Do bundled campaign contributions give more access to business lobbyists than to ordinary citizens? If so, why is this inequality fair?

Other ethical questions about the substance or tactics of corporate lobbying could also be raised on the basis of an implied social contract regarding the conditions necessary to preserve society for the good of all and how lobbying conforms with or affects the moral character of the corporation and its directors and managers. Questions regarding professional character might be couched in Aristotelian terms (Solomon, 1992) or in the Buddhist context of "right livelihood," a moral guide which proscribes work that causes harm (Whitmyer, 1994).

The application of these ethical principles should temper corporate lobbying and mitigate the undertaking of self-interested acts that harm others, but cannot guarantee that all parties to public policy disputes will agree upon an optimal course of action. Individuals with differing perceptions and values may also differ in their choice of optimal conduct and willingness to honor it. The dialogue would be greatly enhanced, however, if all parties recognized ethical

principles as legitimate guides to political behavior, for by taking ethics seriously, they would exercise moral imagination in trying to resolve disagreements.

CASES FOR CLASS USE AND PRACTICE:

THE AIR FORCE BRAKE

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On June 28, 1967, Ling-Temco-Vought (LTV) Aerospace Corporation contracted to purchase 202 aircraft brakes from B. F. Goodrich for the A7D, a new plane that Ling-Temco-Vought was constructing for the Air Force. B. F. Goodrich, a tire manufacturer, agreed to supply the brakes for less than \$70,000. According to Mr. Vandivier, a Goodrich employee who worked on this project, Goodrich had submitted this "absurdly low" bid to LTV because it badly wanted the contract. Even if Goodrich lost money on this initial contact, the Air Force afterwards would be committed to buying all future brakes for the A7D from B. F. Goodrich.

Besides a low price, the Goodrich bid carried a second attractive feature: The brake described in its bid was small; it contained only four disks (or "rotors") and would weigh only 106 pounds. Weight was of course an important factor for Ling-Temco-Vought, since the lighter the Air Force plane turned out to be, the heavier the payload it could carry.

The four-rotor brake was designed primarily by John Warren, an engineer who had been with Goodrich for seven years. As senior project engineer, Warren was directly in charge of the brake. Working under him was Searle Lawson, a young man of twenty-six who had graduated from engineering school only one year earlier. Warren made the original computations for the brake and drew up the preliminary design.

Using Warren's design, Lawson was to build a prototype of the four-rotor brake and test it in the Goodrich laboratories. By simulating the weight of the A7D plane and its landing speed, Lawson was to ensure that the brake could "stop" the plane fifty-one consecutive times without any changes in the brake lining. If the brake "qualified" under this indoor laboratory test, it would then be mounted on airplanes and tested by pilots in flight. Kermit Vandivier, though not an engineer, was to write up the results of these laboratory qualifying tests and submit them as the laboratory report prior to the test flights.

Upon using the prototype of Warren's four-rotor brake in simulated "landings" in the laboratory, Lawson found that high temperatures built up in the brake and the linings "disintegrated" before they made the required fifty-one consecutive stops.

Ignoring Warren's original computations, Lawson made his own, and it didn't take him long to discover where the trouble lay--the brake was too small. There simply was not enough surface area on the disks to stop the aircraft without generating the excessive heat that caused the linings to fail. . . . Despite the evidence of the abortive tests and Lawson's careful computations, Warren rejected the suggestion that the four-disk brake was too light for the job. Warren knew that his superior had already told LTV, in rather glowing terms, that the preliminary tests on the A7D brake were very successful. . . . It would [also] have been difficult for Warren to admit not only that he had made a serious error in his calculations and original

design but that his mistake had been caught by a green kid, barely out of college. (Statement by Mr. Vandivier)

Lawson decided to go over Warren's head to Warren's supervisor, Robert Sink. The supervisor, however, deciding to rely on the judgment of Warren who was known to be an experienced engineer, told Lawson to continue with the tests as Warren had directed.

Dejected, Lawson returned to the laboratory and over the next few months tried twelve separate times to get the brake to pass the "fifty-one-stop" qualifying tests, using various different lining materials for the brakes. To no avail: The heat inevitably burnt up the linings. By April 1968, Lawson was engaged in a thirteenth attempt to qualify the brakes.

On the morning of April 11, Richard Gloor, who was the test engineer assigned to the A7D project, came to me and told me he had discovered that sometime during the previous twenty-four hours instrumentation used to record brake pressure had deliberately been miss-calibrated so that while the instrumentation showed that a pressure of 1,000 pounds per square inch had been used to conduct brake stops numbers forty-six and forty-seven . . . 1,100 pounds per square inch had actually been applied to the brakes. Maximum pressure available on the A7D is 1,000 pounds per square inch. Mr. Gloor further told me he had questioned instrumentation personnel about the miss-calibration and had been told they were asked to do so by Searle Lawson. (Statement by Mr. Vandivier)

The thirteenth series of tests also ended in failure and the results could not be used to qualify the brake. Mr. Vandivier, however, was anxious to ascertain why Lawson had asked to have the instruments miss-calibrated:

I subsequently questioned Lawson who admitted he had ordered the instruments miss-calibrated at the direction of a superior. . . . Mr. Lawson told me that he had been informed by . . . Mr. Robert Sink, project manager at Goodrich, . . . and Mr. Russell Van Horn, project manager at Goodrich that "Regardless of what the brake does on test, we're going to qualify it." (Statement by Mr. Vandivier)

Lawson then undertook the fourteenth and final attempt to qualify the brake. To ensure that the four-rotor brake passed the fifty-one-stop tests, Mr. Vandivier later testified, several procedures were used that violated military performance criteria.

