Businesses not only engage in external exchanges but also coordinate the activities of various internal constituencies. Employees must be hired and organized, stockholders and creditors must be solicited, and managerial talent must be tapped. Inevitably, conflicts arise within and between these internal constituencies as they interact with each other and as they seek to distribute benefits among themselves.

Perhaps more than any other contemporary social issue, discrimination has been approached in ethical terms: the words *justice*, *equality*, *racism*, and *rights* inevitably find their way into debates over the issue. This chapter analyzes the various sides of this ethical issue. The chapter begins by examining the nature and extent of discrimination. It then turns to discussing the ethical aspects of discriminatory behavior in employment and ends with a discussion of diversity and affirmative action programs in business. The chapter explores how companies can make distinctions between job candidates without discrimination, looks at the widespread nature of discrimination, analyzes exactly what is unethical about discriminating by race and gender, and defines and discusses affirmative action and related controversies.

7.1: Divided over Discrimination

OBJECTIVE: Describe the legal climate and key legal decisions that have affected how discrimination in the workplace is viewed

In 2011, the U.S. Court of Appeals for the Fifth Circuit ruled that the University of Texas at Austin did not engage in racial discrimination when it used race as one criteria for determining which students would be admitted into the university.[1] The admissions process the university used was an *affirmative action* plan aimed at ensuring that the student body of the university included people from a diverse range of geographical areas, socioeconomic classes, experiences, backgrounds, and, of course, races. The ruling of the Fifth Circuit Court was unusual because 15 years earlier, the *same* court had ruled that it was illegal and discriminatory for the university to take race into account in its admissions programs. Thus, in its 2011 decision, the court in effect reversed its own earlier decision.

This reversal was based on a 2003 U.S. Supreme Court decision that had considered the claims of Barbara Grutter, who argued that the University of Michigan had unlawfully discriminated against her when it turned down her application for admission because she is white.

7.1.1: A Key Legal Case: Grutter v. Bollinger

When Barbara Grutter was denied admission to the University of Michigan Law School, she sued both the university and Lee Bollinger, president of the university at the time (*Grutter v. Bollinger*). Many companies took notice because they used hiring programs that were in some respects like those of the university. Grutter claimed that the university's affirmative action program had unfairly given preference to minority students with "similar credentials" to her own. Here is the timeline:

- The U.S. District Court for the Eastern District of Michigan first heard her case in the winter of 2001. The district court agreed with Grutter and ruled on March 27, 2001, that the University of Michigan had engaged in a form of racial discrimination by showing preference to minority students in violation of Grutter's right to equal treatment.
- The University of Michigan appealed the district court's ruling to the Court of Appeals for the Sixth Circuit. In a split decision on May 14, 2002, the judges of the court of appeals overturned the earlier district court's ruling. The court of appeals held that the University of Michigan's preferential program was both fair and constitutional to the extent that it sought diversity, defined as a student population that possesses a diverse range of ages, ethnicities, genders, races, talents, experiences, and other significant human qualities.
- Grutter was not satisfied with this decision, so she took her case to the nation's highest court, the U.S. Supreme Court. The Supreme Court, in a separate case (*Gratz v. Bollinger*), had ruled that an affirmative action program used by the University of Michigan in its undergraduate programs was unconstitutional because it was not "narrowly tailored" and so gave *too* much weight to race. Would the Supreme Court also reject the law school's affirmative action program?
- On June 23, 2003, the Supreme Court reached its decision: it is fair and constitutional, the Supreme Court held, for a university to show preference to minorities in admissions if its goal is to achieve "diversity" in a way that is "narrowly tailored" to achieve this goal, and the University of Michigan's Law School program met these criteria.

> Student body diversity is a compelling state interest that can justify using race in university admissions. . . . Major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to

> widely diverse people, cultures, ideas, and viewpoints. . . . Moreover, because universities, and in particular, law schools, represent the training ground for a large number of the Nation's leaders, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity. Thus, the Law School has a compelling interest in attaining a diverse student body. The Law School's admissions program bears the hallmarks of a narrowly tailored plan. . . . Universities cannot establish quotas for members of certain racial or ethnic groups or put them on separate admissions tracks. . . . The Law School's admissions program, [however,] . . . is flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes race or ethnicity the defining feature of the application.[2]

A CONTROVERSIAL DECISION Earlier, more than five dozen major U.S. corporations had urged the court to protect the University of Michigan's goal of achieving diversity through its affirmative action program. In an amicus brief (an opinion in favor of a position by a party or parties not directly connected to a case), the corporations—including 3M, Intel, Microsoft, Hewlett-Packard, Nike, Coca-Cola, Shell, Ernst & Young, Kellogg, Procter & Gamble, General Motors, and over 50 others—argued:

> In the experience of [these companies], individuals who have been educated in a diverse setting are more likely to succeed, because they can make valuable contributions to the workforce in several important and concrete ways. First, a diverse group of individuals educated in a cross-cultural environment has the ability to facilitate unique and creative approaches to problem-solving arising from the integration of different perspectives. Second, such individuals are better able to develop products and services that appeal to a variety of consumers and to market offerings in ways that appeal to those consumers. Third, a racially diverse group of managers with cross-cultural experience is better able to work with business partners, employees, and clientele in the United States and around the world. Fourth, individuals who have been educated in a diverse setting are likely to contribute to a positive work environment, by decreasing incidents of discrimination and stereotyping. Overall, an educational environment that ensures participation by diverse people, viewpoints and ideas will help produce the most talented workforce.[3]

While most of the judges of the U.S. Supreme Court agreed with these corporations and their affirmation of the importance of diversity, their decision was not unanimous. Like the judges who had earlier disagreed over the Grutter case, the judges on the Supreme Court were also divided about the fairness of affirmative action programs and the legitimacy of pursuing diversity. Although five of the Supreme Court's nine judges held that affirmative action was fair and not a form of unconstitutional discrimination, four of the judges, including Clarence Thomas, a black man, were harshly critical of that opinion. Thomas asserted that showing preference to minorities was harmful "racial discrimination":

> I believe what lies beneath the Court's decision today are the benighted notions that one can tell when racial discrimination benefits (rather than hurts) minority groups, and that racial discrimination is necessary to remedy general societal ills. . . . Clearly the majority still cannot commit to the principle that racial classifications are per se harmful and that almost no amount of benefit in the eye of the beholder can justify such classifications. . . . This discrimination engender[s] attitudes of superiority or, alternatively, provoke[s] resentment among those who believe that they have been wronged by the government's use of race. These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are "entitled" to preferences.[4]

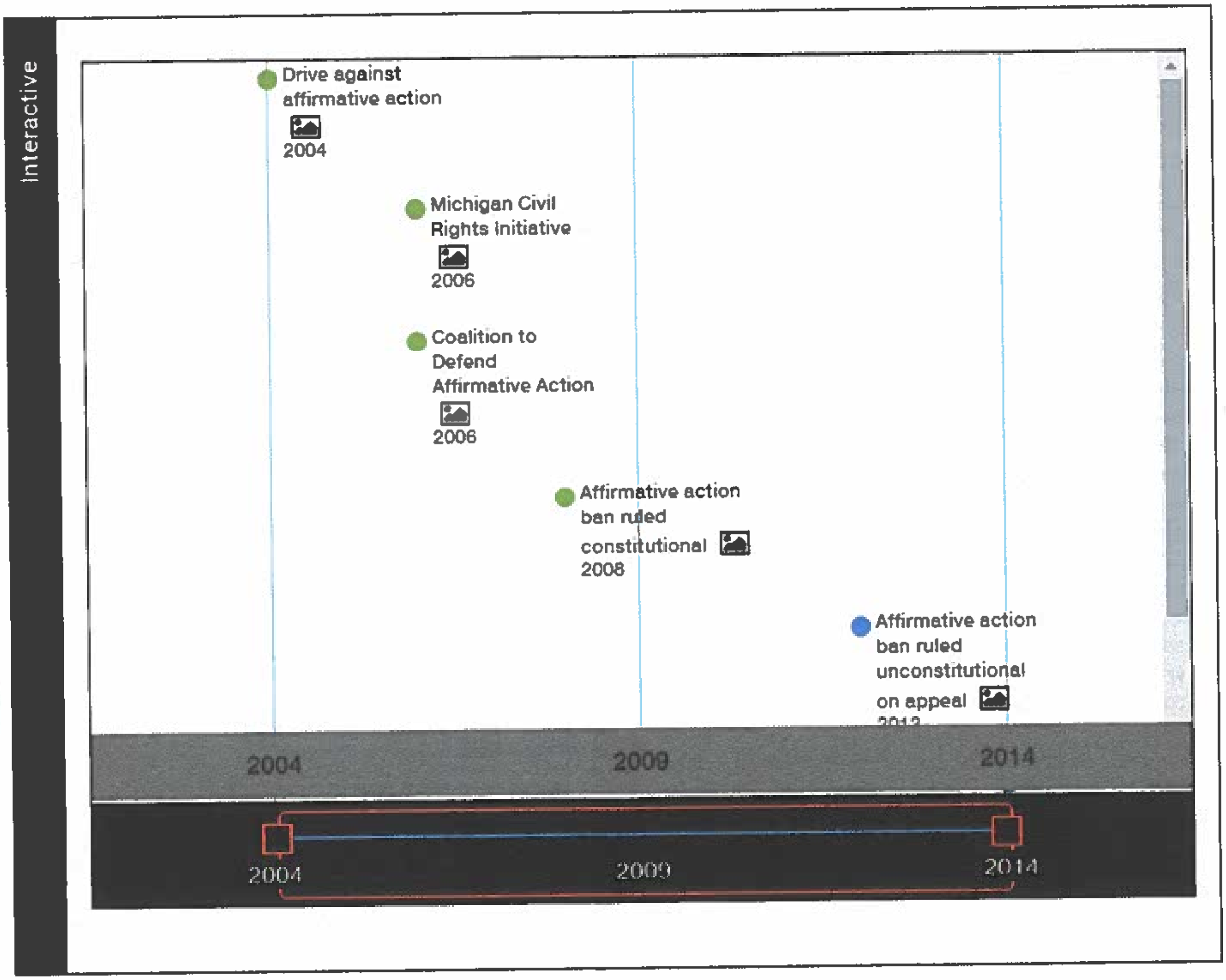
MORE THAN A DECADE OF DIVISION The 2003 decision of the U.S. Supreme Court did not end the controversy. After the Supreme Court's decision was announced, the Michigan state legislature began a divisive and rancorous debate over whether to pass a law that would withhold state funds from public universities—including the University of Michigan—that used affirmative action programs. The debate over the issue was so heated and belligerent that a fistfight broke out on the floor of the legislature between opponents and supporters of the measure. In the end, a deeply divided legislature passed the law. Even then the matter did not end.

7.1.2: Continuing Debates over Diversity in Business

The 2011 University of Texas court of appeals decision, the 2003 Supreme Court decision in the University of Michigan Law School case, the polarizing campaigns to pass state laws banning affirmative action, and the conflicting judicial rulings on whether such bans are constitutional all indicate that our nation today remains divided over our legacy of discrimination and over the justice of dealing with the effects of past discrimination through affirmative action programs. Many businesses, like the Fortune 500 companies that supported the goal of diversity, believe that it is key to competing in a rapidly globalizing world because, as the Supreme Court stated, "the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." Many, however, believe that attempts to achieve diversity

From Grassroots to the U.S. Supreme Court: The University of Michigan and Affirmative Action

Developments surrounding *Grutter v. Bollinger* continued for 10 years (from 2004 to 2014) after the U.S. Supreme Court ruled that the university's ban on affirmative action was not unconstitutional.



through affirmative action programs are themselves forms of unjust "reverse discrimination."

The debates over equality, diversity, and discrimination have been prolonged and acrimonious. Controversy continues to swirl around the nature of the plight of racial minorities, the inequality of women, and the harm that whites or males have suffered as a result of preference shown to women and minorities. These continuing debates over racial and sexual diversity have often focused on business and its needs. This focus is inevitable: racial and sexual discrimination have had a long history in business, and diversity is widely believed to have significant benefits for business.

7.2: The Nature of Job Discrimination

OBJECTIVE: Analyze the nature of job discrimination based on study of intentional, unintentional, individual, and institutional forms

A few years ago, the American Broadcasting Company (ABC) sent a male and female, Chris and Julie, out on a live experiment. Their goal was to apply in person for jobs several companies were advertising. As you will see, the experience of Chris and Julie suggests that discrimination based on gender is alive and well. Results from this experiment lay the groundwork for our analysis of the nature of job discrimination.

Ethical Application

Same Qualifications, Different Offers

Part 1

Chris and Julie were both blonde, trim, neatly dressed college graduates in their 20s, with identical resumes indicating management experience. Unknown to the companies, both were secretly wired for sound and had hidden cameras. One company indicated in its help-wanted ad that it had several open positions. However, when the company recruiter spoke with Julie, the only job he brought up was a job answering telephones. A few minutes later, the same recruiter spoke with Chris. He was offered a management job. When interviewed afterward by ABC, the company recruiter said he would never want a man answering his telephone. Another company had advertised positions as territory managers for lawn-care services. The owner of the company gave Julie a typing test, discussed her fiancé's business with her, and then offered her a job as a receptionist at $6 per hour. When the owner interviewed Chris, however, he gave him an aptitude test, chatted with him about how he kept fit, and offered him a job as territory manager paying $300 to $500 per week. When the owner was later interviewed by ABC, he commented that women "do not do well as territory managers, which involves some physical labor." According to the owner, he had also hired one other woman as a receptionist and had hired several other males as territory managers.[5]

Several other researchers have replicated the findings of the ABC gender-discrimination study and came up with similar results.[6] Numerous similar experiments suggest that racial discrimination also continues to thrive.

Part 2

In a study on racial discrimination, researchers at the Urban Institute paired several young black men with similar young white men, matching them in openness, energy level, articulateness, physical characteristics, clothing, and job experience. Young Hispanic males fluent in English were likewise matched with young white males. Each member of each pair was trained and coached in mock interviews to act exactly like the other, then they applied in person for the same jobs, ranging from general laborer to management trainee in manufacturing, hotels, restaurants, retail sales, and office work. Despite the fact that all were equally qualified for the same jobs, blacks and Hispanics were offered jobs 50 percent fewer times than the young white males. In another study, white students paired with black students applied for low-wage, entry-level jobs in Milwaukee. While the white applicants told employers they had been in jail for 18 months, the black applicants presented themselves with a clean record. Yet the white ex-cons were called back for interviews 17 percent of the time, while their crime-free black equivalents were called back only 14 percent of the time. In short, being black is about equivalent to having an 18-month jail conviction. In yet another study, identical resumes were sent to random help-wanted ads in Boston and Chicago. Half of the resumes carried the "white-sounding" names "Emily" and "Greg," while the other half carried the "African-American-sounding" names "Lakisha" and "Jamal." The white-sounding names received 50 percent more callbacks for interviews.[7]

7.2.1: Discrimination Is Not Morally Neutral

Today, outright sexist and racist bigotry is rarely exhibited or expressed openly; on the contrary, virtually everyone will sincerely and forcefully deny that they are prejudiced against women or minorities. Yet, the studies described above suggest that both minorities and women today continue to be treated differently from their white or male counterparts. Studies such as these, as it were, catch us in the very act of discriminating against minorities or women, perhaps without us even realizing what we are doing.

> **The root meaning of the term *discriminate* is "to distinguish one object from another," a morally neutral and not necessarily wrongful activity.**

However, in modern usage, the term often is not morally neutral; it is often intended to refer to the wrongful act of distinguishing illicitly among people not on the basis of individual merit, but on the basis of prejudice or some other invidious or morally reprehensible attitude.[8] This morally charged notion of invidious discrimination as it applies to employment is what is at issue in this chapter. In this sense, to discriminate in employment is to make an adverse decision (or set of decisions) against employees (or prospective employees) who belong to a certain class because of morally unjustified prejudice toward members of that class, whether or not that prejudice is consciously held.

Employment discrimination in the United States historically has been directed at a surprisingly large number of groups. These groups have included religious groups (such as Muslims, Jews, Catholics), ethnic groups (such as Italians, Poles, and Irish), racial groups (such as blacks, Asians, and Hispanics/Latinos), and groups based on gender and

Elements of Discrimination

Discrimination can be based on an overt and conscious racist bias against a group, or it can arise from unconscious stereotypes about the members of a group. Thus, discrimination in employment must involve three basic elements.

Interactive

First Element: Decision is Not Based on Individual Merit

The decision against one or more employees (or prospective employees) is not based on individual merit, such as the ability to perform a given job, seniority, or other morally legitimate qualifications.

Second Element: Decision is Based on Prejudice

Third Element: Decision Would Have or Has a Negative or Harmful Impact

sexuality (such as women and LGBTQ [lesbian, gay, bisexual, transgender, and queer] persons). We have an embarrassingly rich history of discrimination.

7.2.2: Forms of Discrimination: Intentional and Institutional Aspects

A helpful framework for analyzing different forms of discrimination can be constructed by distinguishing the extent to which a discriminatory act is intentional (conscious) or unintentional (unconscious), and the extent to which it is an individual (isolated) or institutional (systematic) act.[9]

Table 7.1 describes the four categories of discriminatory action in further detail.

Quick Review 7.1
Forms of Discrimination

- Intentional discrimination is conscious and deliberate discrimination.
- Unintentional discrimination is discrimination that is not consciously or deliberately sought, but is brought about by stereotypes or as an unintended outcome.
- Individual discrimination is the discrimination of one or a few individuals acting on their own.
- Institutional discrimination is discrimination that is the result of the actions of all or many of the people in an institution and of their routine processes and policies.

Distinguishing Forms of Discrimination

Many initial denials of discrimination are based on the misunderstanding that discrimination comes in many forms and can be unintentional.

Interactive

Intentional Discrimination versus Unintentional Discrimination

Intentional discrimination is carried out consciously and deliberately, while *unintentional discrimination* is not consciously or deliberately sought, but it is generally the result of unconscious factors such as stereotypes or processes that have unintended outcomes.

Individual Discrimination versus Institutional Discrimination

HISTORICAL PERSPECTIVE During the latter part of the last century, an important shift in emphasis occurred—from seeing discrimination primarily as an intentional and individual matter to also seeing it as an institutionalized and perhaps unintentional outcome of routine behavior.

Starting in the 1970s, many people came to believe that if a company hired for certain positions from an area in which qualified minorities made up 30 percent of the people in the pool of available workers, then it might be considered to be discriminatory on the grounds that qualified minorities should make up about 25 to 35 percent of the company's workers in those positions. If the company hired, say, only 4 or 5 percent minorities in those positions, that could be considered a form of discrimination. The discrimination would be remedied when the proportions of minorities within the organization more or less matched their proportions in the available pool of workers. To remedy any imbalances, companies were asked to use **affirmative action programs**. For example, a U.S. Department of Labor guidebook for employers issued in February, 1970 stated:

> An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and thus to increase materially the utilization of minorities and women at all levels and in all segments of his work force where deficiencies exist. . . . "Underutilization" is defined as having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.[10]

The Equal Employment Opportunity Act of 1972 gave the **Equal Employment Opportunity Commission (EEOC)** increased power to combat this form of discrimination and to

Table 7.1 Discriminatory Actions

Interactive

Term	Description
Individual and intentional	A discriminatory act may be the isolated act of a single *individual* who *intentionally* discriminates out of personal prejudice. In the ABC experiment, for example, the attitudes held by the male interviewer may not be characteristic of all company interviewers: his behavior toward female job seekers may be an intentional, but isolated, instance of gender discrimination in hiring.
Institutional and intentional	A discriminatory act may be part of the routine *institutional* behavior of a group that *intentionally* discriminates because of the shared prejudices of its members. Aryan Nations, Stormfront, and the White Aryan Resistance, for example, are organizations that engage in intentional institutionalized discriminatory behavior against minorities of virtually every kind.
Individual and unintentional	An act of discrimination may be the isolated act of a single (or a few) *individual*(s) who *unintentionally* discriminates against women or minorities because the individual has unconscious stereotypes about the abilities of women or minorities, perhaps absorbed from surrounding society. If the interviewer quoted in the ABC experiment, for example, acted unintentionally, then his actions would fall into this third category.
Institutional and unintentional	A discriminatory act may be the result of the *institutionalized* routines of a corporate organization whose procedures and practices discriminate against women or minorities *unintentionally*; that is, without anyone in the organization consciously intending that result. The companies studied in the ABC experiment, for example, were organizations in which the best-paying jobs were routinely assigned to men and the worst-paying jobs were routinely assigned to women—based on the stereotypical assumption that women are fit for some jobs and not for others. There may be no conscious intent to discriminate, but the result is the same: a recurring and widespread pattern of racially or sexually based preferences biased against minority or female candidates.

Check Your Understanding

even require affirmative action programs to correct any deficiencies. The EEOC is a national (federal) government agency established in 1964 to enforce our federal civil rights laws.

However, the view that an institution is discriminatory if a minority group is merely underrepresented within its ranks was criticized from the beginning. Discrimination is the *intentional* act of *individuals*, critics have argued, and it is individual women and minorities whom it mistreats.

Consequently, these critics claimed, we should not conclude that discrimination exists until we know that a specific individual or individuals *intentionally* discriminated against another individual in a specific instance.

THE INTENTIONALITY DEBATE The view that intentionality must accompany discrimination is problematic for a number of reasons:

1. Most obviously, it rules out or at least ignores the possibility of unintentional discrimination. Most of us have unconscious negative stereotypes or unconscious negative associations related to various racial, ethnic, age-based, or other social groups (To see if you have such unconscious biases, take the Project Implicit tests at https://implicit.harvard.edu/implicit/takeatest.html). A number of studies have demonstrated that these stereotypes or associations influence our decisions even when we do not intend them to do so, do not know they are doing so, and may even consciously try not to let them influence us.[11] Yet, even if not intended, these unconscious stereotypes or associations lead us to systematically discount the merits of members of the groups about whom we have these stereotypes and associations. In fact, an impressively large number of studies have shown that even when we genuinely and consciously avoid being biased toward a racial or social group, even when we are sincerely and deeply convinced that we are not prejudiced against

Mid-Twentieth Century Legal View of Discrimination

The legal definition of the term discrimination began to evolve with the landmark Civil Rights Act of 1964.

Interactive

Early 1960s | Late 1960s | The 1970s

During the early 1960s, employment discrimination was seen primarily as an intentional act performed by one individual on another. Title VII of the Civil Rights Act of 1964 (amended in 1972 and 1991)—the fundamental U.S. law against discrimination—seems to have had this notion of discrimination in mind when it stated:

> It shall be an unlawful employment practice for an employer
>
> 1. to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin or
> 2. to limit, segregate, or classify his employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, sex, or national origin.

minorities or other groups, we harbor unconscious attitudes that influence the judgments we make about the members of those racial or social groups.[12]

2. Another problem with this view is that it is generally impossible to know when, or even whether, a specific individual was intentionally discriminated against in a particular job-related context. Individuals compete with other individuals for jobs and promotions. Whether a specific individual wins a specific job or promotion at a particular time depends on a number of variables. They include the candidate's qualifications, the fairness of the hiring manager and any unconscious stereotypes he or she may hold, and numerous chance factors (e.g., who the other candidates are, the qualifications of the other candidates, how the manager feels on the day he or she makes the decision, and how the candidate performs during the interview). Consequently, when a minority individual loses in this competitive process, there is generally no way of knowing whether that individual's loss was the result of his or her qualifications, some chance factor, or intentional discrimination.
3. The only way of knowing whether discrimination has occurred is by looking at what happens to minorities as a group over a period of time. If minorities as a group regularly lose out in a competitive process in which their abilities as a group match those of nonminorities, then we may conclude that the process itself is discriminatory even though we may not know which particular individuals were intentionally discriminated against.[13]

Late-Twentieth Century Legal View of Discrimination

Policy in the United States shifted away from attempts to remedy institutionalized unintentional racism in the 1980s and back toward a favorable climate for affirmative action in the 1990s.

Interactive

The 1980s | The 1990s

During the 1980s, government policy in the United States shifted toward the view that efforts to deal with discrimination should not focus on discrimination in its institutionalized unintentional forms. Starting in about 1981, therefore, the federal government began to actively oppose affirmative action programs based on statistical analyses of systematic discrimination. The Reagan administration, for example, held that only individuals who could prove that they had been the victims of discrimination aimed specifically and intentionally at them should be eligible for special treatment in hiring or promotions. Although the administration was largely unsuccessful in its efforts to dismantle affirmative action programs altogether, it did succeed in naming a majority of U.S. Supreme Court justices who rendered decisions that tended to undermine some legal supports of affirmative action programs.

Quick Review 7.2
Controversy over Forms of Discrimination

- Four possible kinds of discrimination are (1) individual and intentional, (2) institutional and intentional, (3) individual and unintentional, and (4) institutional and unintentional.
- In the 1960s, discrimination was seen as individual and intentional; by the 1970s, it was seen to have institutional and unintentional forms—as indicated by an "underrepresentation" of minorities and women—and was to be remedied with affirmative action.
- In the 1980s, some insisted that discrimination was only individual and intentional, but in the 1990s, the view that it can also be institutional and unintentional prevails.

DISTINCTION BETWEEN PREVENTION AND REMEDY For purposes of analysis, it is important to keep the ethical issues raised by policies that aim to prevent discrimination (intentional or unintentional) separate from those raised by policies that aim to remedy discrimination after it has already happened by, say, achieving a proportional representation of minorities within a business (e.g., through affirmative action). We will discuss each of these issues separately, since each raises distinct ethical issues.

It is a commonly held belief, especially among whites, that, although our institutions used to be discriminatory, this is no longer the case because of the great strides minorities and women have made during the last few years.

Visible Leadership of Women and Minorities

While we do see women and minorities in high public office and in business leadership, we must examine whether and to what extent our business institutions today are discriminatory.

Interactive

Diversity in High Public Office

Barack Obama was elected president in 2008 and served until 2016. In 1966, Edward Brooke became the first African-American to be elected senator since Reconstruction; in 1979, Edward Hidalgo became the first Latino Secretary of the Navy; in 1981, Sandra Day O'Connor became the first female Supreme Court Justice; in 1990, Dr. Antonia Novello was named the first Hispanic U.S. Surgeon General; in 1989, Colin Powell was named the first African-American Chair of the Joint Chiefs of Staff, and in 2001 he was the first African-American Secretary of State; in 2007, Nancy Pelosi became the first female Speaker of the House of Representatives; and in 2009, Sonia Sotomayor became the first Hispanic Supreme Court Justice.

1 of 2 Previous Next

Because minorities and women hold prominent leadership roles and have achieved success in various fields, many believe that discrimination against minorities is no longer a significant problem in the United States. In a recent national Gallup poll, for example, 72 percent of whites in the United States said that blacks now have as good a chance as whites to get any kind of job for which they are qualified (only 36 percent of blacks felt the same), and 78 percent thought blacks were treated as fairly as whites on the job (only 43 percent of blacks thought the same).[14] Another poll found, in fact, that 60 percent of white U.S. workers think that discrimination against whites is now as bad as discrimination against blacks and other minorities.[15] If the belief that discrimination against minorities is a thing of the past is correct—and it is at least challenged by the experiments described earlier, in which matched pairs of male and female or white and minority people applied for the same job—then there is not much point in discussing the issue of discrimination. However, is this belief correct?

On the Edge

Work Environment at Plainfield Healthcare Center

Plainfield Healthcare Center is an Indiana nursing home that cares for elderly women in frail health who live there full time.[16] Brenda Chaney, a black certified nurses aide (CNA) worked at the center. Each day, the center gave Brenda a sheet that assigned specific patients to her and she was responsible for attending to the needs of her patients along with any other CNAs assigned the same patients. Next to each patient's name on the assignment sheet was an indication of the care the patient needed and various notes about each patient's condition, special needs, or special requests. Marjorie Latshaw, a white elderly woman, was a patient who had lived at the center for several months and who suspected she would live there until her death. Latshaw felt that since the center was her home, she had a right to have things arranged as she would have arranged them for herself in the privacy of her own home. Indiana laws state that residents in nursing homes have a right to "choose a personal attending physician and other providers of services." So when she was admitted to the nursing home, Latshaw insisted that she be attended only by white caretakers.

The nursing home had a policy of honoring each resident's requests as far as possible, and this included honoring residents' racial preferences in caretakers. Consequently, the daily assignment sheets that Chaney received indicated, next to Latshaw's name, "Prefers No Black CNAs." The managers of the nursing home were clear that this meant that all black CNAs were "banned" from assisting Latshaw or any other white patient that made a similar request. The managers of Plainfield Healthcare Center said that if they did not honor Latshaw's requests, they would not be following Indiana state laws which said residents of nursing homes have the right to have access to the providers they choose, the right to privacy, and the right to bodily autonomy (i.e., the right to determine what is done to one's body). Federal civil rights laws on equal employment opportunity normally overrule state laws, and federal civil rights laws prohibit employers from accommodating the discriminatory preferences of their customers. However, federal courts had ruled that those laws do not prohibit *nursing homes* from accommodating their patient's privacy rights when patients asked that their providers be members of their *own gender*. Plainfield Healthcare Center's managers decided that this same reasoning meant that a nursing home could accommodate its patients when they requested that their caretakers be of their *own race*.

Chaney was extremely upset by the policy of the nursing home, but because she feared being fired and needed the job, she went along with it. Although Latshaw was sometimes on her assignment sheet, she refrained from assisting her. Once when Latshaw fell to the ground, Chaney was forced to search the facility looking for a white nurses aide to help Latshaw get up, as she had insisted. Other white patients had also said they wanted only white CNAs to help them and regularly rejected Chaney's offers of assistance. These racially based rejections of her offers to help humiliated and depressed Chaney and often reduced her to tears. Moreover, the policy seemed to encourage some of her white co-workers who had made racial slurs; one co-worker once called her a "black bitch" and another asked why the center "keeps on hiring all of these black niggers? They're not gonna stay anyway." Another co-worker reminded her several times that she could not touch certain patients because she was black. However, the managers of the center immediately responded when Chaney complained by reprimanding the co-workers and the slurs stopped. Nevertheless, Chaney was fired when one of her co-workers alleged that she had used profanity while helping a patient, although another patient who witnessed the event denied the allegation and although Chaney's supervisor pointed out she had never heard her use profanity at work.

WRITING PROMPT

Racism and Work Environment

1. **Form an ethical position on the decision of the managers of Plainfield Healthcare Center to honor their white patients' requests to be helped only by members of their own race. Consider whether Brenda Chaney was subjected to a hostile workplace on the basis of her race. If yes, how?**
2. **Did the managers of Plainfield Healthcare Center unethically discriminate against Chaney? Explain your answer.**

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

Submit

7.3: The Extent of Discrimination in the United States

OBJECTIVE: Outline the extent of employment discrimination by making comparisons among groups

How do we determine whether a society's institutions are discriminating against a certain group? One way is by looking at how the members of that group are treated by those institutions. A *prima facie* ("at first view") indication of discrimination exists when a disproportionate number of the members of a certain group are in the less desirable positions within the institution, despite their preferences and abilities.[17] Looking at three kinds of comparisons can show how U.S. institutions treat minorities and women today:

1. The average benefits our institutions bestow on minorities and females compared with the average benefits they bestow on other groups
2. The proportion of minorities and women found in the lowest levels of our institutions compared with the proportions of other groups at those levels
3. The proportions of women and minorities that hold the more advantageous positions in our institutions compared with the proportions of other groups in those positions.

If we look at U.S. society in terms of these three kinds of comparisons, it becomes clear that some form of racial and gender-based discrimination is present in U.S. institutions today.

Quick Review 7.3
***Prima Facie* Indicators of Discrimination**

- The average benefits minorities and women receive compared with others
- The proportions of minorities and women at the lowest economic levels
- The proportions of minorities and women at the highest economic levels

7.3.1: Average Income Comparisons: Race and Gender

Income comparisons provide the most revealing indications that racial and gender-based discrimination takes place in our society. Although these comparisons do not imply that such discrimination is intentional, they do suggest that it is at least institutionalized.

In terms of income equality along racial lines, if we compare the average total incomes of nonwhite families with the average total incomes of white families in the United States, we find that the income of white families is substantially above that of nonwhite families (see Figure 7.1).

INCOME INEQUALITY Comparisons of the incomes of individuals also reveal large inequalities based on gender and race. A comparison of average incomes for men and women shows that women continue to receive only a portion of what men receive. One study found that firms employing mostly men paid their workers on average 40 percent more than those employing mostly women.[19, 20, 21]

The disparities between the earnings of men and women, as well as those between the earnings of whites and minorities, have continued for decades. See Figure 7.2.

LANDSCAPE OF WOMEN'S EARNING POWER Studies have shown that the disparities in earnings between men and women begin as soon as they graduate from college, contrary to the optimistic and legitimate hope held by each generation of graduating women that "our generation will be different." A study by the American Association of University Women, for example, found that a year out of college, women's median earnings were only 82 percent of their male colleagues' median earnings.[22] An earlier report found that if women specialized in a female-dominated major such as education, their median earnings were about 95 percent of their male counterparts' median earnings, but if they specialized in a male-dominated major such as mathematics, they ended up with median earnings that were only 75 percent of their male colleagues' median earnings.[23] The study also found that 10 years after graduation, women

Figure 7.1 Average Family Incomes by Race (2014 Dollars)

Contrary to a commonly held belief, the average family income gap between whites and minorities has not decreased but has increased. Since 1970, even during periods of prosperity when all incomes increased, real minority family incomes have not caught up with white family income.[18]

In 1975, as this figure indicates, the average income for a black family was 64 percent of a white family's average income, and the average Hispanic family income was 68 percent of the average white family income. By 2014, the average incomes of a black family and a Hispanic family had both fallen to only 61 percent of the average white family's income.

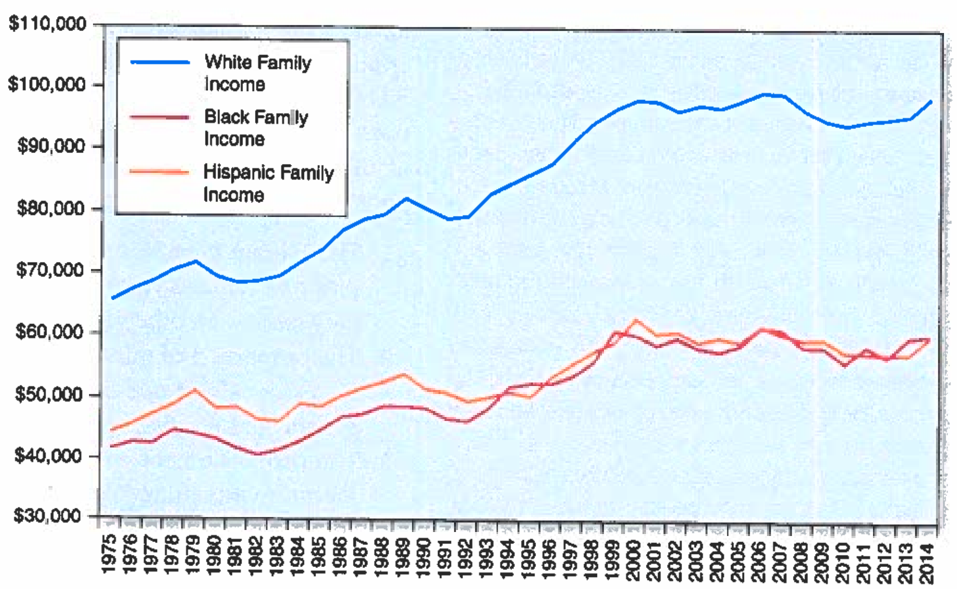
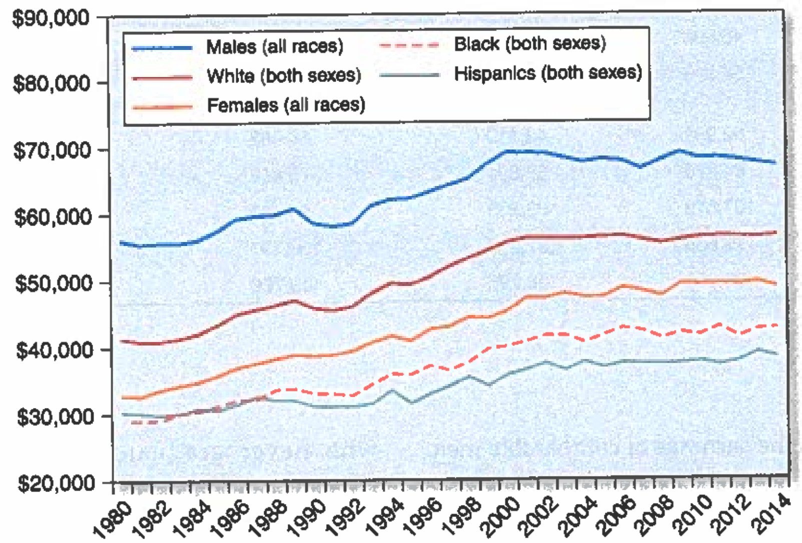


Figure 7.2 Average Earnings of Male, Female, White, Black, and Hispanic Full-Time Individual Workers, 1980–2014 (2014 Dollars)

As the figure shows, the earnings of males have long been significantly higher than the earnings of women. It also shows that the earnings of whites have continuously been higher than those of blacks and Hispanics.[24]

The gap between the median earnings of men and the median earnings of women narrowed from 60 percent in 1964 to 79 percent in 2014 (the median earnings for a group is the amount of earnings at which half of the people in the group have higher earnings, and half have lower earnings), but it took half a century for women to make that 19 percent improvement. Moreover, in 2014, full-time working men earned an average of $67,011, while full-time working women earned an average of $48,924, which is only 73 percent of a man's *average* earnings (the average earnings for a group are the total earnings of the group divided by the number of people in the group). Some of the improvement in the ratio of female and male earnings has come about not as a result of declining discrimination, but as a result of declines in the average earnings of men due to an ongoing decline in the number of manufacturing jobs traditionally occupied by men.



had fallen even further behind their male cohort, earning only 69 percent of what their male colleagues earned. This pattern has endured for decades. An early study in 1980—more than a decade and a half after our civil rights laws were enacted—of white men and women ages 21 to 22 found that although their qualifications had increased substantially relative to men's, women's starting salaries were 83 percent of men's—an actual *decline* from 1970, when women of that age and education earned 86 percent of what men earned.[25]

In fact, as Table 7.2 shows, no matter how much education women just out of college have, their average earnings

Table 7.2 Average Earnings of Year-Round Full-Time Working Men and Women Recently Out of School, 2014

As the following table indicates, a young woman aged 18 to 24 who graduated from high school will earn less than a young man who never went beyond the eighth grade. A young woman aged 18 to 24 with an associate degree will earn less than a young man in the same age group who never graduated from high school. A young woman aged 25 to 34 who graduated from high school will earn about the same as a young man aged 25 to 34 with only an elementary school education. As well, a young woman aged 25 to 34 with a master's degree will earn less than a young man aged 25 to 34 with only a bachelor's degree.[26]

	Average Earnings of 18- to 24-Year-Olds		Average Earnings of 25- to 34-Year-Olds	
Education	Men ($)	Women ($)	Men ($)	Women ($)
Elementary	24,260	NA	30,120	22,548
High school some, no diploma	37,747	19,006	32,886	24,190
diploma	30,283	21,779	39,492	30,701
College some, no degree	29,985	23,058	45,037	33,154
associate degree	32,668	26,463	48,585	37,561
bachelor's degree	44,933	38,995	65,911	51,144
master's degree	NA	NA	82,203	58,041
professional degree	NA	NA	101,324	90,741

Table 7.3 Average Earnings of Year-Round Full-Time Workers, 18 Years Old and Over, by Education, Race, and Sex, 2014

As the following table shows, over the course of their lives female college graduates have lower average yearly earnings ($58,894) than male graduates ($84,576). In fact, the average earnings of a woman who graduated with a master's degree ($69,233) will be quite a bit less than the average earnings of a man with only an undergraduate bachelor's degree ($84,576). The average earnings of a woman with a high school degree ($34,394) will not only be less than the average earnings of a man with a high school degree ($46,688) but also be less than the average earnings of a man who never graduated from high school ($39,980).[27]

		Both Men and Women				
Education	Men's Average Earnings ($)	Women's Average Earnings ($)	Whites' Average Earnings ($)	Blacks' Average Earnings ($)	Hispanics' Average Earnings ($)
Elementary	32,122	29,156	50,456	29,532	28,384
High school some, no diploma	39,980	25,525	44,084	31,027	29,744
diploma	46,688	34,394	45,801	35,091	36,264
College some, no degree	54,349	38,646	51,207	39,996	40,997
associate degree	59,983	43,110	54,432	42,218	45,721
bachelor's degree	84,576	58,894	75,862	59,159	60,920
master's degree	107,619	69,233	89,443	76,377	73,311
professional degree	172,568	121,252	160,397	108,630	123,063
doctorate degree	128,269	98,295	119,796	101,062	117,341

are significantly less than the earnings of comparable men. Table 7.3 shows the earnings disparities continue throughout life. As table 7.4 shows, the earning disparities between men and women extend to virtually all occupations.