After each stop, the wheel was removed from the brake, and the accumulated dust was blown out. During each stop, pressure was released when the brake had decelerated to 10 miles per hour [and allowed to coast to a stop]. By these and other irregular procedures, the brake was nursed along. (Statement of Mr. Vandivier)

When the fourteenth series of test stops was completed, Lawson asked Vandivier to help him write up a report on the brake indicating the brake had been qualified.

I explained to Lawson that . . . the only way such a report could be written was to falsify test data. Mr. Lawson said he was well aware of what was required, but that he had been ordered to get a report written regardless of how and what had to be done . . . [He] asked if I would help

him gather the test data and draw up the various engineering curves and graphic displays that are normally included in a report. (Statement of Mr. Vandivier) Kermit Vandivier had to make up his mind whether to participate in writing up the false report.

[My] job paid well, it was pleasant and challenging, and the future looked reasonably bright. My wife and I had bought a home . . . If I refused to take part in the A7D fraud, I would have to either resign or be fired. The report would be written by someone anyway, but I would have the satisfaction of knowing I had had no part in the matter. But bills aren't paid with personal satisfaction, nor house payments with ethical principles. I made my decision. The next morning I telephoned Lawson and told him I was ready to begin the qualification report. (Statement of Mr. Vandivier)

Mr. Lawson and Mr. Vandivier worked on the curves, charts, and logs for the report for about a month, "tailoring" the pressures, values, distances, and times "to fit the occasion." During that time, Mr. Vandivier frequently discussed the tests with Mr. Russell Line, the senior executive for his section, a respected and well-liked individual.

Mr. Line . . . advised me that it would be wise to just do my work and keep quiet. I told him of the extensive irregularities during testing and suggested that the brake was actually dangerous and if allowed to be installed on an aircraft, might cause an accident. Mr. Line said he thought I was worrying too much about things which did not concern me. . . . I asked Mr. Line if his conscience would hurt him if such a thing caused the death of a pilot, and this is when he replied I was worrying about too many things that did not concern me and advised me to "do what you're told." (Statement of Mr. Vandivier)

Eventually, Mr. Vandivier's superior also insisted that he write up the entire report and not just the graphs and charts. Mr. Vandivier complied and on June 5, 1968 the qualifying report was finally issued.

[Information in the case came from Kermit Vandivier, "Why Should My Conscience Bother Me?" In the Name of Profit (Garden City, N.Y.: Doubleday & Co. Inc., 1972), p.4. Quotes from Vandivier from 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, 13 August 1969.]

Toy Wars

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Early in 1986, Tom Daner, president of the advertising company of Daner Associates, was contacted by the sales manager of Crako Industries, Mike Teal.¹ Crako Industries is a family-owned company that manufactures children's toys and had long been a favorite and important client of Daner Associates. The sales manager of Crako Industries explained that the company had just developed a new toy helicopter. The toy was modeled on the military helicopters that had been used in Vietnam and that had appeared in the "Rambo" movies. Mike Teal explained that the toy was developed in response to the craze for military toys that had been sweeping the nation in the wake of the Rambo movies. The family-owned toy company had initially resisted moving into military toys, since members of the family objected to the violence associated with such toys. But as segments of the toy market were increasingly taken over by military toys, the family came to feel that entry into the military toy market was crucial for their business. Consequently, they approved development of a line of military toys, hoping that they were not entering the market too late. Mike Teal now wanted Daner Associates to develop a television advertising campaign for the toy.

The toy helicopter Crako designers had developed was about one and one half feet long, battery-operated, and made of plastic and steel. Mounted to the sides were detachable replicas of machine guns and a detachable stretcher modeled on the stretchers used to lift wounded soldiers from a battlefield. Mike Teak of Crako explained that they were trying to develop a toy that had to be perceived as "more macho" than the top-selling "G.I. Joe" line of toys. If the company was to compete successfully in today's toy market, according to the sales manager, it would have to adopt an advertising approach that was even "meaner and tougher" than what other companies were doing. Consequently, he continued, the advertising clips developed by Daner Associates would have to be "mean and macho." Television advertisements for the toy, he suggested, might show the helicopter swooping over buildings and blowing them up. The more violence and mayhem the ads suggested, the better. Crako Industries was relying heavily on sales from the new toy, and some Crako managers felt that the company's future might depend on the success of this toy.

Tom Daner was unwilling to have his company develop television advertisements that would increase what he already felt was too much violence in television aimed at children. In particular, he recalled a television ad for a tricycle with a replica machine gun mounted on the handlebars. The commercial showed the tricycle being pedaled through the woods by a small boy as he chased several other boys fleeing before him over a dirt path. At one point the camera closed in over the shoulder of the boy, focused through the gun sight, and showed the gun sight apparently trying to aim at the backs of the boys as they fled before the tricycle's machine gun. Ads of that sort had disturbed Tom Daner and had led him to think that advertisers should find other ways of promoting these toys. He suggested, therefore, that instead of promoting the Crako helicopter through violence, it should be presented in some other manner. When Teal asked what he had in mind, Tom was forced to reply that he didn't know. But at any rate, Tom pointed out, the three networks adhered to an advertising code that prohibited violent, intense, or unrealistic advertisements aimed at children.

This seemed no real obstacle to Teal, however. Although the networks might turn down children's ads when they were too violent, local television stations were not as squeamish. Local television stations around the country regularly accepted ads aimed at children that the networks had rejected as too violent. The local stations inserted the ads as spots on their non-network programming, thereby circumventing the Advertising Codes of the three national networks. Daner Associates would simply have to place the ads they developed for the Crako helicopter through local television stations around the country. Mike Teal was firm: if Daner Associates would not or could not develop a "mean and tough" ad campaign, the toy company would move their account to an advertiser who would. Reluctantly, Tom Daner agreed to develop the advertising campaign. Crako Industries accounted for \$1 million of Daner's total revenues.

Like Crako Industries, Daner Associates is also a family-owned business. Started by his father almost fifty years ago, the advertising firm that Tom Daner now ran had grown dramatically under his leadership. In 1975 the business had grossed \$3 million; ten years later it had revenues of \$25 million and provided a full line of advertising services. The company was divided into three departments (Creative, Media, and Account Executive), each of which had about 12 employees. Tom Daner credited much of the company's success to the many new people he had hired, especially a group with M.B.A.s who had developed new marketing strategies based on more thorough market and consumer analyses. Most decisions, however, were made by a five-person executive committee consisting of Tom Daner, the Senior Account Manager, and the three department heads. As owner-president, Tom's views tended to color most decisions producing what one of the members called a "benevolent dictatorship." Tom himself was an enthusiastic, congenial, intelligent, and widely read person. Firing college he had considered becoming a missionary priest but had changed his mind and was now married and the father of three daughters. His personal heroes included Thomas Merton, Albert Schweitzer, and Tom Dooley.

When Tom Daner presented the Crako deal to his Executive Committee, he found they did not share his misgivings. The other Committee members felt that Daner Associates should give Crako exactly the kind of ad Crako wanted: one with a heavy content of violence. Moreover, the writers and artists in the Creative Department were enthused with the prospect of letting their imaginations loose on the project, several feeling that they could easily produce an attention-grabbing ad by "out-violencing" current television programming. The Creative Department, in fact, quickly produced a copy-script that called for videos showing the helicopter "flying out of the sky with machine guns blazing" at a jungle village below. This kind of ad, they felt, was exactly what they were being asked to produce by their client, Crako Industries.

But after viewing the copy, Tom Daner refused to use it. They should produce an ad, he insisted, that would meet their client's needs but that would also meet the guidelines of the national networks. The ad should not glorify violence and war but should somehow support cooperation and family values. Disappointed and somewhat frustrated, the Creative Department went back to work. A few days later they presented a second proposal: an ad that would show the toy helicopter flying through the family room of a home as a little boy plays with it; then the scene shifts to show the boy on a rock rising from the floor of the family room; the helicopter swoops down and picks up the boy as though rescuing him from the rock where he had been

stranded. Although the Creative Department was mildly pleased with their attempt, they felt it was too "tame." Tom liked it, however, and a version of the ad was filmed.

A few weeks later Tom Daner met with Mike Teal and his team and showed them the film. The viewing was not a success. Teal turned down the ad. Referring to the network regulations, which other toy advertisements were breaking as frequently as motorists broke the 55 mile per hour speed law, he said, "That commercial is going only 55 miles an hour when I want ones that goes 75." If the next versions was not "tougher and meaner," Crako Industries would be forced to look elsewhere.

Disappointed, Tom Daner returned to the people in his Creative Department and told them to go ahead with designing the kind of ad they had originally wanted: "I don't have any idea what else to do." In a short time the Creative Department had an ad proposal on his desk that called for scenes showing the helicopter blowing up villages. Shortly afterwards a small set was constructed depicting a jungle village sitting next a bridge stretching over a river. The ad was filmed using the jungle set as a background.

When Tom saw the result he was not happy. He decided to meet with his Creative Department and air his feelings. "The issue here," he said, "is basically the issue of violence. Do we really want to present toys as instruments for beating up people? This ad is going to promote aggression and violence. It will glorify dominance and do it with kids who are terrifically impressionable. Do we really want to do this?" The members of the Creative Department, however, responded that they were merely giving their client what the client wanted. That client, moreover, was an important account. The client wanted an aggressive "macho" ad, and that was what they were providing. The ad might violate the regulations of the television networks, but there were ways to get around the networks. Moreover, they said, every other advertising firm in the business was breaking the limits against violence set by the networks. Tom made one last try: why not market the toy as an adventure and fantasy toy? Film the ad again, he suggested, using the same jungle backdrop. But instead of showing the helicopter shooting at a burning village, show it flying in to rescue people from the burning village. Create an ad that shows excitement, adventure, and fantasy, but no aggression. "I was trying," he said later, "to figure out a new way of approaching this kind of advertising. We have to follow the market or we can go out of business trying to moralize to the market. But why not try a new approach? Why not promote toys as instruments that expand the child's imagination in a way that is positive ad that promotes cooperative values instead of violence and aggression?"

A new film version of the ad was made, now showing the helicopter flying over the jungle set. Quick shots and heightened background music gave the impression of excitement and danger. The helicopter flies dramatically through the jungle and over a river and the bridge to rescue a boy from a flaming village. As lights flash and shoot haphazardly through the scene the helicopter rises and escapes into the sky. The final ad was clearly exciting and intense. And it promoted saving of life instead of violence against life.

It was clear when the final version was shot, however, that it would not clear the network censors. Network guidelines require that sets in children's ads must depict things that are within the reach of most children so that they do not create unrealistic expectations. Clearly the

elaborate jungle set (which cost \$25,000 to construct) was not within the reach of most children, and consequently most children would not be able to recreate the scene of the ad by buying the toy. Moreover, network regulations stipulate that in children's ads scenes must be filmed with normal lighting that does not create undue intensity. Again clearly the helicopter ad, which created excitement by using quick changes of light and fast cuts, did not fall within these guidelines.