LANDSCAPE OF MINORITY EARNING POWER Black and Hispanic minorities do not fare much better than females. Figure 7.2 shows that the earnings of both blacks and Hispanics are consistently less than the earnings of whites. Since 1990, the average earnings of blacks have stayed at around 70 percent of the average earnings of whites. In fact, in 2014 the average earnings of black full-time workers were 70 percent of the average earnings of full-time white workers, the same as their 1990 level when they received 70 percent of the average earnings of white workers. The average earnings of full-time Hispanic workers have also failed to increase relative to white workers. In 2014, the average earnings of Hispanic full-time workers were 63 percent of those of white full-time workers, a *decline* from 1990 when Hispanic full-time workers made about 66 percent of the average earnings of white workers.[28]

Like the gap between the earnings of males and females, there is also a gap between the earnings of whites and minorities that education does not eradicate. As Table 7.3 indicates, the earnings of a black person with a master's degree ($76,377) are significantly less than the earnings of a white person with a master's degree ($89,443), and a black person with an associate college degree earns less ($42,218) than a white person who never graduated from high school ($44,084). Hispanics suffer a similar earnings gap. A Hispanic who graduates from high school earns less ($36,264) than a white person who completed elementary school but did not graduate from high school ($44,084), and a Hispanic who earns a master's degree earns less ($73,311) than a white person with only a bachelor's degree ($75,862).

7.3.2: Lowest Income Group Comparisons: Poverty

The lowest identified income group in the United States consists of those people whose annual income falls below the poverty level. Here, too, we find that women fare worse than men and minorities fare worse than whites.

7.3.3: Desirable Occupation Comparisons

The evidence of racial and gender-based discrimination provided by the quantitative measures we have presented can be filled out somewhat qualitatively by looking at people's occupations.

For many decades, certain jobs have traditionally been thought of as "women's jobs" because they are predominantly filled by females, such as secretaries (94 percent female), teachers' assistants (92 percent), receptionists (92 percent), dental assistants (93 percent), child-care workers (97 percent), and hairdressers (91 percent);

Table 7.4 Median Weekly Earnings of Full-Time Male and Female Workers by Major Occupational Group, 2015

The earning disparities between men and women extend to all occupations, as the following table indicates. In every major occupational group, women's weekly earnings are only a portion of men's, ranging from legal occupations (where women earn only 60 percent of what men earn) to construction and mining (where the few women who work in these areas earn 94 percent of what men earn). In every single occupational group, women earn less than men.[29]

Occupational Group	Median Weekly Earnings		Women's Earnings as Percentage of Men's (%)
	Men ($)	Women ($)	
Management occupations	1,486	1,139	77
Business and financial operations occupations	1,327	1,004	76
Professional and related occupations	1,343	963	72
Architecture and engineering occupations	1,452	1,257	87
Life, physical, and social science occupations	1,379	1,067	77
Community and social service occupations	973	845	87
Legal occupations	1,877	1,135	60
Education, training, and library occupations	1,144	907	79
Arts, entertainment, sports, and media occupations	1,088	942	87
Healthcare practitioners	1,272	991	78
Healthcare support occupations	577	490	85
Protective service occupations	851	655	77
Food preparation and serving occupations	481	414	86
Building and grounds cleaning occupations	517	419	81
Personal care and service occupations	597	475	80
Sales and related occupations	880	578	66
Office and administrative support occupations	693	646	93
Farming, fishing, and forestry occupations	477	437	92
Construction and extraction (mining) occupations	751	704	94
Installation, maintenance, and repair occupations	842	761	90
Production occupations	729	519	71
Transportation and material moving occupations	679	494	73

while other jobs have been thought of as "men's jobs" because they are predominantly filled by males, such as mechanics (98 percent male), electrical power-line workers (99 percent), crane operators (95 percent), brick layers (100 percent), welders (96 percent), and roofers (99 percent). However, salaries for the women's jobs are noticeably lower (secretaries, $35,724; teachers' assistants, $28,132; receptionists, $29,900; dental assistants, $27,612; childcare workers, $22,724; hairdressers, $23,972) in comparison to the salaries for the men's jobs (mechanics, $37,544; electrical power-line workers, $57,460; crane operators, $51,376; brick layers, $33,904; welders, $39,520; roofers, $30,368), although both sets of jobs require about the same amount of education and training. In fact, the more well-paying occupations tend to be "men's jobs," while lower-paying occupations tend to be "women's jobs."[30] Table 7.5 shows the median weekly earnings for men and women in a variety of occupations and the percentage of men and women in those occupations.

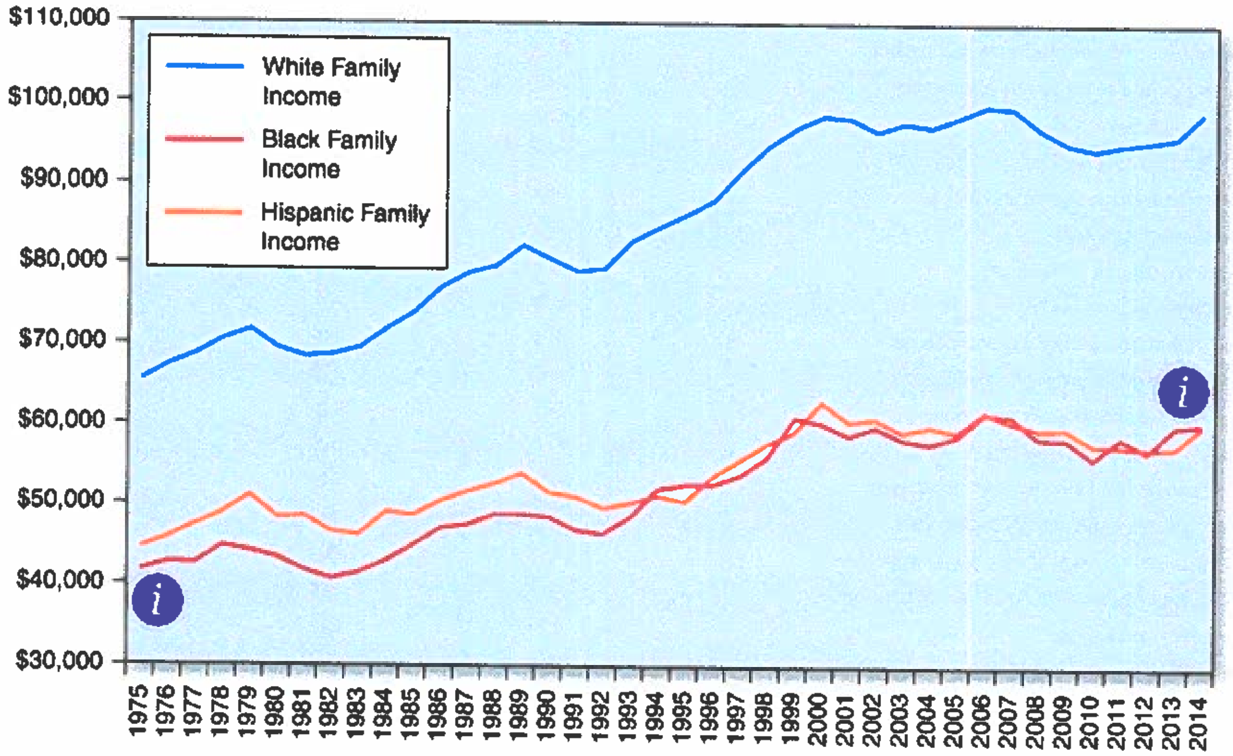
Studies also indicate that, despite two decades of women entering the workforce in record numbers, female managers still are not being promoted from middle-management positions into senior or top-management positions; it is said they encounter an impenetrable **glass ceiling** through which they may "look but not enter."[31] Consequently, although many women have moved into middle-management positions in recent years, all but a very few have been blocked from entering the top-paying executive positions. Blacks and Hispanics are in a similar situation. We noted above that there are women and minorities who are CEOs of large companies, but their number is miniscule. As of 2016, only 21 (4 percent) of the Fortune 500 companies had women as president or CEO, only 5 (1 percent) of the Fortune 500 companies had black CEOs, and only 9 (1.8 percent) had Hispanic CEOs.[32]

EDUCATION AND EMPLOYMENT CHOICES DO NOT EXPLAIN THE GAP The fact that women and minorities end up in positions that earn less than white males is not

Graphical Representation of Poverty Rates by Gender of Family-Head and by Race.

In 2014, the poverty level was set at $24,230 for a family of four. (By comparison, the average tuition, room, and board costs of attending a public four-year college during the 2015/2016 school year were about $19,548, plus another $2,500 in books and miscellaneous, for a total of about $22,048.) The graphs provide evidence that poverty is also heavily influenced by gender and race..[33, 34, 35]

Interactive



explainable in terms of the lower educational levels of minorities and women.[36] If we return to Table 7.3, we see that in 2014, the average earnings for a male, full-time, year-round worker who graduated junior college were $59,983, which is more than the $58,894 earned by a female, full-time, year-round worker who graduated from a four-year college program. In the same year, the average earnings of a white worker who attended high school but never graduated were $44,084, which is more than the $35,091 earned by a black worker who graduated high school. Moreover, the average earnings of a white worker with a college degree were $75,862, which is more than the $73,311 earned by a Hispanic worker with both a college and a master's degree.

Nor can the large disparities in earnings between white males and women or minorities be wholly accounted for by the preferences or qualifications of the two latter groups.[37] It is sometimes suggested that women *voluntarily choose* to work in those jobs that have relatively low pay and low prestige. It is suggested, for example, that women believe only certain jobs (such as secretary or kindergarten teacher) are appropriate for women, that many women choose courses of study that suit them only for such jobs, that many women choose those jobs because they plan to raise children and these jobs are relatively easy to leave and reenter, that many women choose these jobs because they have limited demands and allow them time to raise children, and that many women defer to the demands of

Table 7.5 Median Weekly Earnings of Selected Occupations and Percentage of Men and Women in Those Occupations, 2015

As the following table suggests, the higher the proportion of women in an occupation, the lower the pay for that occupation tends to be. Although there are many exceptions (some of which appear in the table), a negative correlation exists between the proportion of women in an occupation and the earnings level of that occupation: the more women in an occupation, the lower its earnings tend to be.[38]

Occupation	Weekly Earnings ($)	Percentage of Total in Occupation Who Are	
		Men (%)	Women (%)
Childcare workers	437	3	97
Receptionists	575	8	92
Licensed practical nurses	743	9	91
Bookkeepers	692	11	92
Legal assistants	927	14	86
Social workers	877	19	81
Clinical lab technicians	901	25	75
Human resources managers	1,365	27	73
Tax collectors	1,051	34	66
High school teachers	1,066	42	58
Accountants	1,132	42	58
Producers and directors	1,270	55	45
College teachers	1,258	56	43
Marketing managers	1,462	60	40
Physicians	1,824	62	38
Lawyers	1,886	63	37
Computer systems analysts	1,389	65	35
Chief executives	2,041	72	28
Computer software developers	1,682	82	18
Aerospace engineers	1,662	87	13
Electrical engineers	1,778	87	13
Airplane pilots	1,735	91	9
Engineering managers	1,899	92	8

their husbands' careers and choose to forgo developing their own careers. Choice does in fact play a role in pay differentials. As we saw, women often choose to enter occupations that already have large proportions of female workers, and those occupations tend to pay less than "men's jobs." However, researchers who have studied the differences in earnings between men and women have all concluded that the wage differences between men and women and between whites and minorities cannot be accounted for simply on the basis of such factors. One study found that only half of the earnings gap between men and women might be accounted for by women's choices, whereas other studies have found that women's choices could account for somewhat more or somewhat less of the earnings gap.[39]

All studies, however, have demonstrated that only a portion of the gap can be accounted for on the basis of male and female differences in education, work experience, work continuity, self-imposed work restrictions, and absenteeism.[40] These studies show that, even after taking such differences into account, a gap between the earnings of men and women remains that can only be accounted for by discrimination in the labor market. A report of the National Academy of Sciences concluded that about 35 to 40 percent of the difference in average wages is due to "sex segregation," which in turn is due to women being steered into lower-paying "women's jobs."[41] Some studies have shown that perhaps only one-tenth of the wage differences between men and women can be accounted for by differences in their personalities and tastes.[42] Similar studies have shown that half of the earning differences between white and minority workers cannot be accounted for by differences of work history, on-the-job training, absenteeism, or self-imposed restrictions on work hours and location.[43] One study concluded that although "discrimination cannot be measured directly" because "it is illegal," nevertheless "one way to discover discrimination is to eliminate other explanations for the pay gap" between men and women. Although "the 'explanations' for the pay gap [between men and women] are included" in a statistical analysis, the study concludes, "they cannot fully explain the pay disparity"; thus, "while discrimination cannot be measured directly, it is reasonable to assume that this pay gap is the product of gender discrimination."[44]

DIFFERENCES IN CAREER ADVANCEMENT FOR WOMEN As women advance in their careers, they often encounter barriers (again, the so-called glass ceiling) when attempting to advance into the highest-paying, top-management positions. As Table 7.5 indicates, occupations filled mostly by men are awarded the highest pay. Surveys have found that over 90 percent of newly promoted corporation chairs, presidents, and vice presidents—positions which carry the highest corporate salaries—are men. In fact, some studies have suggested that the percentage of women being promoted to the top corporate level is declining.

Another factor that contributes to the male-female earnings gap is that married women who want children, unlike married men who want children, currently encounter major difficulties in their career advancement. One survey found that 52 percent of the few married women who were promoted to vice president remained childless, whereas only 7 percent of the married men had no children. Another survey found that during the 10 years following their college graduation, 54 percent of those women who had made significant advances up the corporate ladder had done so by remaining childless. Several studies have found that women with professional careers are six times more likely than their husbands to be the one who stays home with a sick child; even women at the level of corporate vice president report that they must carry a greater share of such burdens than their husbands.[45]

Workforce Disadvantage

Minorities and women face additional instances of discrimination in the workplace.[46, 47, 48, 49, 50, 51, 52]

Interactive

New Jobs Demand More Specialized Education and Skills

When minorities hit the labor market, they find that most of the well-paying jobs awaiting them require greater skills and education than they have. Of all the new jobs that have been created during the past two decades, more than half require some education beyond high school and almost a third require a college degree. Among the fastest-growing fields are professions with relatively high education requirements, such as technicians, engineers, social scientists, lawyers, mathematicians, scientists, and health professionals. In contrast, jobs that require relatively low levels of education and skills, such as machine tenders and operators, blue-collar supervisors, assemblers, hand workers, miners, and farmers, have been declining in number. Even many jobs that require relatively low levels of skill now have tough requirements: secretaries, clerks, and cashiers need the ability to read and write clearly, understand directions, and use computers; assembly line workers are being required to learn statistical process control methods employing basic algebra and statistics. Thus, most good new jobs demand more education and higher levels of language, math, and reasoning skills.

Minorities Are Disadvantaged in Terms of Skill Levels and Education

Women Face Sexual Harassment

Quick Review 7.4
Discrimination in the United States

- The gap between average family incomes of whites and minorities has not decreased.
- Gaps between average incomes and median earnings of men and women have decreased but are still large; women earn less than less-educated men; women earn less in every occupational group.
- Gaps between the average earnings of minorities and of whites have hardly narrowed; minorities earn less than less-educated whites; the percentage of minorities in poverty is two to three times the white percentage.
- The poverty rate of families headed by women is twice that of male-headed families.
- The salaries of "women's jobs" are significantly lower than "men's jobs."
- Top-paying executive positions are filled by men; a "glass ceiling" stops women.
- The earnings gaps are not explained by education, career choices, preferences, work history, training, or absenteeism.

OTHER DISADVANTAGES FOR MINORITIES AND WOMEN Minorities entering the workforce also encounter other disadvantages that contribute to the racial wage-gap.

DAMAGE OF SEXUAL HARASSMENT A federal court vividly described the injuries that sexual harassment can inflict on a person:

> Cheryl Mathis's relationship with Mr. Sanders began on terms she described as good, but it later became clear that Sanders sought some kind of personal relationship with her. Whenever Mathis was in his office he wanted the door to outside offices closed, and he began discussing very personal matters with her, such as the lack of a sexual relationship with his wife. He then began bombarding her with unwelcome invitations for drinks, lunch, dinner, breakfast, and asking himself to her house. Mathis made it clear that she was not interested in a personal relationship with her married boss. . . . Sanders also commented on Mathis's appearance, making lewd references to parts of her body. As Mathis rejected Sanders's advances, he would become belligerent. By the spring of 1983 Mathis began to suffer from severe bouts of trembling and crying which became progressively worse and eventually caused her to be hospitalized on two separate occasions, once for a week in June, 1983, and again in July for a few days. During this entire summer Mathis remained out on sick leave, not returning to work until September, 1983. . . . As soon as she returned to work, Sanders's harassment resumed . . . and once again she was forced to seek medical help and did not work. . . . The harassment not only tormented . . . Mathis, it created hostility between her and other members of the department who apparently resented the plaintiff's familiarity with Sanders.[53]

Every year thousands of complaints of sexual harassment are filed with the EEOC. Thousands of other complaints are lodged with state civil rights commissions that enforce state civil rights laws. While the great majority of these complaints are filed by women, an increasing number are being filed by men who find themselves being forced to endure sexual advances they do not want.[54] In 2013, about 18 percent of the sexual harassment claims filed with the EEOC were filed by men; a survey found that one-third of all working men had been subjected to sexual harassment during the previous year.[55] We will discuss this topic further in Module 7.4.5.

Quick Review 7.5
Increasing Problems for Women and Minorities

- Women and minorities make up most new workers, but face significant disadvantages.
- Minorities need skills and education, but suffer a comparative lack of both.
- Women are steered into low-paying jobs and face a "glass ceiling" and sexual harassment.

7.3.4: A Reasonable Conclusion about Employment Discrimination

The various statistical comparisons that we have examined, together with the extensive research showing that these differences are not due in any simple way to differences in the preferences or qualifications of women and minorities, strongly suggest that many business organizations still harbor some degree of probably unintentional yet institutionalized discrimination, some of it no doubt a result of earlier discriminatory practices. Whether we compare average incomes, representation in the highest economic positions, or representation in the lowest economic positions, it turns out that women and minorities do not yet have opportunities equal to those of white males, even if during the last 30 years the racial and gender-based gaps have somewhat narrowed. Moreover, a number of troubling trends indicate that, unless we change the way we hire and promote people in our organizations, the situation for minorities and women will not improve.

It is important to recognize that finding that our institutions as a whole embody a degree of institutionalized discrimination does not show that any particular business organization is discriminatory. To find out whether a particular firm is perhaps unconsciously engaging in discriminatory behavior, we would have to make the same sorts of comparisons among the various employment levels of the firm that we made earlier among the various economic and occupational levels of U.S. society as a whole. To facilitate such comparisons within firms, employers today are required to report to the government the number of minorities and women their firm employs in each of the following nine categories: officials and managers, professionals, technicians, sales workers, office and clerical workers, skilled craftworkers, semiskilled operatives, unskilled laborers, and service workers.

7.4: Discrimination: Utility, Rights, and Justice

OBJECTIVE: Analyze discrimination using utilitarian, rights-based, and justice-based arguments

Given the statistics on the comparative incomes and low-status positions of minorities and women in the United States, the question we must ask ourselves is this: Are these inequalities wrong, and if so, how should businesses and managers deal with them? To be sure, these inequalities directly contradict the fundamental principles on which the United States was founded: "We hold these truths to be self-evident: that all men are created equal and endowed by their creator with certain inalienable rights."[56] However, historically we have often tolerated large discrepancies between these ideals and reality.

The ancestors of most black Americans living today were brought to this country as slaves, treated like cattle, and lived out their lives in bondage, despite the nation's ideals of equality. As the personal property of a white owner, blacks prior to the Civil War were not recognized as people and consequently had no legal powers, and no claims on their bodies or their labors. They were regarded by the U.S. Supreme Court in its 1857 Dred Scott decision as "beings of an inferior order . . . and so far inferior that they had no rights that the White man was bound to respect."[57] Women suffered marked inequality. Through much of the nineteenth century, women could not hold office, could not vote, could not serve on juries, nor bring suit in their own names. A married woman lost control over her property (which was acquired by her husband), she was considered incapable of making binding contracts, and, in an important 1873 decision (*Bradwell v. Illinois*), a married woman was declared by the U.S. Supreme Court to have "no legal existence, separate from her husband, who was regarded as her head and representative in the social state."[58]

Why are these forms of inequality wrong? Why is it wrong to discriminate? The arguments mustered against discrimination generally fall into three groups:

1. *Utilitarian arguments*, which claim that discrimination leads to an inefficient use of human resources
2. *Rights-based arguments*, which claim that discrimination violates basic human rights
3. *Justice-based arguments*, which claim that discrimination results in an unjust distribution of society's benefits and burdens

7.4.1: Utilitarian Arguments against Discrimination

The standard utilitarian argument against racial and gender-based discrimination is rooted in the idea that a society's productivity will be optimized to the extent that jobs are awarded on the basis of competency (or "merit").[59] Different jobs, the argument goes, require different skills and personality traits if they are to be carried out in as productive a manner as possible. Furthermore, different people have different skills and personality traits. Consequently, to ensure that jobs are maximally productive, they must be assigned to those individuals whose skills and personality traits qualify them as the most competent for the job. Insofar as jobs are assigned to individuals on the basis of other criteria unrelated to competency, productivity must necessarily decline. Discriminating among job applicants on the basis of race, sex, religion, or other characteristics unrelated to job performance is necessarily inefficient and, therefore, contrary to utilitarian principles.[60]

7.4.2: Rights-Based Arguments against Discrimination

Nonutilitarian arguments against racial and gender-based discrimination may take the approach that discrimination is wrong because it violates a person's basic moral rights.[61] Kantian theory, for example, holds that human beings should be treated as *ends* and never used merely as *means*. At a minimum, this principle means that each individual has a moral right to be treated as a free person equal to any other person and that all individuals have a correlative moral duty to treat each individual as a free and equal person. Discriminatory practices violate the principle in two ways:

- Discrimination is based on the belief that one group is inferior to other groups, that blacks, for example, are less competent or less worthy of respect than whites or perhaps that women are less competent or worthy of respect than men.[62] Discrimination may be based on stereotypes that see minorities as "lazy" or "shiftless" and see women as "emotional" and "weak." Such degrading stereotypes undermine the self-esteem of those groups against whom the stereotypes are directed and thereby, violate their right to be treated as equals.
- Discrimination places the members of groups who are discriminated against in lower social and economic positions: women and minorities have fewer job opportunities and are given lower salaries. Again, the right to be treated as a free and equal person is violated.[63]

A group of Kantian arguments, related to those mentioned, holds that discrimination is wrong because the person who discriminates would not want to see his or her behavior universalized.[64] In particular, the person would not want to

Two Objections to the Utilitarian Argument Against Discrimination

Critics of the utilitarian argument against discrimination have raised two objections to the utilitarian argument.[65, 66, 67, 68, 69]

Interactive

Objection 1 | Objection 2

If utilitarian arguments are correct, then jobs should be assigned on the basis of job-related qualifications only as long as such assignments will advance the public welfare. If, in a certain situation, the public welfare would be advanced to a greater degree by assigning jobs on the basis of some factor not related to job performance, then the utilitarian would have to hold that in those situations jobs should not be assigned on the basis of job-related qualifications, but on the basis of that other factor. For example, if society's welfare would be promoted more by assigning certain jobs on the basis of need (or gender or race) instead of on the basis of job qualifications, then the utilitarian would have to concede that need (or gender or race), and not job qualifications, is the proper basis for assigning those jobs.

be discriminated against on the basis of characteristics that have nothing whatever to do with the person's own ability to perform a given job. Because the person who discriminates would not want to see his or her own behavior universalized, according to Kant's first categorical imperative, it is morally wrong for that person to discriminate against others.

7.4.3: Justice-Based Arguments against Discrimination

A second group of nonutilitarian arguments against discrimination views it as a violation of the principles of justice. For example, John Rawls argued that among the principles of justice that the enlightened parties to the "original position" would choose for themselves is the principle of equal opportunity: "Social and economic inequalities are to be arranged so that they are attached to offices and positions open to all under conditions of fair equality of opportunity."[70] Discrimination violates this principle by arbitrarily closing off to minorities and women the more desirable positions in an institution, thereby not giving them an opportunity equal to that of others. Arbitrarily giving some individuals less of an opportunity to compete for jobs than others is unjust, according to Rawls.

Another approach to the morality of discrimination that also views it as a form of injustice is based on the formal *principle of justice*: individuals who are equal in all respects relevant to the kind of treatment in question should be treated equally even if they are dissimilar in other, nonrelevant respects. To many people, this principle is the defining feature of justice.[71] Discrimination in employment is wrong because it violates the basic principle of justice by differentiating between people on the basis of characteristics (race or gender) that are not relevant to the tasks they must perform. A major problem faced by this kind of argument against discrimination, however, is that of defining precisely what counts as a *relevant respect* for treating people differently and explaining why race and gender are not relevant, whereas something like intelligence or war service may be counted as relevant.

Quick Review 7.6

Arguments against Discrimination

- Utilitarian: Discrimination leads to an inefficient use of human resources, but opponents reply that some forms of discrimination may actually benefit society.
- Rights-based: Discrimination violates basic human rights by holding minorities and women as "inferior," assigning them lower social and economic positions; discrimination cannot be universalized.
- Justice-based: Discrimination results in unjust distributions of benefits and burdens according to John Rawls, and it violates the formal principle of equality by differentiating among people on the basis of characteristics that are not relevant to job performance.

7.4.4: Recognizing Discriminatory Practices

Regardless of the problems inherent in some of the arguments against discrimination, it is clear that good reasons exist for holding that discrimination is wrong. It is consequently understandable that our laws have gradually been changed to conform to these moral requirements and that recognition has grown of the various ways in which discrimination in employment occurs.[72]

Common Discriminatory Practices

Certain business practices are now widely recognized as having discriminatory outcomes, and managers should eliminate them to ensure their companies are not engaged in discrimination.

Interactive

Recruitment Practices

Firms that rely solely on the word-of-mouth referrals of present employees to recruit new workers tend to recruit only from those groups that are already represented in their labor force. Media and agency choice is another way firms may narrow their human resources (HR) searches in a discriminatory manner. When a firm's labor force is composed of only white males, this recruitment policy will tend to discriminate against minorities and women. When desirable job positions are only advertised in media (or by job-referral agencies) that are not used by minorities or women (such as in English newspapers not read by Spanish-speaking minorities) or are classified as "for men only," recruitment will be discriminatory.

Screening Practices

Promotion Practices

Conditions of Employment

Discharge

7.4.5: Specifics of Sexual Harassment

Women, as noted earlier, are victims of a particularly troublesome kind of discrimination that is both overt and coercive: **sexual harassment**. Although males are also subjected to some instances of sexual harassment, it is women who are by far the most frequent victims. For all of its acknowledged frequency, sexual harassment still remains difficult to define, to minitor, and to prevent. The EEOC published a set of guidelines defining sexual harassment and setting out what, in its view, is prohibited by the law. In their current form, the guidelines state:

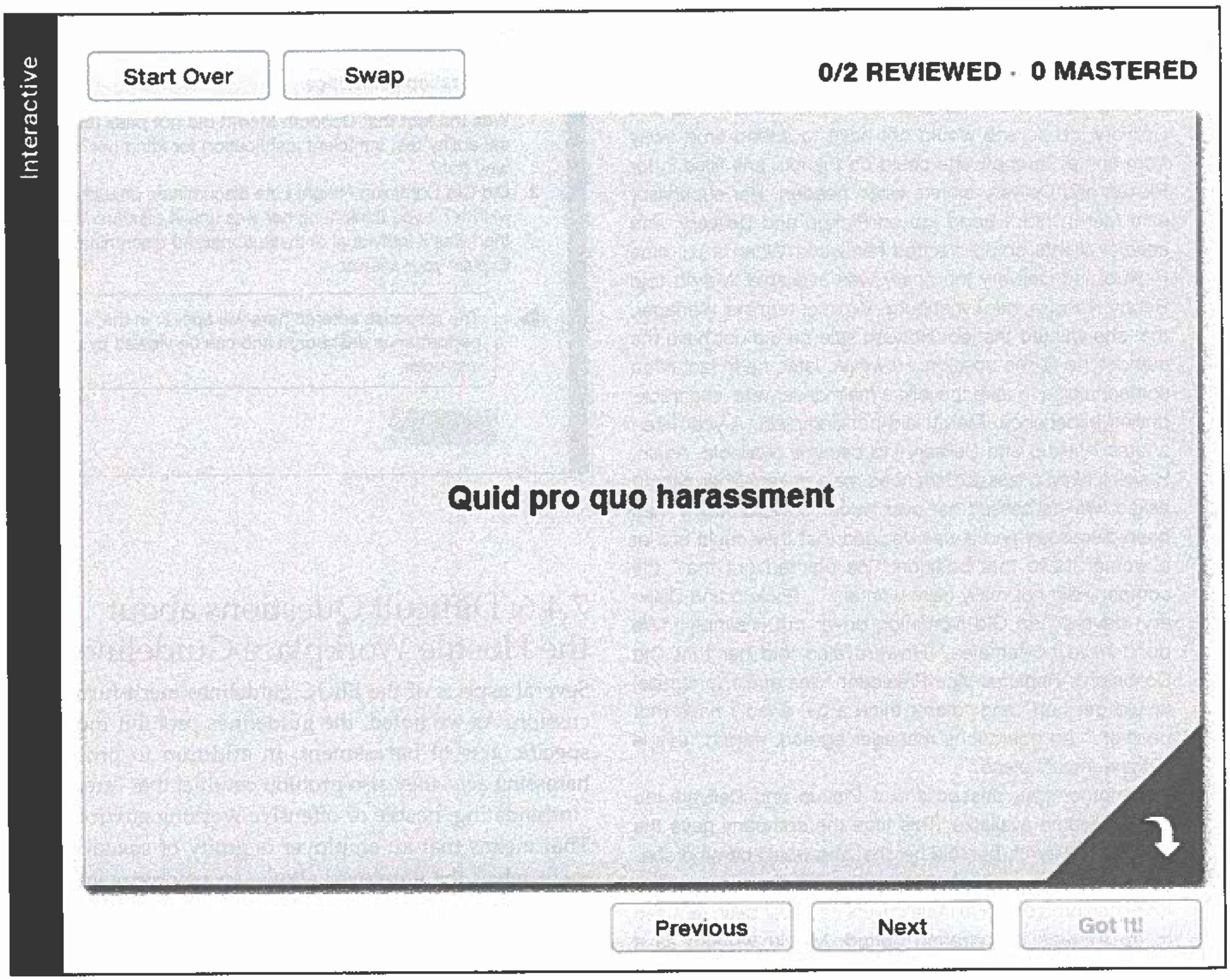
> Unwelcome sexual advances, requests for sexual favors and other verbal or physical contact of a sexual nature constitute sexual harassment when
>
> 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
> 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
> 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.[73]

The guidelines go on to explain that an employer is responsible for all sexual harassment engaged in by employees, "regardless of whether the employer knew" the harassment was occurring and regardless of whether it was "forbidden by the employer."

CLEAR MORAL JUSTIFICATION FOR THE EEOC SEXUAL HARASSMENT GUIDELINES In several major respects, the EEOC sexual harassment guidelines are clearly morally justified. They are intended to outlaw those situations in which an employee is coerced into

Sexual Harassment as Defined by EEOC

The EEOC guidelines imply that there are two distinct kinds of sexual harassment.



giving in to another employee's sexual demands by the threat of losing some significant job benefit, such as a promotion, raise, or even the job. This kind of degrading coercion inflicts great psychological harm on the employee, violates the employee's most basic rights to freedom and dignity, and is an outrageously unjust misuse of the power that a superior can exercise over subordinates. It is thus a crude violation of the moral standards of utilitarianism, rights, justice, and care.

On the Edge

Driving for Old Dominion

Old Dominion Freight Line is a trucking company that hires two kinds of drivers.[74] "Line Haul" drivers drive long distances and spend nights and weekends on the road. "Pickup and Delivery" drivers only drive locally and stay home, but they have to carry and stack heavy loads, so their job is more physically demanding. Out of 3,100 Pickup and Delivery drivers in the company, only five were women. Deborah Merritt worked for six years as a Line Haul driver, making long trips across the United States, sometimes driving over 500 miles per day. Still, she never complained and did her job well. However, Merritt wanted a Pickup and Delivery job so she would not have to spend time away from home. To show she could do the job, she filled in for Pickup and Delivery drivers when needed. Her supervisor said Merritt did a good job on Pickup and Delivery, and several clients complimented her work. When a full-time Pickup and Delivery job finally was available, Merritt told Bobby Howard, her Lynchburg, Virginia, terminal manager, that she wanted the job. Howard said he did not have the authority to fill the position. However, later, he in fact hired someone else to take the job: a male driver with less truck-driving experience. Merritt did not complain. A year later, another Pickup and Delivery job became available. Again, Howard hired a less-experienced male driver. When Merritt asked why he passed her over twice, Howard said it "had been discussed and it was decided that they could not let a woman have that position." He pointed out that "the company did not really have women. . . [Pickup and Delivery] drivers." An Old Dominion driver put it simply: "We don't have no females." Howard also told her that Old Dominion's Regional Vice President "was afraid [a female] would get hurt" and "didn't think a girl should have that position." An operations manager agreed, saying "this is not a woman's place."

Another year passed and a Pickup and Delivery job again became available. This time the company gave the position to Merritt, but told her that she would be on probation for 90 days and would lose the job if she had any performance problems. No male drivers had ever been required to go through a probation period. Merritt worked as a Pickup and Delivery driver for 90 days, and had no problems carrying freight or doing anything else required of the position. However, seven months later, she injured her ankle while moving boxes. Her doctor said she could not do Pickup and Delivery until it healed. Three months later, Merritt's ankle was well and her doctor told her "nothing . . . prevented her from performing her duties as a Pickup and Delivery driver. . . . [Her ankle was] as well, if not better, . . . than before her injury." So Merritt asked to have her Pickup and Delivery job back. However, Brian Stoddard, vice president of Safety and Personnel, said that she first had to take a "physical ability test" that would evaluate her strength, agility, and cardiovascular endurance and have her perform the tasks of a Pickup and Delivery driver. Merritt did not pass the test; but the test had been used only rarely and only when hiring new people. If male employees were injured while on the job, Stoddard admitted, he was "not necessarily going to send them for a [physical fitness] test." Moreover, Merritt said, she could obviously do the job since she did it for seven months and filled in for other drivers even longer. Nevertheless, Stoddard fired her because of her "inability to perform [the] job" as indicated by the test and later replaced her with a male driver.

WRITING PROMPT

Discrimination in Practice

1. **Was the fact that Deborah Merritt did not pass the physical ability test sufficient justification for firing her? Why or why not?**
2. **Did Old Dominion Freight Line discriminate unjustly against Merritt? If you think firing her was unjust discrimination, then was it individual or institutionalized discrimination? Explain your answer.**

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

Submit

7.4.6: Difficult Questions about the Hostile Workplace Guideline

Several aspects of the EEOC guidelines merit further discussion. As we noted, the guidelines prohibit more than specific acts of harassment. In addition to prohibiting harassing acts, they also prohibit conduct that "creates" an "intimidating, hostile or offensive working environment." That means that an employer is guilty of sexual harassment when the employer allows an environment that is hostile or offensive to women even in the absence of any particular incidents of sexual harassment. This point raises some difficult questions.

Ethical Application

Hostile Workplace

If the mechanics in a garage are accustomed to placing pin-ups in their place of work and are accustomed to recounting off-color jokes and using off-color language, are they guilty of creating an environment that is "hostile and offensive" to a female co-worker? In a well-known case, a federal court described the following real situation:

> For seven years the [female] plaintiff worked at Osceola as the sole woman in a salaried management position. In common work areas [she] and other female employees were exposed daily to displays of nude or partially clad women belonging to a number of male employees at Osceola. One poster, which remained on the wall for eight years, showed a prone woman who had a gold ball on her breasts with a man standing over her, golf club in hand, yelling "Fore!" And one desk plaque declared "Even male chauvinist pigs need love. . . . " In addition, Computer Division Supervisor Dough Henry regularly spewed anti-female obscenity. Henry routinely referred to women as "whores," "cunt," "pussy," and "tits. . . . " Of plaintiff, Henry specifically remarked, "All that bitch needs is a good lay" and called her "fat ass."[75]

Does a situation such as this represent an "intimidating, hostile, or offensive working environment," which the EEOC guidelines prohibit as sexual harassment?

Critiques of the EEOC Sexual Harassment Guidelines and Responses

Although we have argued that it is morally wrong to create a work environment that sexually harasses women, the EEOC guidelines have been criticized as imperfect or unrealistic. In turn, counterarguments address these critiques.[76, 77]

Interactive

As a primary critique of the EEOC guidelines, some critics object that these kinds of environments were not created to intentionally degrade women, but that they are part of the "social mores of [male] American workers," that it is hopeless to try to change them, and that they do not unjustly harm women because women have the power to take care of themselves. A *Forbes* magazine article, for example, asked rhetorically, "Can women really think they have the right to a pristine work environment free of rude behavior?" Such sentiments are indicative of the uncertainties surrounding this issue.

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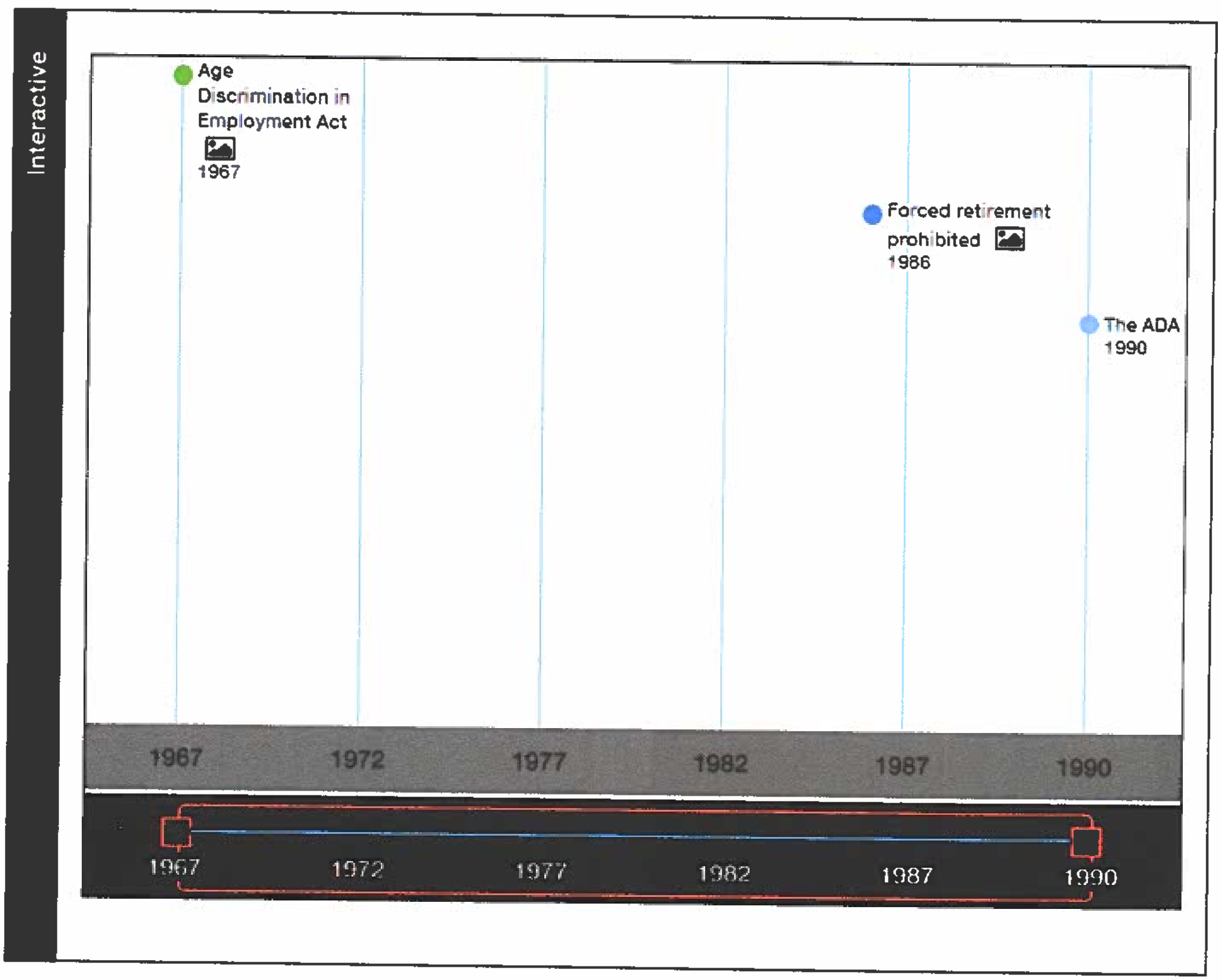
While an individual may react immediately with an answer to this question, the legal answer to the question in "Ethical Application" is unclear, and different courts have taken different positions on the question.

INTENTIONALITY, EFFECT, AND EMPLOYER RESPONSIBILITY A different question and one that is more relevant to our inquiry is this: Is it morally wrong to create or allow an "intimidating, hostile, or offensive working environment"? The answer to this question seems in general to be "yes" because such an environment is degrading, it is usually imposed by more powerful male parties upon more vulnerable female employees, and it imposes heavy costs on women because such environments tend to belittle them and make it more difficult for them to compete with males as equals.

Quick Review 7.7
Objections to the Equal Employment Opportunity Commission's Sexual Harassment Guidelines

- The guidelines prohibit "intimidating, hostile, or offensive working environment," but it is sometimes hard to distinguish this type of environment from one where male rudeness not intended to degrade women occurs.
- The guidelines prohibit "verbal or physical contact of a sexual nature" when it has the "effect of unreasonably interfering with an individual's work performance," but this seems to require use of purely subjective judgments.
- The guidelines prohibit "verbal conduct" that creates an "intimidating, hostile or offensive working environment," but this can conflict with the right to free speech.