After reviewing the film Tom Daner reflected on some last-minute instructions Crako's sales manager had given him when he had been shown the first version of the ad: The television ad should show things being blown up by the guns of the little helicopter and perhaps even some blood on the fuselage of the toy; the ad had to be violent. Now Tom had to make a decision. Should he risk the account by submitting only the rescue mission ad? Or should he let Teal also see the ad that showed the helicopter shooting up the village, knowing that he would probably prefer that version if he saw it? And was the rescue mission ad really that much different from the ad that showed the shooting of the village? Did it matter that the rescue mission ad still violated some of the network regulations? What if he offered Teal only the rescue mission ad and Teal accepted the "rescue approach" but demanded he make it more violent; should he give in? And should Tim risk launching an ad campaign that was based on this new untested approach? What if the ad failed to sell the Crako toy? Was it right to experiment with a client's product, especially a product that was so important to the future of the client's business? Tom was unsure what he should do. He wanted to show Teal only the rescue mission commercial, but he felt he first had to resolve these questions in his own mind.

Note: 1. Although the events described in this case are real, all names of the individuals and the companies involved are fictitious; in addition, several details have been altered to disguise the identity of participants.

COSMER'S DILEMMA

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The Rambler State College basketball program had been an unqualified success ever since the arrival of Coach Kevin Cosmer in 1985. An avid promoter of his team, Coach Cosmer had raised community support for the program to a fever pitch, had completely refurbished the gymnasium, and had embarked on an ambitious recruiting program for talented athletes. An excellent tactician and a motivational leader who prided himself on bringing out the best in his players, Cosmer had taken his team to the regional NCAA tournament for three of the last five years. As a class A school, NCAA rules imposed strict requirements on the number of scholarships the school could offer, the ways in which community and alumni generated funds could be spent, and the times and nature of the various practice sessions for the team. Enforcement of the rules was strict, with sanctions ranging from reprimands to suspension of scholarships and barring the team from post-season play.

This year was an especially tough one for the coach. Two of his players had fallen below the required grade point average for maintaining their scholarships. Both were nice kids who were real contributors in the program and their loss would really be felt by the team and the fans. Because of family circumstances, both players would have to drop out of school without the scholarships. Without schooling, their future lives did not look promising. Both had been able to maintain their grades in high school and for the first two years of college, but both had gotten into academic trouble during the basketball season in spite of the athletic department's academic support program. Given one more semester, both promised that they would be able to meet the required grade point average.

The coach's options were to let the players drop out and free up the scholarships for other players, or to officially freeze the scholarships for these two players until they regained eligibility. If he froze the scholarships he knew he could pay for their schooling with community generated funds. The team boosters would gladly pay to have the players for the next season and the players would likely take advantage of this second chance to make something of themselves. This arrangement, however, was a serious violation of NCAA rules. As Coach Cosmer considered his options, he could hear the team running through a conditioning workout in the gym. Supervised practice was forbidden during this portion of the year, but Cosmer always put out some practice jerseys and a bag of balls in case the players wanted to have a little pick up game after their conditioning. In a few more minutes he would take his coffee and step into the press box to see what they were doing. Use the ethical principles we have studied (utilitarian, exceptions, informed choices, publicity, rights, and justice) to explain to Coach Cosmer what would be the ethical course of action to take. Remember that the effectiveness of your argument depends not only on how clearly you can explain the application of the principles but also on explaining why the principle should be applied to this case (that is, why the principle is valid). As is necessary in real life, be brief in your explanations but not so brief that the explanations are not persuasive.

Phantom Expenses

(David J. Fritzsche, c. 1992 Arthur Andersen & Co, SC. All rights reserved. Reprinted by permission.)

Jane Adams had just completed a sales training course with her new employer, a major small appliance manufacturer. She was assigned to work as a trainee under Ann Green, one of the firm's most productive sales reps on the East Coast. At the end of the first week, Jane and Ann were sitting in a motel room filling out their expense vouchers for the week.

Jane casually remarked to Ann that the training course had stressed the importance of accurately filling out expense vouchers. Ann immediately launched into a long explanation of how the company's expense reporting resulted in underpayment of actual costs. She claimed that all the sales reps on the East Coast made up the difference by padding their under \$25 expenses, which did not require receipts. A rule of thumb used was to inflate total expenses by 25 percent. When Jane questioned whether that was honest, Ann said that even if the reported expenses exceeded actual expenses, the company owed them the extra money, given the long hours and hard work they put in.

Jane said that she did not believe reporting fictitious expenses was the correct thing to do and that she would simply report her actual expenses. Ann responded in an angry tone, saying that to do so would expose all the sales reps. As long as everyone cooperated, the company would not question the expense vouchers. However, if one person reported only actual expenses, the company would be likely to investigate the discrepancy and all the sales reps could lose their jobs. She appealed to Jane to follow the agreed-upon practice. They would all be better off. No one would lose his or her job. And besides, the company does not really need the money. They are very profitable already.

Irrevocable Election

(Ed Scribner. c. 1992 Arthur Andersen & Co, SC. All rights reserved. Reprinted by permission.)

Steve graduated from college about a year and a half ago and has been progressing rapidly as a staff member of a local CPA firm. Now, in Steve's second year at his firm, one of the partners has just stopped by to visit with him about a tax return Steve had prepared several months earlier. While looking at the client's file, the partner happened to notice that the firm should have attached to the return an irrevocable election that would have affected the timing of recognition of certain income the client had received and would continue to receive over the next several years. The election had to have been filed on a "timely" basis with the original return. Now the client faces a significant additional tax burden for a number of years to come.

"It's not really your fault, Steve," said the partner. "This was a fairly obscure election, and I wouldn't have expected you to have discovered it. I was out of town, and the return simply slipped through our review process without the election attached. Now it's too late, but I hate to see the client have to pay all this additional tax because of our mistake. Of course, she'll never realize what happened unless we tell her, but maybe we can avoid the problem entirely."