Age Discrimination and American Disabilities Act



- The guidelines hold the employer guilty for an employee's sexual harassment even if the employer did not know nor could have prevented it; some respond that eradicating sexual harassment justifies forcing the employer to be responsible for preventing it, and that it is an "external cost" employers should internalize.

7.4.7: Beyond Race and Gender: Other Groups

Are there other groups that deserve protection from discrimination?[78] Legal protection against discrimination for older and disabled workers was enacted in the last half of the twentieth century.

Since obesity is considered a disability, the Americans with Disabilities Act prohibits discriminating against workers on the basis of their obesity. Nevertheless, because of widespread stereotypes about the abilities and capacities of older workers and workers with disabilities, subtle and overt discrimination against these groups continues to pervade the United States.[79]

Although older workers and workers with disabilities at least have some legal protections against discrimination, such protections are rare for workers with nontraditional gender identities and sexual preferences. No federal laws prohibit discrimination on the basis of sexual orientation, and only about half of the states and some cities have laws prohibiting discrimination against LGBTQ people. A court held, for example, that Liberty Mutual Insurance Company was not acting illegally when it refused to hire a male merely on the grounds that he was "effeminate," and a court also cleared Budget Marketing, Inc., of acting illegally

Peter Oiler and Winn-Dixie Stores

Winn-Dixie Stores fired Peter Oiler, a truck driver who had worked for the Louisiana supermarket chain for 21 years.

Interactive

With more than 500 stores in Florida, Alabama, Louisiana, Georgia, and Mississippi, Winn-Dixie Stores, Inc., says it aspires to be the "leading neighbourhood grocer in every market it serves."

Peter Oiler loaded groceries from the company's warehouse and drove them to Winn-Dixie stores in Louisiana and Mississippi. A good worker, he received above-average performance ratings and was promoted three times. Oiler had been married to his wife, Shirley, for 23 years.

Two years before he was fired, Oiler asked his supervisor, Greg Miles, to squelch a company rumor that he was gay. A year later, Miles met with Oiler and asked him if the rumor still bothered him. Oiler said it did because he was not gay but transgender. Oiler said he had no intention of having surgery or even of transitioning to live full-time as a woman.

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when that company fired a male who began to dress as a female prior to gender-reassignment surgery.[80]

Many managers are reluctant to hire overweight persons—a class of people that the laws of most states do not protect. For example, Philadelphia Electric Company refused to hire Joyce English on the grounds that she weighed 300 pounds and not because she was unable to perform the duties of the position for which she applied.[81] How should these groups—LGBTQ and obese persons—be protected against job discrimination? Some have argued that they should be protected on the same grounds that women and ethnic minorities are currently protected.[82] At the present time, these groups remain as vulnerable as women, minorities, older workers, and people with disabilities once were.

WRITING PROMPT

Discrimination against Transgender People

1. In relation to the ethics in the case of Winn-Dixie and Peter Oiler, do you find that Oiler experienced intentional, institutional, or some other kind of discrimination? Why?
2. If you agree that protections must be extended to transgender people, explain why.

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

Submit

Quick Review 7.8
In Addition to Race and Gender, Discrimination Can Be Based On . . .

- Age, which is protected by the Age Discrimination in Employment Act
- Disability, which is protected by the Americans with Disabilities Act
- Sexual orientation, which has few protections against discrimination
- Transgender status, which has even fewer protections against discrimination
- Obesity, which to some extent is protected by the Americans with Disabilities Act.

7.5: Affirmative Action

OBJECTIVE: Examine the policy of affirmative action from practical, legal, and moral points of view

All of the equal opportunity policies discussed in this chapter are ways of making employment decisions blind with respect to gender and race. These policies are all negative: they aim to prevent any further discrimination. Therefore, they ignore how past discrimination has left minorities and women disadvantaged in comparison to nonminorities and men. Because of past discrimination, minorities and women do not have the kind of work skills and workplace qualifications that their more advantaged white and male counterparts have been able to acquire. Women and minorities are still underrepresented in the more prestigious and well-paying economic positions, which creates stereotypical impressions that they are not well-suited for these positions or that these positions are appropriate for whites or males. Past discrimination has also placed white and male employees in decision-making positions that determine who will be hired or promoted, and, psychologists have found, from early childhood people tend to favor those who are most like themselves (although in U.S. society, both whites and blacks tend to be biased toward lighter skin).[83] The policies discussed so far do not call for any positive steps to eliminate these lingering effects of past discrimination that tend to reproduce similar (perhaps unconscious) discriminatory behaviors in the present.

To rectify the effects of past discrimination, many employers have instituted affirmative action programs designed to achieve a more representative distribution of minorities and women within the firm by giving some degree of preference to women and minorities.

7.5.1: Legal Aspects of Affirmative Action

U.S. Supreme Court decisions have not been completely clear about the legality of affirmative action programs. A large number of federal court decisions have agreed that the use of affirmative action programs to redress racial or gender imbalances that are the result of previous discriminatory hiring practices is legitimate. Moreover, the Supreme Court has ruled that companies can legally use affirmative action programs to remedy a "manifest racial imbalance" or a "historic," "persistent," and "egregious" underrepresentation of women or minorities, even if the representation was not the result of past discriminatory job practices.[84] Over the years, the Supreme Court has placed additional conditions on affirmative action programs.

Quick Review 7.9
Legal Status of Affirmative Action

- Affirmative action is legal when used to correct a racial or sexual imbalance that is the result of previous discrimination, or to correct an "egregious," "persistent," and "manifest racial imbalance" not caused by previous discrimination; it can be used in hiring but not in layoffs; it cannot use "inflexible" quotas; it must be "narrowly tailored" to achieve the program's objectives; it can be used to achieve "educational diversity" and "broadcast diversity."

What Does an Affirmative Action Program in the Workplace Involve?

The heart of an affirmative action program in the workplace is a detailed study (a "utilization analysis") of all the major job classifications in the firm.

Interactive

Purpose of the Study

The purpose of studying all the major job classifications in the firm is to determine whether there are fewer minorities or women in a particular job classification than could be reasonably expected by their availability in the local pool of workers from which the firm recruits.

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- Affirmative action cannot overrule seniority and cannot be used in government set-aside programs except as a "last resort" in an "extreme case" involving previous racial bias by the government.

7.5.2: Societal Aspects of Affirmative Action

Of course, affirmative action programs are not found only in the United States. In Canada, affirmative action programs are widely used for women, people with disabilities, Aboriginal people, and members of visible minority groups. India uses affirmative action programs particularly for members of the lowest castes who are underrepresented in schools and within government jobs. India's lowest castes, sometimes called the "Depressed Classes," include those once popularly referred to as "untouchables," people who have long been (and who in many parts of India still are) humiliated, shunned, oppressed, segregated, and impoverished, but for whom the government now reserves a certain percentage of places in schools and universities plus jobs in government. Many Chinese universities have affirmative action policies directed at several of their own ethnic minorities, while Romania uses affirmative action for the Roma people otherwise known as "gypsies." The South African government supports affirmative action programs for blacks, Indians, and coloreds. Israel uses such programs for Jewish Ethiopians. However, as in the United States, affirmative action is highly controversial and has been attacked in foreign nations.

U.S. Supreme Court Rulings on Affirmative Action Programs

Based on U.S. Supreme Court decisions, race or gender can be only one of several factors affirmative action programs consider when making decisions about individuals; affirmative action targets cannot be inflexible "quotas"; and affirmative action programs must be temporary and must be "narrowly tailored" to achieve their objectives. Finally, affirmative action can be used to achieve "diversity," at least by educational institutions and, apparently, even by the government when it distributes broadcast licenses.[85, 86, 87, 88, 89]

Interactive

Supreme Court Decision in 1984

In June 1984, the Supreme Court ruled that companies may not set aside the seniority of white workers during layoffs in favor of women and minority workers hired under affirmative action plans as long as the seniority system was adopted without a discriminatory motive. Thus, although affirmative action programs that give preference to women or minorities as a group were not declared illegal, their effects could disappear during hard times because *the last hired, first-fired* rule of seniority would hit strongest at women and minorities recently hired through the programs. The 1984 Supreme Court decision also included a nonbinding advisory statement that

> If individual members of a . . . class demonstrate that they have been actual victims of the discriminatory practice, they may be awarded competitive seniority and given their rightful place on the seniority roster. However, . . . mere membership in the disadvantaged class is insufficient to warrant a seniority award; each individual must prove that the discriminatory practice had an impact on him.

Supreme Court Decision in 1986

Later Supreme Court Decisions

7.5.3: Compensation Arguments for Affirmative Action

Arguments that defend affirmative action as a form of compensation are based on the concept of compensatory justice.[90] Compensatory justice implies that people have an obligation to compensate those whom they have intentionally and unjustly wronged. Affirmative action programs are then interpreted as a form of reparation by which white male majorities now compensate women and minorities for unjustly injuring them by discriminating against them in the past. One version of this argument holds, for example, that blacks were wronged in the past by U.S. whites and that consequently the former should now receive compensation from whites.[91] Programs of preferential treatment provide that compensation.

The difficulty with arguments that defend affirmative action on the basis of the principle of compensation is that the principle requires that compensation should come only from those specific individuals who intentionally inflicted a wrong, and it requires them to compensate only those specific individuals whom they wronged. For example, if five red-haired persons wrongfully injure five black-haired persons, then compensatory justice obligates only the five

Objection and Answers Concerning Affirmative Action Programs

Affirmative action programs have been attacked mainly on the grounds that, in attempting to correct the effects of past discrimination, the programs themselves have become racially or sexually discriminatory.[92, 93, 94, 95]

Interactive

Argument: Reverse Discrimination against White Males

By showing preference to minorities or women, critics argue, the programs institute a form of reverse discrimination against white males. A 45-year-old electrical worker, for example, is quoted as saying:

> What does bother me is the colored getting the preference because they're black. This I am against. I say, I don't care what his color is. If he has the ability to do the job, he should get the job—not because of his color. They shouldn't hire 20 percent just because they're black. This is discrimination in reverse as far as I'm concerned. . . . If they want it, they can earn it like I did. I am not saying deprive them of something—not at all.

Affirmative action programs are said to discriminate against white males by using a nonrelevant characteristic—race or sex—to make employment decisions, and this, critics argue, violates justice by violating the principles of equality and equal opportunity.

Counterarguments: Compensation for Past Harm and Achieving Social Goals

red-haired persons to give to only the five black-haired persons whatever the black-haired persons would have had if the five red-heads had not injured them. Compensatory justice, however, does not require that compensation should come from all the members of a group that contains some wrongdoers, nor does it require that compensation should go to all the members of a group that contains some injured parties. In this example, although justice requires that the five red-haired persons must compensate the five black-haired persons, it does not require that all red-haired persons should compensate all black-haired persons. By analogy, only the specific individuals who discriminated against minorities or women in the past should now be forced to make reparation of some sort, and they should make reparation only to those specific individuals against whom they discriminated.[96]

Although affirmative action programs usually benefit all the members of a racial or gender-based group, regardless of whether they specifically were discriminated against in the past, and because these programs hinder every white male regardless of whether he specifically discriminated against someone in the past, it follows that such preferential programs cannot be justified on the basis of compensatory justice.[97] In short, affirmative action programs are unfair because the beneficiaries of affirmative action are not the same individuals who were injured by past discrimination, and the people who must pay for their injuries are usually not the ones who inflicted those injuries.[98]

COUNTERING THE OBJECTION TO COMPENSATION Various authors have tried to counter the objection to the "affirmative action as compensation" argument by claiming that actually *every* black person (or every woman) living today has been injured by discrimination and that *every* white person (or every male) has benefited from those injuries. For example, the well-known philosopher Judith Jarvis Thomson wrote:

> But it is absurd to suppose that the young blacks and women now of an age to apply for jobs have not been wronged. . . . Even young blacks and women have lived through downgrading for being black or female. . . . And even those who were not themselves downgraded for being black or female have suffered the consequences of the downgrading of other blacks and women: lack of self-confidence and lack of self-respect.[99]

Philosopher Martin Redish wrote:

> It might also be argued that, whether or not the [white males] of this country have themselves participated in acts of discrimination, they have been the beneficiaries—conscious or unconscious—of a fundamentally racist society. They thus may be held independently "liable" to suppressed minorities for a form of unjust enrichment.[100]

It is unclear whether these arguments succeed in justifying affirmative action programs that benefit groups (all blacks and all women) instead of specific injured individuals and that penalize groups (white males) instead of specific wrongdoers.[101] Has every minority and woman really been injured, as Thomson claims, and are all white males really beneficiaries of discrimination as Redish implies? Even if a white male happens (through no fault of his own) to benefit from someone else's injury, does this make him "liable" for that injury?

Quick Review 7.10
Compensation Argument for Affirmative Action

- It claims affirmative action compensates groups for past discrimination.
- It is criticized as unfair because those who benefit were not harmed and those who pay did not injure, which are requirements of compensatory justice.
- Some argue in response to this criticism that discrimination has harmed all minorities and women, and all whites and males have benefited from it.

7.5.4: Affirmative Action as an Instrument for Increasing Utility

A second set of justifications advanced in support of affirmative action programs is based on the idea that these programs are morally legitimate instruments for achieving morally legitimate ends. For example, utilitarians have claimed that affirmative action programs are justified because such programs promote the public welfare.[102] They have argued that past discrimination has produced a high degree of correlation between race and poverty.[103] As racial minorities were systematically excluded from better-paying and more prestigious jobs, their members have become impoverished. The kinds of statistics cited earlier in this chapter provide evidence of this inequality. Impoverishment in turn has led to unmet needs, lack of self-respect, resentment, social discontent, and crime. Therefore, the public welfare is promoted if the position of these impoverished persons is improved by giving them special educational and employment opportunities. If opponents object that such affirmative action programs are unjust because they distribute benefits on the basis of an irrelevant criterion such as race, the utilitarian can answer that *need*, not race, is the criterion by which affirmative action programs distribute benefits. Race provides an inexpensive *indicator* of need because past discrimination has created a high correlation between race and need. Need, of course, is a just criterion of distribution.[104] Appealing to the reduction of need is consistent with utilitarian principles because reducing need will increase total utility.

The major difficulties encountered by these utilitarian justifications of affirmative action have concerned two areas:

1. Some have questioned whether the social costs of affirmative action programs (such as the frustrations felt by white males) outweigh their obvious benefits.[105] The utilitarian defender of affirmative action, of course, will reply that the benefits far outweigh the costs.
2. More important, opponents of the utilitarian justifications of affirmative action have questioned the assumption that race is an appropriate indicator of need. It may be inconvenient and expensive to identify the needy directly, critics argue, but the costs might be small compared with the gains that would result from having a more accurate way to identify the needy.[106] Utilitarians answer this criticism by arguing that all minorities (and women) have been impoverished and psychologically harmed by past discrimination. Consequently, race (and gender) provide accurate indicators of need.

Quick Review 7.11
Utilitarian Argument for Affirmative Action

- It claims affirmative action reduces need by benefiting minorities and women in need, and so increases utility.
- It is criticized on grounds that its costs outweigh its benefits and that other ways of reducing need will produce greater utility.

7.5.5: Equal Justice Argument for Affirmative Action

Although utilitarian arguments in favor of affirmative action programs are quite convincing, the most elaborate and persuasive array of arguments advanced in support of affirmative action is the equal justice argument, which proceeds in two steps. First, supporters argue that the end envisioned by affirmative action programs is equal justice. Second, they argue that affirmative action programs are morally legitimate means for achieving this end.

ARGUMENTS CENTERING ON PREFERENTIAL TREATMENT Is preferential treatment a morally legitimate means for attaining a more just society? Three reasons have been advanced to show that it is not.

It is often claimed that affirmative action programs are a form of "reverse discrimination" against white males.[114] Supporters of affirmative action programs, however, have pointed out that there are crucial differences between the treatment accorded to whites by affirmative action programs and unjust discrimination.[115]

To discriminate, as we indicated earlier, is to make an adverse decision against the member of a group because members of that group are considered inferior or less worthy of respect. Preferential treatment programs, however, are not based on invidious contempt for white males. On the contrary, they are based on the judgment that white

Affirmative Action and Distributive Justice

The basic end that affirmative action programs are supposed to achieve—equal justice—is characterized by various positive goals. Three goals are described here, followed by a description of the ultimate end, a more just society.[107, 108, 109, 110, 111, 112, 113]

Interactive

Goal 1: Distribute Society's Benefits and Burdens

In our present society, it is argued, jobs are not distributed justly because they are not distributed according to the relevant criteria of ability, effort, contribution, or need. Statistics show that jobs are in fact still distributed according to race and gender. One end of affirmative action is to bring about a distribution of society's benefits and burdens that is consistent with the principles of distributive justice and that eliminates the important position race and gender currently have in the assignment of jobs. In our present society, women and minorities do not have the equal opportunities that white males have and that justice demands. Statistics prove this point. This lack of equal opportunity is because of subtle racist and sexist attitudes that bias the judgments of those (usually white males) who evaluate job applicants and that are so deeply entrenched that they are virtually ineradicable by good-faith measures in any reasonable period of time.

Goal 2: Neutralize Conscious and Unconscious Bias

Goal 3: Neutralize Competitive Disadvantages

Ultimate End: Seek a More Just Society

males are currently in an advantaged position and that others should have an equal opportunity to achieve the same advantages. Moreover, racist or sexist discrimination is aimed at destroying equal opportunity. Preferential treatment programs are aimed at restoring equal opportunity where it is absent. Thus, preferential treatment programs cannot accurately be described as "discriminatory" in the same immoral sense that racist or sexist behavior is discriminatory.

It is sometimes claimed that preferential treatment violates the principle of equality ("Individuals who are equal in all respects relevant to the kind of treatment in question should be treated equally") by allowing a nonrelevant characteristic (race and sex) to determine employment decisions.[116] Defenders of affirmative action programs have replied that sexual and racial differences are now relevant to making employment decisions. These differences are relevant because when society distributes a scarce resource (such as jobs), it may legitimately choose to allocate it to those groups that will best advance its legitimate ends.

In our present society, allocating scarce jobs to women and minorities will best achieve equality of opportunity, thus race and sex are now relevant characteristics to use for this purpose. Moreover, as we have seen, the reason that we hold that jobs should be allocated on the basis of job-related qualifications is that such an allocation will achieve a socially desirable (utilitarian) end: maximum productivity.

When this end (productivity) conflicts with another socially desirable end (a just society), it is legitimate to pursue the second end even if doing so means that the first end will not be as fully achieved.

DOES AFFIRMATIVE ACTION DO MORE HARM THAN GOOD? Some critics have objected that affirmative action programs actually harm women and minorities because such programs imply that women and minorities are so inferior to white males that they need special help to compete.[117] This attribution of inferiority, critics claim, is debilitating to minorities and women and ultimately inflicts harms that are so great they far outweigh the benefits provided by such programs.

In a widely read and much-acclaimed book, for example, black author Shelby Steele criticized affirmative action in business and education because, he wrote, after 20 years, it has proved to be "more bad than good."[118] Specifically, he writes, in affirmative action programs, "the quality that earns us preferential treatment is an implied inferiority." According to Steel, even when a black person does not see such implied inferiority in preferential treatment, "he knows that whites do," so "the result is virtually the same." Preferential treatment, he claims, is "the lowering of normal standards" in order to increase black representation, and such a lowering of standards leads blacks who are measured by those lower standards to suffer a "debilitating doubt" that may be "unrecognized" but nevertheless becomes a "preoccupation" that "undermines" their ability to perform, especially in integrated situations.

ARGUMENTS FAVOR AFFIRMATIVE ACTION AS MORALLY PERMISSIBLE Strong arguments can be made in support of affirmative action programs, and strong objections can be lodged against them. Because there are such powerful arguments on both sides of the issue, the debate over the legitimacy of affirmative action programs continues to rage without resolution. However, the review of the arguments seems to suggest that affirmative action programs are at least a morally permissible means for achieving just ends, even if they may not show that they are a morally required means for achieving those ends.

Quick Review 7.12
Equal Justice Argument for Affirmative Action

- It claims affirmative action will secure equal opportunity by a fairer distribution of jobs, by neutralizing the effects of unconscious bias that affects judgments about minorities and women, and by placing women and minorities in less disadvantaged and more competitive positions in competitions with males and whites.
- It claims affirmative action is a morally legitimate means for securing equal opportunity. It is not a form of "reverse discrimination" because it is not based on invidious judgments of male inferiority nor does it aim to destroy equal opportunity; it does not use nonrelevant characteristics, since race and sex are relevant in this limited context; and it does not harm minorities and women, and any potential harm would be less than the harm inflicted by current unconscious discrimination.