"Here's my idea," the partner continued. "I'd like you to prepare the election and attach it to our file copy of the return. Then, we'll prepare next year's return as if the election had been filed on time. If any questions come up, we'll pull out our file copy, show it to the auditor, and suggest that the election must have been lost during processing at IRS. Give it some thought, and I'll get back to you in a couple of days."

As the partner leaves, Steve is already nervously reviewing the conversation. Although thankful for some time to think, he is concerned that this could be a "no-win" situation. He has a sense of loyalty to the firm, and he doesn't want the client or anyone else to suffer for his mistake. On the other hand, he has misgivings about complying with the partner's suggestion.

Life Insurance--Who Benefits, the Consumer or the Company?

(Thomas W. Klose, c. 1992 Arthur Andersen & Co, SC. All rights reserved. Reprinted by permission.)

Mark is a sales representative for a large life insurance company. He has been with the company for about 18 months. Things have been going well, or so he thinks. One concern he has is about the product he sells most. The product is an insurance and savings plan bundled together. It provides protection for premature death, savings that can be used for retirement, or an emergency fund that can be accessed quickly without hassle.

The problem Mark faces is that this insurance product is more expensive to purchase, and for young families it provides the least amount of protection in case of premature death of the breadwinner. Another drawback is the low return on savings, somewhere between 3 percent and 6 percent net. The company pushes sales of this product because it is more profitable. The commission Mark earns is 110 percent of the first year's annual premium, so it is very profitable for him and his family.

Mark also has another product that is considerably cheaper, that can provide much greater insurance protection, and at the same time would let the insured invest the difference in another product (i.e., an annuity) that provides a greater return. But the commissions paid by the company are very low, and management frowns on too many of these policies being sold.

The quandary is: If Mark does what is right for the consumer, he can't provide for his own family; if he sells the more expensive insurance product, the protection doesn't come anywhere near meeting the needs of the family should the breadwinner die prematurely. What should Mark do?

Survive the Year

(Sandra K. Fleak & Philip J. Korb. c. 1992 Arthur Andersen & Co, SC. All rights reserved. Reprinted by permission.)

Chris, a CPA and formerly a staff accountant for a large public accounting firm, is the new controller for a small construction company that employs 60 people. The company is now facing tough times in light of a downturn in the construction industry.

Both Chris and the CEO, Robin, know the collectability of a material receivable from Ender Corporation is in doubt. Just before year-end, Chris goes in to talk to Robin. Chris says, "Ender had real problems. The word on the street is they won't last the year. We need to adjust the allowance for the Ender receivable." Robin replies, "If we do that, we're not going to look good, and the auditor may have to mention our shaky financial position. If we don't get a clean opinion, we won't get the bank loan we're applying for, and we might be out of business too by this time next year. This loan is really important to us. If we can just weather this downturn, I know business will pick up."

Back in the controller's office, Chris ponders what can be done to help Robin and the company. Chris remembers the past years working in public accounting and is certain the auditor would want to know about Ender's difficulties.

"Dave, I Shrank the Package."

(based on case by Geoffrey P. Lantos, c.1992 Arthur Andersen & Co, SC.)

Julie is a product manager for a snack foods manufacturing company. She is responsible for the marketing strategy for potato based products. These products, primarily potato chips, make up 65% of the sales in her division so her success or failure has a large influence on the division's profitability. During her first three years in the job, Julie has been able to increase sales and maintain her share of the market because of some successful promotional campaigns and an overall increase in potato chip consumption. The competition from other brands has been fierce and profit margins have been low, remaining in the range of 5%.

In planning for next year's sales, Julie is facing a difficult situation. A recent drought has resulted in a 25% increase in potato prices and there is no way to tell if this higher cost for raw materials will be a one-year or several year phenomenon. She is reluctant to raise the price for her chips because of the price sensitivity of snack food customers. Some of her competitors may decide to maintain their current prices in order to attract some of her customer base and increase their market share.

The current low profit margin makes some kind of action important. Simply absorbing the higher material costs would further erode profitability and Julie and the six other people in her division are evaluated on the basis of monthly net profits. Discussions of "long range planning" and "investing in building a loyal customer base" are simply not relevant in determining salary and promotion in her company.

One alternative to raising the price would be to downsize the contents of the package. Industry data suggested that customers would not notice the change in contents necessary to sustain profits (1.1 oz. less in a 7.5 oz. package). Julie was concerned, however, that this practice might be deceptive.

When she discussed the idea of downsizing with Dave, the Vice President in charge of her division, he was very enthusiastic. "Buyers almost never read the label in subsequent purchases, so your loyal customer base will never notice the cost adjustment that the downsizing represents. And we are not gouging them. We are simply passing on legitimate costs to the person who gets the benefits of the product." To Julie's question as to whether the practice is deceptive, Dave answered that companies in the snack foods industry do it all the time and that the information about the correct weight of the contents would be printed on the label for any customer who was interested. "Besides," he told her, "the whole division is depending on your maintaining sales so that we can meet our target returns for next year. There really is no other choice."

Product Risk

(adapted from Collins & O'Rourke, 1994)

As marketing director for the Computer Monitor Division of BMI, you have just been handed a research study from the company R&D division indicating that a new monitor you are just about to introduce to the market may cause permanent vision damage in some users (approximately 1 in 1,000) after 10-20 years of use. The damage to vision would be difficult, however to link to the use of the new monitor because of the many other video products that users would be exposed to. Redesigning the product would take one to two years and allow competitors to gain precious market share from your line of products. The V.P. of Marketing who has also seen the report has informed you that ethical concerns are best left to the tender hearted and that he expects to see the product introduced as per schedule. Besides, he contends, users can avoid the damage by taking regular breaks during use. The R&D director has mentioned her recommendation for a delay, but she is not at an administrative level to participate in the final roll out decision. Given the obligations you have to your customers under the contract view, the due care view and the social costs view, what should you recommend to the VP of Marketing if each one of these product liability approaches were to be enforced by the courts? Which organizational blocks and excuses can you identify in this situation?

An Embarrassing False Pregnancy Was a Conception of the Hospital

by Gabriella Stern (The Wall Street Journal Nov. 4, 1992)

Columbus, Ohio - For nine months, local residents waited anxiously for Beth and Mark to have their first child. The couple, on behalf of Mount Carmel Health, a Roman Catholic hospital complex here, wrote first-person accounts of the pregnancy in the Columbus Dispatch daily newspaper. The journal entries were part of ads that included photos of the couple and reminders of Mount Carmel's prenatal and postnatal services.

In her second month, Beth wrote: "Mark told the doctor that the neat thing about pregnancy is learning all these things he never knew before. I'm glad he feels that way. Tomorrow, he's going to learn how to iron." On the big day, Mark broke the news: "We had a girl, Beth. She's beautiful." Beth recalled the first time she held Angela (9 pounds, 1 ounce). "I got to hold her. My baby. My own, beautiful baby." All of Columbus sighed with relief at the good news.

Then came the bad news. The Other Paper, a weekly, reported that baby Angela was really a boy named Nicholas. Beth and Mark, like little Nick, were paid models. To top it off, the woman who played Beth wasn't even pregnant; she is married, but not to Mark.

The news was crushing to such Columbus residents as Angie Barber, who followed the ads religiously during and after her first pregnancy. "I really put myself in her shoes and remembered what I went through. When she finally had the baby, I remember saying to my husband, "She had the baby!" I didn't realize it was a fake." The Columbus Dispatch was also caught unawares.

Mount Carmel says it didn't intend to deceive, but a spokesperson conceded that the hospital wasn't exactly open with the public. "We never came out and said there aren't real people," says Brenda Streng, vice president, business planning and development.

Marilyn Finneran, mother of five and grandmother of 11, was so taken by the ads that before Angela's birth, she wrote the Other Paper thanking Mount Carmel for "sharing their joy with us." After the Other Paper's expose--including a report that readers had sent baby gifts to Mount Carmel, which the hospital denies--Mrs. Finneran was outraged. They led us to believe this was a true, honest pregnancy," she says. "I was just thoroughly disgusted."

The Nonuser Celebrity Endorser

(Geoffrey P. Lantos, c. 1992 Arthur Andersen & Co, SC. All rights reserved. Reprinted by permission).

Amie, copywriter for Laird & Laird (L&L) Advertising, has just been assigned the Bud's Best (BB) bacon account. She is tickled pink, because she knows that Bud's Best has just signed a one-year contract to use Lance Willard as a celebrity endorser. Lance is a well-known, well loved, young, handsome, and vibrant Hollywood movie star who specialize in action drama roles. Victor, President of L&L, tells Amie that she will be writing commercials using Lance in the role of giving product testimonials. Victor explains to Amie that this endorsement is a testimonial given by a celebrity rather than an average consumer. He tells her that Lance has signed an affidavit swearing that he is a bona fide user of the product, as is legally required. The TV commercials featuring Lance, explains Victor, should feature Lance testifying as to the quality, value, and tastiness of the bacon. Victor suggests that this will take some good acting on Lance's part, since he has just recently become a vegetarian. Amie wonders whether a testimonial by Lance might not be dishonest, but she.... figures she can get all of the details later from Lance.

....Lance explains that he has had personal experience with the product, as is legally required for a testimonial. He tells her that he has done many celebrity endorsements in the past and knows that the American Advertising Federation's "Advertising Principles of American Business" state that "advertising containing testimonials shall be limited to those of competent witnesses who are reflecting a real and honest opinion or experience" and that as long as the endorser's comments are based on verifiable personal use, the message cannot be challenged as deceptive. In fact, he says, it has been his favorite brand of bacon ever since he was a small child, and bacon and eggs were his favorite and most frequently consumed breakfast until about a month ago when he became a vegetarian for health reasons. Lance tells Amie that a recent checkup by his physician revealed that his cholesterol level was 200--in the danger zone. His doctor had warned Lance to cut down on high cholesterol foods, such as bacon and eggs. Lance decided to go even further and abstain from meat since so many meats are high in cholesterol.

Amie asks Lance diplomatically whether he feels comfortable testifying about how much he likes Bud's Best bacon when he no longer uses the product. Lance replies that his conscience is clean. He has discussed the legalities with Victor, who told him that technically it was okay for him to discuss his past enjoyment of the product. After all, Lance reminds Amie, the selling points he would discuss in the commercials would be the bacon's quality, value, and good taste. Lance explains that in his view, as far as bacon goes, Bud's Best is second to none along these criteria. He tells Amie that nothing regarding the bacon's healthiness, or lack thereof, will be mentioned. As long as people are going to eat bacon, Lance asserts, they might as well eat Bud's Best....

Daughters of Murphy Brown

(Newsweek, Aug. 2, 1993)

Sally Pfeifer comes from a big family -- she is the fifth of seven children -- and she always knew she'd have a child of her own. For years she joked that if she wasn't married by the time she was 30, she'd consider becoming a parent alone. Then she turned 30 and stopped joking. Carefully, she selected a father -- a man she loved but didn't necessarily expect to wed. Confident, she stopped taking her birth-control pills. When she became pregnant, she figured that, with a home in Portland, Ore., a career and a supportive network of family and friends, she didn't need a husband to have a child. "I didn't sit down and discuss it with him first," Pfeifer, 33, says of her daughter's father. "It doesn't matter what he wanted because I knew what I wanted."