7.5.6: Implementing Affirmative Action and Managing Diversity

Opponents of affirmative action programs have argued that other criteria besides race and sex have to be weighed when making job decisions in an affirmative action program. Opponents have argued the following:

1. If sex and race are the only criteria used, this will result in the hiring of unqualified workers and a consequent decline in productivity.[119]
2. Many jobs have a significant impact on the lives of others or are critical to the success of the firm. Consequently, if a job has a significant impact on life or health (e.g., it affects the safety of others such as the job of flight controller or surgeon) or the entire success of the company, then criteria other than race or sex

Views That Counter the More-Harm-Than-Good Objection

Shelby Steele's eloquently expressed view is not idiosyncratic. It is a view that many other minorities have come to hold. Yet the objection to affirmative action programs that essentially says it does more harm than good has met with several responses.[120, 121, 122]

Interactive

1. Benefits Outweigh Costs

Although many minorities concede that affirmative action carries some costs for minorities, they also hold that the benefits of such programs still outweigh the costs. For example, a black worker who won several jobs through affirmative action is reported as saying, "I had to deal with the grief it brought, but it was well worth it."

2. The Law Can Counter Biased Decisions

3. History of Overt Racism and Discrimination is Predominant

4. Beneficiaries Have No Cause to Feel Inferior

should have a prominent place and can override affirmative action.[123]

3. Affirmative action programs, if continued, will turn us into a more racially and sexually conscious nation.[124] Consequently, the programs should cease as soon as the defects they are meant to remedy are corrected.

The following guidelines have been suggested as a way to fold these sorts of considerations into an affirmative action program when minorities are underrepresented in a firm:[125]

1. Both minorities and nonminorities should be hired or promoted only if they reach certain minimum levels of competency or are capable—after training or education—of reaching such levels in a reasonable time.
2. If the qualifications of the minority candidate are equal to (or higher or only slightly less than) those of the nonminority, then the minority should be given preference.
3. If both the minority and nonminority candidates are adequately qualified for a position but the nonminority candidate is clearly more qualified, then:
   a. If performance in the job directly affects the lives and safety of people (such as a surgeon or an airline pilot) or if performance on the job has a substantial and critical effect on the entire firm's success (such as head comptroller), then

Special Needs of Women and Minorities in the Workplace

Both women and minorities encounter special workplace problems and companies need to devise innovative means to address these needs. Despite societal changes, the balance of family and work remains more difficult for women, who physically bear children and who, in our culture, carry most of the burden of raising and caring for them.[126, 127, 128]

Interactive

Some people have suggested that companies could create two career tracks for women: one track for women who indicate that they plan to have and actively participate in raising their own children while pursuing their careers, and the other track for women who either plan not to have children or plan to have others (husbands or childcare providers) raise their children while they devote themselves to pursuing their careers by putting in extra hours, making sacrifices in their personal lives, traveling, transferring, and relocating to advance their careers, and taking every opportunity for professional development.

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the more qualified nonminority should be given preference.

b. If the position (like most positions in a firm) does not directly involve safety factors and does not have a substantial and highly critical effect on a firm's success, then the minority person should be given preference.

4. Preference should be extended to minority candidates only as long as their representation throughout the various levels of the firm is not proportional to their availability.

THE ROLE OF BUSINESS ACCOMMODATION The success or failure of an affirmative action program also depends in part on the accommodations a company makes to the special needs of a racially and sexually diverse workforce.

CONSISTENT WITH MORAL PRINCIPLES, BUT DEBATE CONTINUES The controversy over the moral propriety of affirmative action programs has not yet disappeared. The U.S. Supreme Court has ruled that such programs do not violate the Civil Rights Act of 1964. It does not follow that these programs do not violate any moral principles. If the arguments examined are correct, however, then affirmative action programs are at least consistent with moral principles. However, the arguments continue to be the subject of intense debate.

Web Resources

Readers who want to conduct online research on the topic of discrimination might want to begin by accessing the web page of the U.S. Census Bureau for current detailed statistics on income, earnings, poverty, and other topics (*http://www.census.gov*), the Bureau of Labor Statistics (*http://www.bls.gov*), or the Equal Employment Opportunity Commission (*http://www.eeoc.gov*). The legal aspects of discrimination can be researched at the "Civil Rights Law" section of the Hieros Gamos website (*http://www.hg.org/civilrgt.html*). Patrick McCarthy's Review of Court Decisions on Workplace Discrimination provides useful summaries and links to key U.S. Supreme Court cases on job discrimination, although it is no longer regularly updated (*http://www.mtsu.edu/~pmccarth/eeocourt.htm*); EEOC Newsroom provides ongoing summaries and links to key stories on discrimination cases and developments (*https://www.eeoc.gov/eeoc/newsroom/*); the Oyez website provides useful summaries and links on current and previous U.S. Supreme Court cases on civil rights and discrimination (*https://www.oyez.org/cases/1850-1900/109us3*). For materials on affirmative action and racial discrimination in general, check out Vernellia R. Randall's website (*http://racism.org*).

SHARED WRITING

Background and Research on Discrimination

1. In your judgment, was the historical shift in emphasis from intentional/isolated discrimination to unintentional/institutionalized discrimination good or bad? Justify your judgment.
2. Research your library or the Internet (e.g., the U.S. Census Bureau at *http://www.census.gov*) for statistics published during the last year that tend to support or refute the statistical picture of racism and sexism developed in Module 7.3 of this chapter. In view of your research and the materials in the text, do you agree or disagree with the statement, "Discrimination is no longer a major problem in the United States"? Explain your position fully.

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

Submit

0 characters | 140 minimum

SHARED WRITING

For and against Affirmative Action

1. Compare and contrast the three main arguments against racial and gender-based job discrimination. Which of these seem to you to be the strongest? The weakest? Can you think of different kinds of arguments not discussed in the text? Are there important differences between racial discrimination and gender-based discrimination?
2. Compare and contrast the main arguments used to support affirmative action programs. Do you agree or disagree with these arguments? If you disagree with an argument, state clearly which part of the argument you think is wrong, and explain why it is wrong. (It is not enough to say, "I just don't think it is right.")

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

Submit

0 characters | 140 minimum

Case Study 7.1: Should Kroger Pay Now for What a Ralphs' Employee Did in the Past?

The Kroger Company, a Cincinnati-based firm that operates 2,500 supermarkets in 32 states, acquired the Ralphs chain of 450 supermarkets in 1998 when it bought Fred Meyer Inc., which had acquired Ralphs the year before. Kroger had a reputation for being a well-run company, with progressive and exemplary employee policies. According to company spokesman Gary Rhodes, for example, "Kroger has had a written policy prohibiting sexual harassment since the 1980s. It includes a procedure that enables employees to point out any concerns to the company. All complaints are thoroughly investigated."[1] The company had a zero-tolerance policy for sexual harassment.

A Verdict of Sexual Harassment

On June 1, 1998, the jury reached a two-part verdict in the case involving Roger Misiolek:

- In the first phase of the trial, the jury found the supermarket chain liable for gender harassment, failure to prevent gender harassment, and malice or oppression based on a conscious disregard of the rights or safety of others.
- In the second (penalty) phase of the trial, the jury awarded the six women \$550,000 in compensatory damages and \$3.325 million in punitive damages. Kroger Co., of course, would ultimately have to pay those damages.

Part of the June 1, 1998, verdict, however, was set aside almost immediately. California Judge Joan Weber, who presided over the trial, discovered that one of the jurors was a shareholder of Ralphs. Moreover, during the jury's deliberations, that juror had looked up Ralphs' net worth and shared this information with other jurors, disputing the expert testimony that had been offered in court on what Ralphs' real net worth was. The jurors had relied on information about the company's net worth to decide what punitive damages they should impose on the company during the penalty phase of the trial.

Ralphs asked that the case be retried. Judge Weber, however, ruled that the juror's misconduct affected only the penalty phase of the trial, and so only the penalty for punitive damages needed to be retried. Judge Weber's decision was upheld on appeal. The six women and their lawyers would have to return to court to retry the penalty phase of the trial.

In 1999, Misiolek had been demoted to working on a loading dock. However, he continued working for Ralphs for more than a year after Kroger took over Ralphs. In early 2000, Ralphs' management sent Misiolek a disciplinary letter, claiming that he had continued to make sex- and race-based insults against Ralphs' employees and had continued to touch women inappropriately. Fourteen months after Kroger acquired Ralphs, the company finally suspended Misiolek, and he subsequently quit. In his resignation letter to Ralphs, Misiolek continued to deny the accusations against him.

The one-month trial for the penalty phase of the case took place in 2002 and was presided over by Judge Michael Anello. This time, there was less dispute over the net worth of Ralphs because the jurors had available the exact price that Fred Meyer Inc. had paid for Ralphs in 1996 and that Krogers had subsequently paid in 1997. The penalty phase concluded on April 5, 2002, when the jury announced that it had awarded each of the six women $550,000 as compensation for emotional damage the harassment had caused them and $5 million each in punitive damages, for a total award of $33.3 million.

The award was among the largest ever for a sexual harassment case in the United States, and came as a surprise to Kroger, who had hoped it would be substantially less. The women's lawyer declared that the award was appropriate since the company "knew it was happening, but chose not to take any effective action. All they would do was transfer the victims away." After the trial, the women's lawyer told jurors that the judge had not allowed him to present evidence that Misiolek had been harassing women for 10 years before he was put in charge of the Ralphs store in Escondido. One woman who worked for Misiolek in 1985

Kroger Acquires a Case of Sexual Harassment

Roger Misiolek, an employee of the Ralphs grocery store chain, had a proven history of harassing female employees.

Interactive

On Friday, April 5, 2002, managers of Kroger were stunned to learn that its relatively new subsidiary, Ralphs, was being told to pay compensatory and punitive damages totaling $30.6 million—the largest sexual harassment verdict ever in California, and the second-largest in the history of the United States—for the actions of Roger Misiolek, a Ralphs store manager accused of harassing six female employees at a Ralphs supermarket in Escondido, California, during 1995 and 1996. It seemed especially unfair that Kroger would have to pay for alleged injustices that had occurred before Kroger even owned Ralphs.

The harassment suit against Ralphs had been filed in 1996 by six women—Dianne Gober, Sarah Lange, Terri Finton, Peggy Noland, Suzanne Pipiro, and Tina Swann—all of whom were employees of a Ralphs store in Escondido, California. Four of the women worked as grocery cashiers, one was a bookkeeper, and one was the manager of the bakery department in the Escondido market. The trial began in April 1998 and concluded on June 1, 1998. During the trial, the women testified that Roger Misiolek, manager of the store where they worked, began to harass them immediately after he took over the store in 1995. The harassment continued through the rest of 1995 and into 1996. The women claimed that he touched them inappropriately, verbally abused them with profanity, and that on certain occasions, he shoved shopping carts at them, and threw objects at them including telephones, clipboards, and, in one instance, a 30-pound mailbag. One woman testified that Misiolek used foul language and racial slurs against her, fondled her against her will, and threw pens and a 12-pack of soda at her. A cashier testified that Misiolek suggestively touched, grabbed, hugged, and patted her. Another testified that he repeatedly asked her about her sex life. According to the four cashiers, Misiolek would come to their grocery checkout stand, squeeze into the small area with them so body-to-body touching would occur, and grab them around the waist.

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allegedly said he called her a "dirty Mexican" and threw things at her, while a black woman said he had told her in 1992, "You can call me, 'Yessuh, boss.'" One of the jurors, John Adair, declared that he felt the penalty was too small because the company should have been penalized at least 1 percent of its $3.7 billion net worth.

The Verdict Set Aside and Reduced Damages Awarded

Nevertheless, a few months after the trial ended, the verdict of the jurors was set aside again. Judge Michael Anello issued an order on July 15, 2002, which argued that the damages awarded to the six women was "grossly excessive" and the result of the jury's "passion and prejudice." In his order, Judge Anello conceded that Misiolek's behavior was "utterly despicable." However, he continued, "there was no evidence to support the conclusion that Misiolek was a managing agent of Ralphs, and the evidence was insufficient to support the conclusion that Ralphs approved of or ratified Misiolek's conduct." Misiolek was not acting on behalf of Ralphs when he harassed the women, claimed the judge, nor was the harassment ordered by the company's management. It was, instead, the isolated action of a single manager. The company as a whole should therefore not be held responsible for his actions, the judge argued. Instead, the jury should have punished the company only for the specific actions of Misiolek's supervisors who allowed him to run the Escondido store after they had received complaints from other women about his behavior. The actions of this handful of managers did not merit a penalty of $30.6 million against the entire company. Moreover, said Judge Anello, the punitive damages (which were about 60 times the $550,000 awarded as compensatory damages by the second jury) were not reasonably related to the compensatory damages. In addition, the compensatory damages the second jury had awarded each woman ($550,000) were themselves excessive and should also be set aside.

Finally, the $30.6 million exceeded the amount needed to punish Ralphs and to deter other companies from doing the same in the future. Anello concluded by reducing the $30.6 million award to $8.25 million. According to the judge, the punitive damages each of the women should receive should be no more than 15 times the amount of compensatory damages the first jury had awarded them. This meant that Dianne Gober should receive $3 million, Tina Swann should receive $1.5 million, Finton and Lang should each receive $934,500, Noland should get $750,000, and Papiro should receive $1.125 million. The judge gave the six women 10 days to make up their minds whether to accept his reduced award, or to agree to a third trial.

On July 24, 2002, two of the women, Dianne Gober and Tina Swann, agreed to accept the judge's reduced award equal to 15 times the compensatory damages awarded by the jury in their first trial. The other four women decided to reject the smaller awards and to return to the courtroom for yet another trial as the judge promised they could do. One of the lawyers for the women angrily stated that the reduced awards failed to punish Ralphs, would fail to deter similar activity from other companies, and failed to serve as an example to others, as punitive damages are supposed to do.

For four years the case slowly wound its way through the court system as both sides filed repeated appeals. However, the 10-year-old case reached its final conclusion on March 1, 2006, when the case came before the Court of Appeal for the Fourth District, Division 1, of California. The court of appeal, in what appeared to be a reprimand to the four remaining female victims, ruled that they were entitled to punitive damages equal to only 6 times the compensatory damages awarded by the jury in their first trial, much less than the punitive award of 15 times the compensatory damages that had been offered by the judge four years earlier on July 24, 2002! This ruling meant that instead of the $934,500 Finton and Lang had each been offered in 2002, they each would now receive only $375,000; instead of the $750,000 Noland had been offered in 2002, she would now receive only $300,000; and instead of the $1.25 million Papiro had been offered in 2002, she would now receive only $450,000. If the women's lawyers had thought that the 2002 punitive amounts were such negligible sums to a company the size of Kroger that they neither punished the company nor served as a deterrent, then the 2006 amounts the women were given for what they had gone through while working at Ralphs perhaps did not even register as a slap on the company's figurative wrists.

WRITING PROMPT

Complexities of the Case

1. **Assuming that the store and district managers of Ralphs received complaints about Misiolek's behavior starting in 1985, but that these complaints did not reach Ralphs' headquarters in Compton, do you believe that the judge is right in holding that the company as a whole should not be held responsible for his actions? Should the company be held responsible for policies that prevent complaints from reaching headquarters?**
2. **What kind of penalty do you believe would be appropriate for Ralphs? In your view, was the initial $33.3 million penalty excessive? Explain. Was the final 2006 judgment fair? Explain.**
3. **Should Kroger have to pay for events that happened before it took over the chain of supermarkets?**
4. **What can a company do to make sure that a situation like Misiolek's does not occur? Why do you think Ralphs allowed Misiolek to continue managing stores?**

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

Submit

Case Notes

1. This case is based on the following sources: Jim McNair, "Subsidiary of Kroger Loses $30.6M Lawsuit," *Cincinnati Enquirer*, April 9, 2002; Alexei Oreskovic, "$30M Awarded in Sex Harassment Suit," *Recorder*, April 10, 2002; "Post-Verdict, Jury Learns of Other Allegations," *ABCNEWS.com*, June 20, 2002; Davan Maharaj, "$3.3-Million Judgment against Ralphs Tossed Out," *Los Angeles Times*, July 24, 1998; Onell Soto, "Ralphs to Pay $30 Million over Sexual Harassment," *San Diego Union-Tribune*, April 7, 2002; Onell Soto, "Harassment Award against Ralphs Cut," *San Diego Union-Tribune*, July 17, 2002; Lisa Girion, "$30.6 million Judgement against Ralphs Slashed,"

Los Angeles Times, July 17, 2002; Lisa Girion, "Harassment Verdict Prompts Review," *Los Angeles Times*, April 9, 2002; Davan Maharaj, "Ralphs Fights Record Award," *Los Angeles Times*, July 23, 1998; Lisa Girion, "6 Women Win Suit against Employer Ralphs," *Los Angeles Times*, April 6, 2002; Margaret Fisk, "$3.3 M Award Swells to $30 M," *National Law Journal*, April 15, 2002; Alexei Oreskovic, "$30 Million Verdict Cut," *National Law Journal*, July 22, 2002; "Harassment in the Supermarket," *ABCNEWS.Com*, June 30, 2002; and the court decisions online at https://nosexualharassment.com, including in particular Gober v. Ralphs Grocery Co. (2006) 137 Cal. App.4th.

Case Study 7.2: Wal-Mart's Women

On April 26, 2010, the full 11-member Ninth Circuit U.S. Court of Appeals in San Francisco ruled in a 137-page opinion (*Betty Dukes et al. v. Wal-Mart Stores, Inc.*) that a case accusing Wal-Mart Stores, Inc. of discriminating against its U.S. female workers could proceed to trial as a class action lawsuit, thereby reaffirming most of the earlier 2007 and 2004 rulings of three members of the Ninth Circuit Court of Appeals as well as earlier district court rulings.[2] The women, according to the 2010 court of appeals opinion, "allege that women employed in [domestic] Wal-Mart stores:

1. Are paid less than men in comparable positions, despite having higher performance ratings and greater seniority; and
2. Receive fewer—and wait longer for—promotions to in-store management positions than men."

The case, the largest ever in American civil rights history, had been launched almost a decade earlier by six American women who had worked in 13 Wal-Mart stores. They were asking the company to compensate them and any other women who had worked for Wal-Mart in the United States since December 26, 1998, for the many years of injury they had suffered as a result of the company's sexual discrimination. Several analysts noted that if Wal-Mart were to lose the case, it would cost the company many billions of dollars since the allegedly injured group would include all women employees subjected to discrimination at Wal-Mart's 3,400 stores hired since December 26, 1998, a group estimated to include as many as 1.5 million to 2 million women. While the 2010 decision allowed all women who were working for Wal-Mart when the lawsuit was filed to be part of this injured group, it ruled that a lower district court would have to decide how to handle any women who worked for Wal-Mart after December 26, 1998, but who were no longer working for Wal-Mart the day the lawsuit was filed.

About the Company

Wal-Mart Stores, Inc., the world's biggest retailer, owns more than 8,400 stores, including 800 discount stores, 2,747 Wal-Mart Supercenter combination discount and grocery stores, and 596 Sam's Club warehouse stores. It is the leading retailer in both Canada (317 stores) and Mexico (1,469), owns almost 40 percent of SEIYU, a Japanese supermarket chain, and has stores in Argentina (43), Brazil (434), China (279), Chile (252), Costa Rica (170), El Salvador (77), Guatemala (164), Honduras (53), Japan (371), Nicaragua (55), Puerto Rico (56), and the United Kingdom (371). At the end of its fiscal year, January 2010, Wal-Mart posted sales of $408.2 billion (64 percent from U.S. sales) and net profits of $14.3 billion. The company had over 2,100,000 employees worldwide.

The "Always Low Prices" company is famous for its strong and distinctive corporate culture, which it actively promotes. New employees get videos, classes, and literature on Wal-Mart's culture, such as the "Three Basic Beliefs" ("Respect for the Individual," "Service to Our Customers," and "Strive for Excellence"). Employees read founder Sam Walton's personal biography and learn how his personal values became core beliefs of the company. Weekly training on company culture is mandatory for managers and employees. Managers get continuing lessons on the company's culture and impart these lessons to subordinates. Managers are evaluated on their knowledge of the culture, and employees are rewarded when they demonstrate a strong commitment to it.[3] Some of the company's cultural traditions are male-oriented. Senior managers attend an annual corporate retreat, for example, that always includes fishing and quail hunting. Managers sometimes scheduled district meetings at Hooters restaurants, and annual sales meetings sometimes featured side trips to strip clubs.

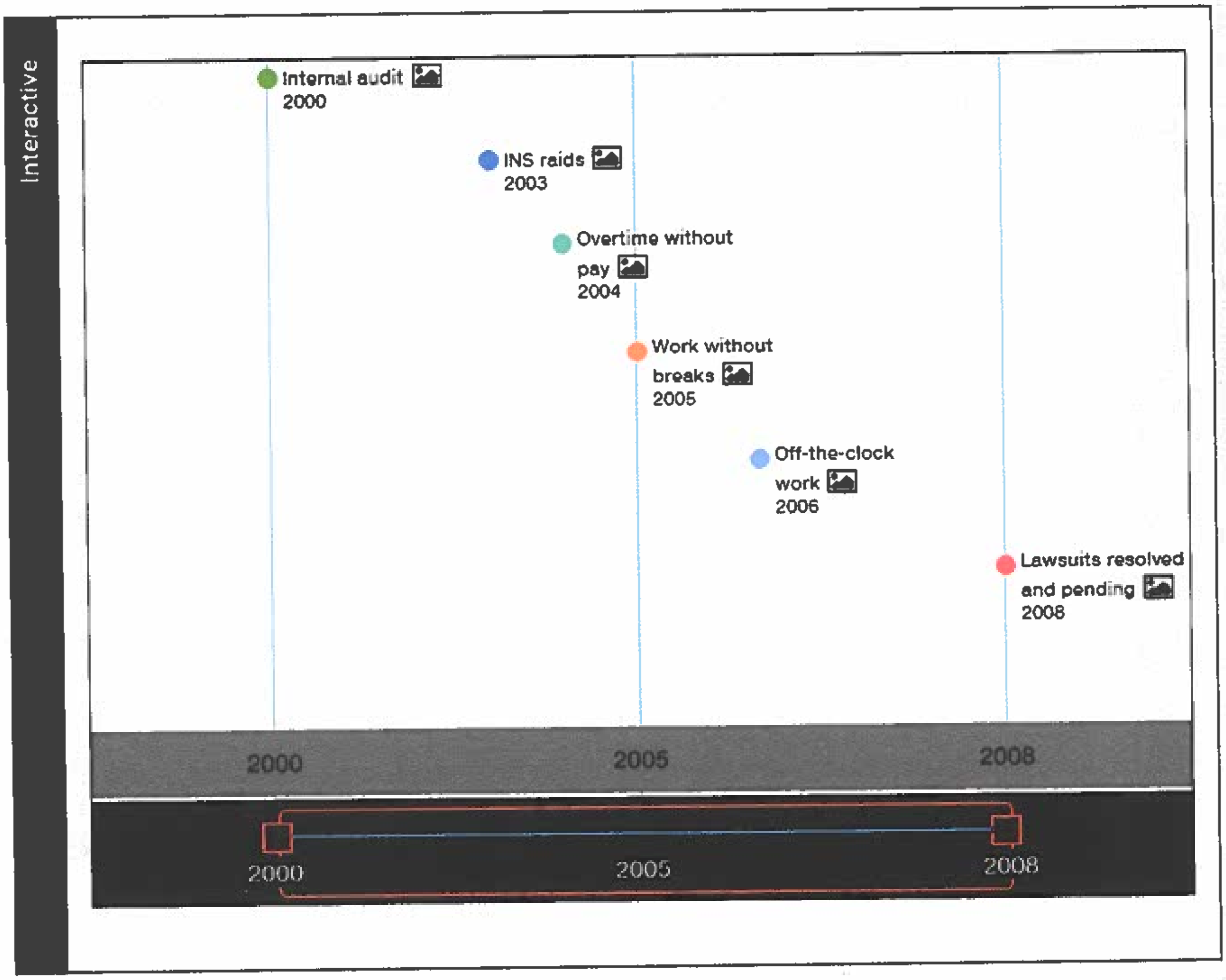
Class Action Lawsuit

Wal-Mart's biggest employee headache, however, was the class action lawsuit *Dukes et al. v. Wal-Mart Stores, Inc.*, which claimed the company discriminated against female employees in promotions, pay, management training, and job assignments. The lawsuit was launched in June 2001 by six female Wal-Mart employees. On June 22, 2004, U.S. District Court Judge Martin Jenkins ruled that the six women could sue on behalf of all female employees of Wal-Mart who worked at its U.S. stores anytime since December 26, 1998. The women asked for back pay and compensation for all 1.6 million female employees against whom Wal-Mart had discriminated. In 1995, six years before the lawsuit was filed, Wal-Mart had paid a law firm to assess its compensation practices and the law firm reported that in 1993 Wal-Mart's male department managers earned $236.80 per week while female department managers earned $223.70 per week; males in salaried jobs earned $644.20 per week while females in salaried positions earned $540.50. These and other disparities, the law firm concluded, "are statistically significant and sufficient to warrant a finding of discrimination unless the company can demonstrate at trial that the statistical disparities are caused by legitimate, nondiscriminatory factors."

The six women who filed the discrimination lawsuit in 2001 hired statistical expert Richard Drogin, a professor at California State University at Hayward, to analyze Wal-Mart's computerized records of 3,945,151 employees who had worked any time from 1996 to 2002.[4] The professor's findings supported some of the allegations of the women.

Wal-Mart's Employment Record: Early Twenty-first Century

Although the staunchly antiunion company is known as a benevolent employer, Wal-Mart's reputation suffered during the opening decade of the twenty-first century.



Drogin reported that Wal-Mart employees are divided into two main groups: hourly employees at the lower levels and salaried management employees at the higher levels. Hourly employees include store cashiers, associates, stock people, department heads, and support managers. Salaried management employees are divided into two groups: at the lower level are those who manage a single store, and at the higher level are those who manage an entire district or region or who enter corporate management. At the store level, salaried managers include store managers and assistant managers; above them are district managers, regional vice presidents, and senior vice presidents. Since Wal-Mart promotes predominantly from within, workers typically progress from being an upper hourly employee (usually a "support manager"), to management trainee, to store manager or assistant manager, and finally to district, regional, or corporate manager.

Summarizing the Data

Finally, Drogin performed several statistical tests to determine whether the discrepancies in promotions and pay could be the result of women not being available (not in the "feeder pools") when promotions came up or of some other factors. He found, instead, the following:

- Women received 2,891 fewer promotions into support manager positions (the step before Management Trainee) than would be expected from their representation in the feeder pools.
- Women received 2,952 fewer promotions into management trainee positions than would be expected from their representation in the feeder pools.
- Women received 346 fewer promotions into co-manager positions than would be expected from their representation in the feeder pools.
- Women received 155 fewer promotions into store manager positions than would be expected from their representation in the feeder pools.
- Total earnings paid to women ranged between 5 and 15 percent less than total earnings paid to similarly situated men in each year from 1996 to 2001, even when accounting for factors such as seniority, status, and store.

Wal-Mart's Compensation Gaps: Data

Side-by-side comparisons of the differences in compensation between men and women give a clear picture of the case brought by Wal-Mart employees against their employer.

Interactive

Group	% Female	Male Earnings $	Female Earnings $
Hourly	70.2	18,609	17,459
Salaried managers	33.5	55,443	40,905

Table 7.6: Average Annual Earnings, 2001

As this table shows, in 2001 the average annual earnings of salaried male managers was $55,443 per year, while the average annual earnings of hourly employees was $17,459. Drogin found that 65 percent of hourly employees were women, but only 33 percent of salaried managers were. In both hourly and salaried groups, women earned less than men. Drogin found this pattern repeated in all 41 of Wal-Mart's American regions.

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Drogin noted two factors that might affect women's promotion into management:

- Many store managers believed that employees going into salaried management positions had to be willing to relocate geographically, and they communicated this belief to women. In practice, however, only a small proportion of managers were required to relocate their homes, and the company had programs that allowed women to opt out of this requirement.
- While the company had a policy of posting available management positions, managers had the discretion to not post some positions and to communicate the availability of these positions by word of mouth to potential candidates they picked.

Other Expert Consultation

Another expert hired by the six women who brought the discrimination lawsuit against Wal-Mart, Marc Bendick, a labor economist, noted that Wal-Mart's top retail competitors had no trouble promoting women into management. While 34.5 percent of Wal-Mart's in-store salaried managers were women, 56.5 percent of salaried managers at 20 comparable large retail chains were women. If Wal-Mart had achieved the same female manager-to-nonmanager ratios as comparable chains in 1999, it would have had at least 4,004 more in-store female managers, 466 more female managers at corporate headquarters, 144 more at "blue-collar" nonstore establishments, 107 more in other nonstore establishments, and 97 more in separately reporting establishments.

The six women suing Wal-Mart also hired an expert in sociology, William T. Bielby, a professor at the University of California, Santa Barbara, to analyze and report on Wal-Mart's hiring practices.[5] Based on numerous hours of testimony under oath given by Wal-Mart managers, Bielby concluded that although company guidelines stated minimum criteria for promotions, managers had no written policies to guide them in selecting among candidates who met the minimum criteria, nor did they have guidelines to guide them in setting exact salaries. He noted that "a large body of social science research demonstrates that gender stereotypes are especially likely to influence personnel decisions when they are based on subjective factors, because substantial decision-maker discretion tends to allow people to seek out and retain stereotype-confirming information and ignore or minimize information that defies stereotypes." Moreover, he added, "In such settings stereotypes can bias assessments of women's qualifications, contributions, and advancement potential, because perceptions are shaped by stereotypical beliefs about women generally, not by the actual skills and accomplishments of the person as an individual." In his report he noted:

> For example, Store Manager Arturo Mireles testified that he was aware of no written criteria to be used in making decisions about promotion to Department Manager or Support Manager. His practice was to rely on a range of unwritten criteria, including subjective factors such as teamwork, ethics, integrity, ability to get along with others, and willingness to volunteer to come in to assist in the store or at another store outside of regular work hours. While factors like these might have common sense appeal and some might in fact be appropriate to consider in making promotion decisions, assessments will be biased [by stereotypes] unless they are assessed in a systematic and valid manner, with clear criteria and careful attention to the integrity of the decision-making process. . . . The same kind of discretion is allowed in decisions about compensation for hourly employees. . . . [A]ccording to company policy the Store Manager can pay up to two dollars an hour above the stated rate, based on his or her assessment of factors such as previous pay and experience. There is no company guideline and no training on when and how to adjust pay upwards and while overall payroll is monitored, there is no monitoring of these individual adjustments . . . A Store Manager can give a raise larger than the specified amount at his or her own discretion. In addition, employees can be given merit increases for "exceptional performance.". . . However, there is no guideline for assessing "exceptional performance" and no monitoring of the number of people who receive increases and how frequently they are given to any specific employee.

Bielby also noted, however, that Wal-Mart's "managers testified consistently that they did not believe that women were less qualified than men for management positions in the company." Wal-Mart insisted, in fact, that it explicitly prohibited any form of discriminatory behavior and that its managers all believed that women were as qualified as men. Any discriminatory behavior would have to be based on an individual manager's personal decision to contravene company policy and should not be attributed to anything Wal-Mart had done. On the contrary, the company worked hard to ensure equal opportunity for all of its employees.

Women's Experiences and Company Efforts

More than 100 female Wal-Mart employees came forward to provide sworn declarations detailing their treatment by the company.[6] These included:

- A female assistant manager in Utah was told by her store manager that retail is "tough" and "not appropriate" for women.
- A manager in Texas told a female employee that women have to be "bitches" to survive Wal-Mart management.
- A Sam's Club manager in California told a woman that to get promoted she should "doll up," dress a little better, and "blow the cobwebs off her make up."
- Male managers in several states repeatedly told numerous women employees in virtually identical words that men "need to be paid more than women because they have families to support."
- A male manager in South Carolina told a female employee that "God made Adam first, so women will always be second to men."
- A female personnel manager in Florida was told by her manager that men were paid more than women because "men are here to make a career and women aren't. Retail is for housewives who just need to earn extra money."
- A female corporate manager in Arkansas was told by a senior VP that it would be better if she "were at home raising a family" and that since she did not hunt, fish, or do other typically male activities, she would not advance any further: "you aren't a part of the boy's club, and you should raise a family and stay in the kitchen."
- A female management trainee in Texas was told by her supervisor, "I don't like college graduates, and I don't like female managers" and was told by her next manager that she should "resign and find a husband to settle down with and have children."

The company's lawyers claimed that the group of allegedly injured women was too large to handle in a single trial and that the experiences of the six women who brought the suit could not possibly be representative of the diverse and varied experiences of the millions of women that had worked for Wal-Mart. Moreover, they argued, Wal-Mart used many different systems for compensating and promoting employees, depending on the position and the particular store. Pay and promotion decisions were independently determined by individual managers at the store level and were not based on a uniform company policy. The company as a whole should not be penalized, they said, because of the independent decisions of some of its managers. The company had instituted many equal opportunity programs to ensure that everyone was treated the same regardless of race or gender.

As early as the 1990s, in fact, Wal-Mart had started a number of programs to achieve diversity. The company had a written antidiscrimination policy posted everywhere. Managers got reports on the gender composition of their hourly and salaried positions. Managers were told that women's representation should "reflect the community." Managers had to set an annual goal of increasing female representation in their areas and were supposed to be evaluated on the progress they made toward reaching the goals they set for themselves. Although this evaluation did not affect the compensation of in-store salaried managers, all higher-level managers were evaluated on the progress they made toward the diversity goals they had set themselves, and this evaluation was then averaged with their progress toward three other kinds of "people" goals. Each manager's "people average" constituted 5 percent of the final evaluation on which their compensation for the following year was based. The managers testified that they tried to set goals that were "realistic," "achievable," "made sense," and "weren't worse than the year before." A program that allowed women to enter salaried management jobs without having to relocate their homes had been begun by the late Sam Walton. After Walton's death, however, the program was not widely used nor known.

To the Supreme Court

Although the Ninth Circuit Court of Appeals ruled in April 2010 that the women's case could finally go forward as a class action, Wal-Mart's management appealed the ruling to the U.S. Supreme Court. On December 6, 2010, the Supreme Court announced that it had decided to hear the Wal-Mart case and to make a final determination about whether the case could be tried as a class action suit that would end up involving some 1.5 million female workers. Wal-Mart management believed that if the lawsuit were to succeed, it could have a significant material financial impact on the company. Some analysts speculated that Wal-Mart might choose to reach a settlement with the women either before or after the Supreme Court decided what it would do to "put the case behind it," although even a negotiated settlement would not be cheap.

Jeff Gearhart, executive vice president and general counsel for Wal-Mart, said: "We are proud of the strides we have made to advance and support our female associates and have been recognized for our efforts to advance women through a number of awards and accolades. In 2008, Wal-Mart was named in the 'Top 40 Greatest Organizations for Women of Color to Work' by *Women of Color* magazine as well as one of the 'Top 10 Best Companies for Women' by *PINK* magazine." In May 2007, Wal-Mart announced it was named one of the "Top 50 Companies for Diversity" by *DiversityInc* magazine. "We remain committed to maintaining diversity in all aspects of our business," said a company spokesperson.

WRITING PROMPT

What's in Store for Wal-Mart?

1. What are the major moral complaints of the women suing Wal-Mart? Do you believe these complaints are justified? Why or why not? Wal-Mart has said that the case should not be heard as a class action suit, but that each woman should be considered individually and that an individual determination should be made regarding whether she specifically was discriminated against by Wal-Mart because each woman's situation is different. Do you agree?
2. What financial impact do you think the lawsuit could potentially have on Wal-Mart? What if the outcome of the case cost Wal-Mart so much it had to lay off thousands of its workers and close stores?
3. What factors do you think might account for the discrepancies the Drogin report uncovered?
4. What, if anything, do you think Wal-Mart should do to correct these discrepancies? Should the company institute an affirmative action promotion program for female employees? If so, what should this program be like?

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

Submit

Case Notes

2. Much of this case is based on the documents the plaintiffs in Dukes et al. v. Wal-Mart Stores, Inc. have made available at http://www.walmartclass.com/walmartclass_forthepress.html. In particular, the materials cited in notes 4, 5, and 6 are available at this website and can be accessed there.
3. See M. J. Schneider, "The Wal-Mart Annual Meeting: From Small-Town America to a Global Corporate Culture," *Human Organization* 57 (1998): 292–99, and "Saturday Morning Fever: Wal-Mart's Weekly Meeting," *Economist*, December 8, 2001.
4. Richard Drogin, "Statistical Analysis of Gender Patterns in Wal-Mart Workforce," February 2003, accessed August 1, 2004, http://www.walmartclass.com/staticdata/reports/r2.pdf; all information and quotations attributed to Drogin in this case are drawn from this report.
5. William T. Bielby, "Expert Report of William T. Bielby, Ph.D.," February 3, 2003, accessed August 1, 2004, on Wal-Mart Class website (see note 1); all information and quotations attributed to Bielby in this case are drawn from this report.
6. This summary of the 100 declarations is taken in part from "Women Present Evidence of Widespread Discrimination at Wal-Mart," news release, April 28, 2003; "Ask Judge to Expand Case to be Largest Ever Sex Discrimination Case," accessed August 2, 2004, on Wal-Mart Class website (see note 1); all 100 declarations are available on the Wal-Mart Class website and my summary includes some materials drawn from these declarations.

Summary

1. Discrimination can be intentional or unintentional, and it can be inflicted by one individual acting alone, or it can be institutionalized such as when it is the result of people acting according to routine organizational or institutional processes and policies. The Civil Rights Act of 1964 made discrimination illegal. Nevertheless, comparing the economic fortunes of women and minorities to those of men and whites suggests that women and minorities are still subjected to discrimination. Women, for example, earn less than men with comparable educations, and minorities earn less than comparable white workers. The poverty rate of families headed by women is significantly higher than the poverty rates of families headed by men. Salaries for jobs predominantly filled by women are significantly lower than those for jobs in which men predominate. Several studies have shown that these earnings gaps are not explained by education, career choices, preferences, work history, training, or absenteeism.
2. Utilitarians have argued that discrimination leads to an inefficient use of human talent; rights-based arguments against discrimination have held that discrimination violates the right to be treated as a person who is equal and not inferior to others; justice-based

arguments have claimed that discrimination leads to an unjust distribution of benefits and burdens and that it unjustly differentiates between people on the basis of nonrelevant characteristics.

3. A particularly heinous kind of sex-based discrimination is sexual harassment. Sexual harassment occurs when a person, because of the person's sex, is singled out for unwelcome sexual advances, requests for sexual favors, or other verbal or physical sexual interactions that affect the person's employment, interfere with the person's work, or create a hostile work environment. If an employer does not take steps to prevent sexual harassment before it happens or does not take steps to stop sexual harassment that is already happening, the employer may be held liable for the harassment.
4. Other forms of discrimination besides racial and sexual discrimination include discrimination on the basis of age, sexual orientation, transgender status, disability, and obesity. The Age Discrimination in Employment Act prohibits age discrimination, while the Americans with Disabilities Act prohibits discrimination on the basis of disability. About half of the states today have laws that prohibit discrimination based on sexual orientation; however, there is no federal law that prohibits such discrimination nor any that prohibits discrimination based on a person's transgender status. Also no federal law prohibits discriminating against a person because of his or her weight; however, if a person is morbidly obese, his or her condition may be considered a disability, and the person may then be protected by the Americans with Disabilities Act.
5. Affirmative action consists of policies designed to correct a racial or gender imbalance in an organization. It has been judged to be legal if it does not use "inflexible quotas" and is "narrowly tailored" to achieve the desired balance. While some have argued in support of affirmative action as a form of "compensation," such arguments seem to be fallacious. Utilitarian arguments in favor of affirmative action are also problematic. Arguments that support affirmative action on the grounds that it will secure equal opportunity, however, seem to be more reasonable.

Chapter 8
Ethics and the Employee

Every morning millions of workers hurry off to work. Psychologists tell us we define ourselves by the work we do, and that our health, both physical and emotional, depends on whether our work is fulfilling or a source of meaningless stress.

Learning Objectives

8.1 Describe the rational model of the business organization in terms of structure and the obligations of employee and employer

8.2 Analyze the political model of the organization in terms of power and rights and justice

8.3 Explain informal power relationships in organizations from an ethical perspective

8.4 Evaluate the ethical characteristics of the caring organization

In this chapter, we explore the ethical problems raised by work life in business organizations. We begin by describing the traditional model of the organization: the organization as a rational structure. The employee's duties to the employer and the employer's duties to the employee are defined by this model. Then we turn to examining what some say is a more realistic view of the organization: the organization as a political structure. Employee rights and organizational politics are key ethical issues in this model. Finally, we present a more recent view of the organization: the organization as a network of personal relationships. The discussion of this still emerging view is briefer than that of the other views, which have a much longer history of development.

8.1: The Rational Organization

OBJECTIVE: Describe the rational model of the business organization in terms of structure and the obligations of employee and employer

Many descriptions of life in organizations by people who work in them touch on some of the problematic ethical issues business organizations create: alienated workers doing repetitive work, feelings of oppression created by the exercise of authority, heavy responsibilities heaped on the shoulders of managers, power tactics employed by managers anxious to advance their career ambitions, and pressures placed on both subordinates and superiors as they try to get their jobs done. Other ethical issues can be added to the list: health problems created by unsafe working conditions, conflicts of interest created by an employee's allegiance to other causes, absence of due process for nonunionized employees, and invasion of privacy by management's legitimate concern to know what's going on in the organization they manage. The list could go on.