It may not be everyone's vision of maternal bliss, but for more and more women, single parenthood is not some "alternative" lifestyle. Despite growing recognition by social scientists that children do better in two-parent homes, the number of women going it alone jumped by 60 percent in the last decade.... Nearly a quarter of never-married 18- to 44-year-olds --3.9 million in all -- have had at least one child. And though mothers like Pfeifer -- older, professional, financially stable and emotionally independent -- are only a tiny fraction of the whole, the dramatic rise in their ranks reflects a fundamental shift in how we view marriage. Especially for women who can afford it, marriage is no longer necessary.

Complications in Capriota

(adapted from David F. Baron, 1993)

Maria's Pizzeria, Inc. operates a chain of franchised restaurants in the South Central and Midwest states. Company growth had slackened because of a saturated market in the U.S., so Maria's decided to open restaurants in developing countries around the world. In 1989 it sent one of its experienced managers, George Pringle, to open a restaurant in Capriota as a means of learning about operating in a foreign country. To insure the quality and uniformity which have brought the company success, Pringle planned to ship all the ingredients, plates, utensils and glasses from the company plant in Alabama.

The restaurant in Capriota was quite successful but Pringle experienced a number of difficulties. It was difficult to get Maria's food and other supplies shipped into the country because low-level customs officials routinely delayed the shipments and demanded payments before signing the required documents. Occasionally a higher level official would demand payment as well. On the advice of a German company also doing business in the country, Pringle engaged an expeditor to whom he paid a monthly fee to handle customs business for him. The delays ceased. The Germans also advised that if Maria's wished to open a chain of restaurants in the country, that matters would be made much easier by hiring the law firm of the speaker of the lower house of the national assembly. Pringle wondered whether payments to the customs officials and to the law firm would be right. What would the Donaldson principles and the Cummins principles suggest about the morality of each of these actions?

Security Payments in Qatar

(copyright 1994 by J. Brooke Hamilton III)

On Christmas Eve, 1994, the Vice President for Overseas Operations of Enton Corporation, a global petroleum-based chemical manufacturing firm, is awakened at his suburban Connecticut home by a long distance phone call from his plant manager in Qatar, a small petroleum producing country near the Persian Gulf. She has just been visited by the Chief Superintendent of the Savan, the country's police and internal security forces. The Chief Superintendent has made it very clear to her, without directly saying it, that without a payment of \$2 million dollars to a yet undesignated Swiss bank account, the security forces will be unable to guarantee the safety of Enton's plant and personnel. According to the Chief Superintendent, fundamentalist Islamic organizations within the country are ready to cleanse Qatar of all Western companies and to punish any citizens of Qatar who have worked for those companies. Enton Corporation has one week to arrange the payment or be vulnerable to these attacks.

Far from being surprised by this visit, the regional manager has been expecting it for several weeks. Her contacts with other Western firms operating in the country have revealed a series of these meetings with the Chief Superintendent demanding payment from Western multinational corporations in return for security. Inquiries to the CIA through the country's embassy have indicated that the government's ruthless suppression of any political opposition, while permitting Westernization of the culture in dress and behavior, has caused the formation of a political underground bent on overthrowing the government and establishing a religious rule similar to the government in Iran. Having no chance to express themselves, the moderate political elements within the country have been forced to ally with the fundamentalists in seeking to overthrow the government. The fundamentalists would like to see the country's industrial economy dismantled because it threatens their religious orthodoxy. The moderates seek a democratic form of government. The government's reaction to this threat has been to increase repressive measures including arrests, detention for long periods without charges and the torture and execution of prisoners. Fearing that these measures may not be enough to insure his rule, the King of Qatar has begun to raise money from Western business investors to pay for increased security and even more repressive measures against the people of the Qatar and to insure himself a comfortable retirement in Europe should he be overthrown.

The plant manager, who is a native of Qatar, feels very keenly the responsibility for the \$300 million plant which has been in operation for only a year and for the safety of the workers in the plant who have shown loyalty to the company and a willingness to be very productive. Her sources tell her that the threat to their safety is real, since the government may be very willing to sacrifice one or two Western operations to the fundamentalists in order to encourage the others to pay. By paying the "security fee" suggested by the Chief Superintendent, all the Western companies combined may be able to maintain the present government in power for at least another 5 to 10 years, thereby allowing the companies to recover their investments in the country and move their operations to more secure locations somewhere else in the world. The actual payment involved, even made on a yearly basis as the manager expects will be necessary, is small compared to the company's investment in the country and the safety of the workers.

An Influential Agent

(Wall Street Journal, July 14, 1975)

For 18 months Del Monte Corp tried to buy a 55,000 acre banana plantation in Guatemala, but the government said no. Then the company hired an influence-wielding "business consultant" and agreed to pay him nearly \$500,000. Suddenly, the Guatemalan government reversed itself. Now, Del Monte owns the profitable banana growing properties, for which it paid \$20.5 million.

The California food packer declines to identify the Guatemalan consultant, citing his fear that disclosure of his relationship with the large U.S. company could diminish his influence in Guatemala and perhaps provoke left-wing threats against his life. For these reasons, he demanded and received company assurances on anonymity.

To protect him, Del Monte paid him outside the country. It charged his fee to general and administrative expenses on the books of several Panamanian shipping subsidiaries. His fee was entirely contingent on his ability to influence the balky Guatemalan government. Del Monte hasn't publicly disclosed these facts, but it confirms them.

The company says that the fat fee secretly paid to its agent was entirely proper. It concedes that the consultant, a wealthy businessman, frequently contributes to political parties in Guatemala. But the consultant has assured Del Monte that no corporate cash went to any government officials there, a company spokesman says. Thus, Del Monte says its payments to the consultant shouldn't be compared to foreign bribes paid by United Brands Co. and Northrop Corp. or to illegal political contributions made abroad by Gulf Oil Corporation.

Still, Del Monte's experience suggests why many U.S. companies find it necessary to hire well-connected fixers--a practice that would seem irregular in the U.S.--to help swing foreign transactions. Sometimes a fat fee paid to the right intermediary can quickly produce a few crucial phone calls and a favorable decision. Whether or not things went that way in the Del Monte case, a company spokesman does recall: "For a year we pounded on doors and waited for meetings. Then we hired this guy and things started occurring."

Appendix I

Code of Ethics*
American Marketing Association

CODE OF ETHICS

Members of the American Marketing Association (AMA) are committed to ethical professional conduct. They have joined together in subscribing to this Code of Ethics embracing the following topics:

Responsibilities of the Marketer

Marketers must accept responsibility for the consequences of their activities and make every effort to ensure that their decisions, recommendations, and actions function to identify, serve, and satisfy all relevant publics: customers, organizations and society.

Marketers' professional conduct must be guided by:

1. The basic rule of professional ethics: not knowingly to do harm;
2. The adherence to all applicable laws and regulations;
3. The accurate representation of their education training and experience; and
4. The active support, practice and promotion of this Code of Ethics.

Honesty and Fairness

Marketers shall uphold and advance the integrity, honor, and dignity of the marketing profession by:

1. Being honest in serving consumers, clients, employees, suppliers, distributors and the public;
2. Not knowingly participating in conflict of interest without prior notice to all parties involved; and
3. Establishing equitable fee schedules including the payment or receipt of usual, customary and/or legal compensation for marketing exchanges.

Rights and Duties of Parties in the Marketing Exchange Process

Participants in the marketing exchange process should be able to expect that:

1. Products and services offered are safe and fit for their intended uses;
2. Communications about offered products and services are not deceptive;
3. All parties intend to discharge their obligations, financial and otherwise, in good faith; and
4. Appropriate internal methods exist for equitable adjustment and/or redress of grievances concerning purchases.

It is understood that the above would include, but is not limited to, the following responsibilities of the marketer:

In the area of product development and management,

- disclosure of all substantial risks associated with product or service usage;
- identification of any product component substitution that might materially change the product or impact on the buyer's purchase decision;
- identification of extra-costs added features.

In the area of promotions,

- avoidance of false and misleading advertising;
- rejection of high pressure manipulations, or misleading sales tactics;
- avoidance of sales promotions that use deception or manipulation.

In the area of distribution,

- not manipulating the availability of a product for purpose of exploitation;
- not using coercion in the marketing channel;
- not exerting undue influence over the resellers choice to handle a product.

In the area of pricing,

- not engaging in price fixing;
- not practicing predatory pricing;
- disclosing the full price associated with any purchase.

In the area of marketing research,

- prohibiting selling or fund raising under the guise of conducting research;
- maintaining research integrity by avoiding misrepresentation and omission of pertinent research data;
- treating outside clients and supplies fairly.

Organizational Relationships

Marketers should be aware of how their behavior may influence or impact on the behavior of others in organizational relationships. They should not demand, encourage or apply coercion to obtain unethical behavior in their relationships with others, such as employees, suppliers or customers.

1. Apply confidentiality and anonymity in professional relationships with regard to privileged information;
2. Meet their obligations and responsibilities in contract and mutual agreements in a timely manner;
3. Avoid taking the work of others, in whole, or in part, and represent this work as their own or directly benefit from it without compensation or consent of the originator or owner;
4. Avoid manipulation to take advantage of situations to maximize personal welfare in a way that unfairly deprives or damages the organization or others.

Any AMA members found to be in violation of any provision of this Code of Ethics may have his or her Association membership suspended or revoked.

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Appendix II

Internet Addresses for Ethics Materials

Velasquez (1998) lists the following web addresses for ethics materials:

DePaul University's Ethics Institute: collection of materials plus links at <http://condor.depaul.edu/ethics>

Communications Department at California State University at Fullerton: materials plus links at http://www5.fullerton.edu/les/ethics_list.html

Essential Organization: links to organizations and resources, radical and conservative, that deal with social responsibilities of businesses at <http://essential.org>

For research on publicly traded companies and on the economy, see Wall Street Research at <http://www.wsrn.com>

For all Securities and Exchange Commissions filings, see the Stern School of Business at New York University site at <http://edgar.stern.nyu.edu/edgar.html>

Other sites include:

The Ethics Center - www.taknosys.com/ethics/ This site focuses on ethics issues in engineering of all types. Case studies on everything from ad-casting antennas collapsing to the Challenger explosion.

Religion & Ethics Newsweekly - www.pbs.org/wnet/religionandethics/home.html This is the companion site to the PBS series of the same name. Many of the topics covered on the show are also given a separate, print-style treatment here.

The Naughty Lawyer Reports - naughtylawyers.com/ Case studies of unethical legal behavior, designed to provoke thought regarding what is right and wrong with the legal system.

Fairness and Accuracy in Reporting - www.fair.org/ Progressive point of view on journalistic ethics. Accuracy in Media - www.aim.org has a more conservative bent.

Ethics Resource Center - www.ethics.org The highlight is the online edition of the Ethics Today, quarterly journal, which discusses trends in the fields of ethics. Adobe Acrobat Reader required to read it (www.adobe.com/acrobat).

Center for Ethics and Business - www.ethicsandbusiness.org/ Loyola Marymount University hosts this site, which examines business ethics in a clear and understandable way.

Browse through the case studies and offer your opinion on how they should be handled.

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