For clues to the ethics of the relationship between the organization and its employees, let's look first at what is known as the rational organization. The traditional *rational model of a business organization* defines the organization as a structure of formal (explicitly defined and openly employed) relationships designed to achieve a goal with maximum efficiency.[1] E. H. Schein provides a compact definition of an organization from this perspective:

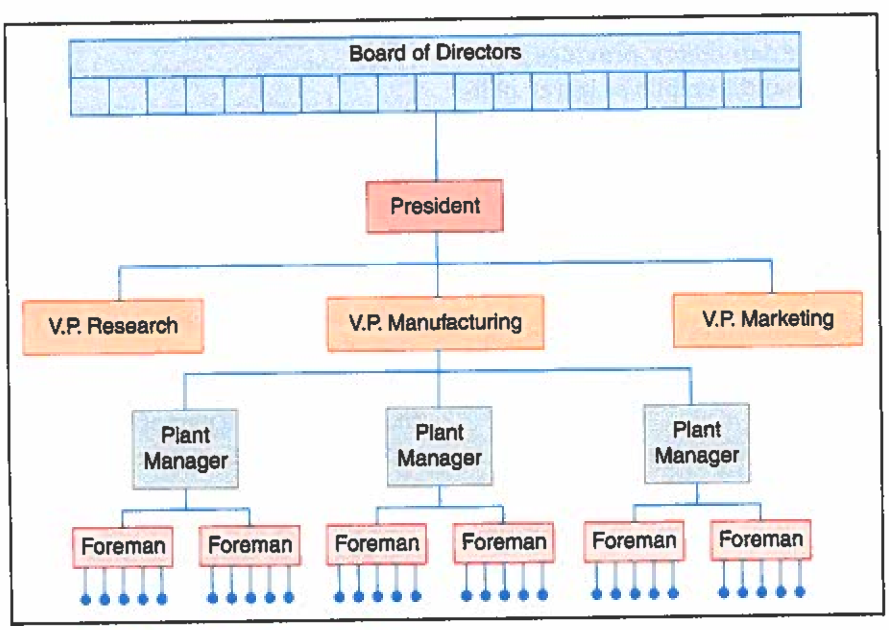
> An organization is the planned coordination of the activities of a number of people for the achievement of some common, explicit purpose or goal, through division of labor and function, and through a hierarchy of authority and responsibility.[2]

If an organization is looked at in this way, then the most fundamental elements of the organization are the **formal hierarchies of authority**. Figure 8.1 provides a simplified example.

Figure 8.1 Organizational Chart

This structure represents the various official positions and lines of authority in an organization.

At the bottom of the organization is the **operating layer**: those employees and their immediate supervisors who directly produce the goods and services that constitute the essential outputs of the organization. Above the operating layer of laborers are ascending levels of **middle managers** who direct the units below them and who are in turn directed by those above them in ascending formal lines of authority. At the apex of the pyramid is **top management**: the board of directors, the chief executive officer (CEO), and other company officers such as the president, chief financial officer (CFO), chief technology officer (CTO), chief human resources officer (CHRO), and various vice presidents.



The rational model of the organization supposes that most information is collected from the operating layers of the organization, rises through the various formal management levels, each of which aggregates the information, until it reaches top management levels. On the basis of this information, the top managers make general policy decisions and issue general commands, which are then passed downward through the formal hierarchy, where they are amplified at each managerial level until they reach the operating layer as detailed work instructions. These decisions of the top managers are assumed to be aimed at a more or less known business goal, such as expanding market share, increasing profits, and maximizing shareholder returns. The goal is defined by those at the top of the hierarchy of authority, who are assumed to have a legitimate right to make this decision.

What is the glue that holds together the organization's many layers of employees and managers and that fixes these people onto the organization's goals and formal hierarchy? Contracts. The model conceives of the employee as an agent who freely and knowingly agrees to accept the organization's formal authority and to pursue its goals in exchange for a fair wage and just working conditions. These contractual agreements—some explicit and some left implicit—cement each employee into the organization by defining each employee's duties and scope of authority within the organization. By virtue of these contractual agreements, the employee has a moral responsibility to obey the employer in the course of pursuing the organization's goals, and the employer in turn has a moral responsibility to provide the employee with the wage and working conditions it agreed to provide. As we have already discussed at some length in previous chapters, when two persons knowingly and freely agree to exchange goods or services with each other, each party to the agreement acquires an ethical obligation to fulfill the terms of the contract. Utilitarian theory provides additional support for the view that the employee has an obligation to loyally pursue the goals of the firm: businesses will function most efficiently and productively if employees single-mindedly pursue the firm's goals. If each employee were free to use the resources of the firm to pursue personal ends, chaos would ensue and everyone's utility would decline.

The basic ethical responsibilities that emerge from these "rational" aspects of the organization focus on two reciprocal moral obligations:

1. The obligations of the employee to the employer, such as to obey organizational superiors, loyally pursue the organization's goals, and avoid any activities that might threaten those goals
2. The obligations of the employer to the employee, such as to provide the employee with a just wage and just working conditions

We will examine these two reciprocal obligations in turn.

Quick Review 8.1

The Rational Model of a Business Organization

- Formal hierarchies identified in the organizational chart are the firm's fundamental realities.
- Organizations seek to coordinate the activities of members so as to achieve their goals with maximum efficiency.
- Information rises from the bottom of the organization to the top.
- Contracts obligate the employee to loyally pursue the organization's goals and the employer to provide a just wage and just working conditions.

8.1.1: The Employee's Obligations to the Employer

In the rational view of the firm, the employee's main ethical duty is to work toward the goals of the firm and avoid any activities that might harm those goals. To be unethical, basically, is to deviate from these goals to serve one's own interests in ways that, if illegal, can be a form of "white-collar crime."[3]

As administrator of the company's finances, for example, the financial manager is entrusted with its funds and has the responsibility of managing those funds in a way that will minimize risk while ensuring a suitable rate of return for the company's shareholders. Financial managers have this contractual duty to the firm and its shareholders because they have contracted to provide the firm with their best judgment and to exercise their authority only in the pursuit of the goals of the firm and its stockholders and not for their own personal benefit. Financial managers fail in their contractual duty to the firm when they misappropriate funds, when they waste or squander funds, when they are negligent or fraudulent in the preparation of financial statements, when they issue false or misleading reports, and so on.

These traditional views of the employee's duties to the firm have become part of the *law of agency*—that is, the part of law that specifies the legal duties of agents (e.g., employees) toward their "principals" (e.g., their employers).[4] For example, the second edition of the "Restatement" of the law of agency states in section 385 that "an agent is subject to a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency"; and section 394 contains language that prohibits the agent from acting "for persons whose interests conflict with those of the principal in matters in which the agent is employed."[5] In short, the employee must pursue the goals of the firm and must do nothing that conflicts with those goals while working for the firm.

The employee might fail to live up to the duty to pursue the goals of the firm in several ways: the employee might act on a *conflict of interest*, the employee might steal from the firm, or the employee might use the position as leverage to force illicit benefits out of others through extortion or commercial bribery. We turn now to examine the ethical issues raised by these tactics.

CONFLICTS OF INTEREST **Conflicts of interest** in business arise when an employee or officer of a company

1. Is engaged in carrying out a certain task (or using personal judgment) for the employer;
2. Has an interest that provides him or her with an incentive or motive to do the task (or use personal judgment) in a way that serves that interest; and
3. Has an obligation to do the task (or use personal judgment) in a way that serves the interests of the employer, free of any incentive to serve another interest.

More simply, an employee has a conflict of interest when he or she has an interest that provides an incentive to do the job in a way that serves that interest and not necessarily the interests of the employer he or she is obligated to serve. Suppose, for example, that Mary is an employee with the job of choosing the supplier from which her company will buy raw materials. Suppose that she also owns a small firm that makes the kind of raw materials her company needs. Then, her interest in having her own firm make money gives her an incentive to choose her own firm to supply the raw materials even if it does not offer the best terms to her employer. Therefore, she has a conflict of interest.

It is important to notice that the mere *existence* of an interest that provides an incentive or motive that *could* influence an employee's actions on behalf of his or her employer is enough to give that employee a conflict of interest even if the employee does not allow the interest to influence him or her. That is, the mere existence of such an incentive or motive, even if it does not influence the employee's actions in any way, is enough to count as a conflict of interest.

Conflicts of interest do not have to be based on a financial or economic incentive; they can also be based on a personal or emotional relationship, as noted in "Ethical Application."

Ethical Application

Two Variations of Conflicts of Interest

Suppose that John is trying to choose the supplier from which his employer will buy raw materials. Also suppose that John honestly resolves to be completely objective when choosing suppliers, and honestly resolves that he will not choose the company he owns unless it offers the best terms to his employer. Now suppose that he is objective and ends up not choosing his own firm because it did not offer his employer the best terms. Nevertheless, John had a conflict of interest. He had a conflict of interest because he had an incentive or motive to choose his own firm, and the mere existence of that incentive or motive is a conflict of interest even if in the end it does not influence what he does for his employer; that is, even if in the end he did not act on that incentive or motive.

Suppose, once again, that Mary's job is choosing a company to supply raw materials to her employer. Also suppose that Mary's son is a salesman for one of the firms that sells those raw materials. Since Mary has an interest in seeing her son succeed in his job, she has an incentive to give him her employer's business even if other firms offer better terms for the same raw materials. So Mary has a conflict of interest; in this case she does not have a financial interest, but an interest in helping someone with whom she has a close relationship.

OBJECTIVE AND SUBJECTIVE, ACTUAL AND POTENTIAL A conflict of interest that is based on financial relationships is sometimes called an *objective conflict of interest*, while a conflict of interest that is based on emotional ties or other kinds of relationships is sometimes called a *subjective conflict of interest*.

Conflicts of interest can also be classified as being actual conflicts of interest, or merely potential conflicts of interest.

A *potential conflict of interest* occurs when an employee has an interest that could influence what she does for her company if the employee were performing a certain task for her company *but she has not yet been given that task to perform*. An *actual conflict of interest* occurs when an employee has an interest that could influence what he does for his employer when the employee performs a certain task for that employer *and he actually has been given that task to perform*. For example, recall the case of Mary who owns a firm that makes the kind of raw materials her own employer sometimes buys. If Mary does not yet have the job of choosing the supplier from which her company will buy the raw materials, she only has a potential conflict of interest; but her conflict of interest becomes an actual one when her company gives her the job of choosing who will supply its raw materials.

If we accept the view that agreements impose moral duties, then actual conflicts of interest are unethical because they are contrary to the implied agreement that a worker

Examples of Conflict of Interest

Conflicts of interest can be created when the employee of one company holds another job or consulting position in another firm with which the employee's own company deals or competes.

Interactive

Example 1: An Employee of a Bank

An employee of one bank would have a conflict of interest if he took on a second job with a competing bank. At the very least, the employee's loyalties would be divided between serving the interests of each competing bank. Since the banks compete with each other, the employee could help one bank by giving that bank information about the other bank that hurts that other bank, yet as an employee of that other bank, he had an obligation to serve the interests of that other bank and failed to live up to that obligation.

Example 2: An Accountant

Example 3: An Employee with Stock in a Construction Company

freely makes when taking a job with a firm. The personnel of a firm are hired to do their jobs in a way that serves the interests of the firm. By accepting a position within the firm, an employee agrees that his or her judgments and actions will not be encumbered by any interests that could lead him or her to serve those interests instead of the interests of the firm. To knowingly then encumber one's judgments or actions by taking on an interest that can influence those judgments or actions will violate the duties and obligations created by the agreement and, thus, is unethical. Conflicts of interest are also unethical on utilitarian grounds. If employees were allowed to have conflicts of interest, then employees in effect would be allowed to have incentives to serve their own interests at the expense of their employer's interests. Key consequences would be as follows:

1. Employers would be harmed by the actions of their employees often.
2. The trust employers need to be able to place in employees who work on their behalf would be undermined, which would thereby decrease the utility of the employer–employee relationship.

As we have seen, a conflict of interest can be present even when the interest involved does not actually influence the employee's actions but *could* do so. It is sometimes asked whether there are any general guidelines for determining when an employee's interests are significant enough to say that they *could* influence his or her job or judgment; that is, significant enough to say that they constitute an incentive or motive even though the employee does not allow them to influence him or her. No general guidelines exist on the matter since much depends on the employee's position in the firm, the nature of the job or task, how much he or she stands to gain from the transactions involved, and the impact the employees' actions will have on others inside and outside the firm. However, to eliminate the possibility of any employee interest that might provide a conflict of interest, many companies do the following:

- specify the exact amount of stock, if any, that the company will allow employees to hold in firms with which the company does business or with which the company competes
- prohibit certain relationships with employees of competitors, buyers, or suppliers
- require key officers to disclose all their outside financial interests

THE APPARENT CONFLICT OF INTEREST Some ethicists have claimed that to allow even the appearance of a conflict of interest is wrong. Two situations concerning apparent conflict of interest are shown in Table 8.1.

The appearance of a conflict of interest can undermine people's trust in the fairness and impartiality of processes that people need to trust are fair and impartial (if those processes are going to be accepted and used by people). For this reason, it is often claimed that it is wrong to allow the appearance of a conflict of interest.

Employees can avoid conflicts of interest or can get rid of them when they arise in three main ways. We said earlier that a conflict of interest exists when an employee or officer of a company

1. Is engaged in carrying out a certain task for the employer;
2. Has an interest that provides him or her with an incentive or motive to do the task in a way that serves that interest; and
3. Has an obligation to do the task in a way that serves the interests of the employer, free of any incentive to serve another interest.

Table 8.1 Apparent or Actual Conflict of Interest

An *apparent conflict of interest* exists when an employee has no actual conflict of interest, but other people looking at the employee's situation may come to believe (wrongly) that he or she has an actual conflict of interest.

Interactive

Conflict of Interest	Situation
I have no actual conflict of interest.	Suppose that I own a construction company that submits bids for a construction job my employer wants to have done. Also suppose that I have nothing to do with choosing the construction company and have no influence whatsoever over the choice.
I have an apparent conflict of interest.	Suppose that my employer chooses the construction company that I own for a construction job without knowing it is my company. Also suppose that other construction companies find out that my company was chosen. Then, those other companies may come to believe that I unfairly influenced my employer, and so they may come to believe because of this conflict, the choice of my construction company was unfair.

Check Your Understanding

Conflicts of interest can be avoided by making sure that these three conditions are not all present simultaneously; moreover, when a conflict of interest arises, it can be eliminated by eliminating one of these three conditions.

Ethical Application

Eliminating a Conflict of Interest

Suppose that I have a conflict of interest because I own one of the companies that submits bids for a construction contract and I am the one who chooses which company will get the contract. I can eliminate this conflict of interest in one of three ways. (1) I can get out of performing the task that creates the conflict of interest, in this case the task of choosing who gets the contract. That is, I can ask my employer to "recuse" me from the task of choosing who gets the contract or I can "recuse" myself. (2) I can eliminate the interest that might give me an incentive not to serve my employer's best interests, in this case my ownership of one of the companies that is submitting bids. I can eliminate the interest, for example, by selling or otherwise getting rid of my ownership of this company. (3) I can eliminate or change my obligation to do the task in a way that serves the interests of my company free of any incentive to serve another interest. For example, I can leave my employer and then I no longer have an obligation to serve my employer's interests. Alternatively, I can reveal the interest I have to my employer; that is, I can reveal to my employer that I own one of the companies that is submitting bids. My employer might then let me continue in the task and let me continue to have this interest, perhaps because my employer can monitor my decisions to ensure the interest does not influence my judgment or perhaps because my employer just knows and trusts me. Since my employer has explicitly allowed me to do this task (and to do it even though I have this incentive), I am no longer obligated to be free of any conflicting interest while doing this task. My employer changed my obligation by allowing me to evaluate the bids even though I own one of the companies submitting bids. However, since I still have the obligation to serve my employer's interests, I must strive to be objective when evaluating the bids and do all I can to ensure I will not be influenced by the fact that I own one of the companies submitting a bid.

COMMERCIAL BRIBES AND GIFTS Conflicts of interest can be created by a variety of different kinds of situations and activities.

Extorting or accepting a bribe obviously creates a conflict of interest that violates the employee's contractual agreement to use his or her unbiased judgment on behalf of the employer.

Accepting gifts may or may not be ethical. The purchasing agent, for example, who accepts small gifts from a salesperson without asking for the gifts and without making such gifts a condition of doing business may be doing nothing unethical. If the agent does not give favored treatment to the giver of a gift and is not prejudiced against those who fail to give a "gift," no actual conflict of interest is created. However, a potential conflict of interest may exist, and accepting gifts may encourage a practice that could become an actual conflict of interest or that may subtly affect the independence of a person's judgment.

EMPLOYEE THEFT Part of the employee's agreement with the employer is that he or she will use the resources and goods of the firm in the pursuit of the firm's legitimate aims. For the employee to use company resources for his or her own benefit is a form of theft because to do so is to take or use property that belongs to another (the employer) without the consent of its rightful owner.

Employee theft is often petty, involving the theft of small tools, office supplies, or clothing. At the managerial level, petty theft sometimes occurs through the manipulation or padding of expense accounts, although the amounts involved are sometimes substantial. Other forms of managerial theft, sometimes referred to as *white-collar crime*, are embezzlement, larceny, and fraud. The ethics of these forms of theft, however, are relatively clear.

THEFT OF INFORMATION Not always as clear are some particularly modern kinds of theft: thefts involving the theft of various kinds of information. For example, what is the ethics of hacking into a company's database when I do not do anything other than just look around? Or of copying a company's computer programs or its computerized data if doing so will not change the original? Unless authorized explicitly or through a company's formal or informal policies, all of these activities are forms of theft because they all involve taking or using property that belongs to someone else without the consent of its owner. The fact that I did not damage, change, or carry away what I used for my own benefit is irrelevant to the simple fact that I used property without the owner's permission to do so. The main difference between the property that is taken in these examples and most other kinds of property, of course, is that the property that is taken in these examples consists of information. Information, like the information contained in a database or the programs owned by a company are not tangible property, and the employee who examines, uses, or copies such information or programs can leave the original information or programs unchanged (the company might never even realize what the employee did). Nevertheless, unauthorized examination, use, or copying of computer information or programs constitutes theft.

Theft of information is best understood by considering the nature of property: property consists of a bundle of exclusive rights that a specific person has with respect to a specific asset. *Exclusive* here means that the right belongs

Commercial Bribes and Extortion

Two kinds of situations and activities demand further attention: commercial bribes and extortion.

Interactive

Commercial Bribes | Commercial Extortion

Definition

A **commercial bribe** is something of value that is given or offered to an employee by a person outside the employee's company who intends it to lead the employee to deal favorably with that person or the person's firm. The bribe may consist of money, tangible goods, the "kickback" of part of a payment, preferential treatment, or any other kind of benefit.

Example

Marco is a purchasing agent. He takes a commercial bribe when he accepts money from a supplier who gives it to him in order to receive favored treatment when Marco makes his purchasing decisions.

only to the owner and excludes all others except those authorized by the owner. The most important of these exclusive rights are as follows:

- the right to use the asset
- the right to decide whether and how others may use the asset
- the right to sell, trade, or give away the asset
- the right to any income or other benefits produced by the asset
- the right to modify or change the asset[6]

(These rights, like all rights, are limited by the rights of others, such as the right not to be harmed.)

All of these rights can and do apply to any information, including digitized information, and computer programs that a company used its own resources to develop or that the company purchased with its own financial resources. Consequently, such information and programs are the property of the company, and only the company has the bundle of exclusive rights related to that property, including the right to its use or the benefits deriving from its use. To usurp any of the rights of the owner of a piece of property, including the rights pertaining to its use, is therefore theft, even when the property consists of information and even if in using the information I leave the original copy of the information unchanged.

Copying digitized information is sometimes defended on the grounds that "it doesn't hurt anyone." However, when violations of rights are concerned, it is a mistake for a person to say that he or she did nothing wrong because "It didn't hurt anyone." A person's rights can be violated and the person can be wronged, we saw, even when the person is not injured or hurt in any way. (This is one of the ways in which moral rights considerations differ from utilitarian considerations.) Using some-

Ethics of Accepting a Gift

Vincent Barry suggests that the following factors should be considered when evaluating the ethics of accepting a gift.[7]

Interactive

What is the value of the gift?

Is the gift substantial enough that it could influence one's decisions?

1 of 7

Previous

Next

one's property without his consent is a violation of the person's property rights, in particular the right to use or have others use his property only as he chooses. When a person's property rights are violated, that person has been wronged, and the one who wronged him has engaged in wrongdoing, even if the violation of the property owner's rights did not inflict any injuries on the property owner and even, in fact, if the property owner never finds out that his property rights were violated. Thus, when an employee uses the employer's property to benefit himself without the employer's consent, the employee is engaged in wrongdoing, regardless of whether the employee changed or damaged the original property and regardless of whether the employer was hurt or injured in any way. The violation of the property right is wrong by itself, and its wrongfulness does not require any additional infliction of harm.

Quick Review 8.2
Theft of Information Details

- It includes the theft of digitized programs, music, movies, and e-books, as well as trade secrets, company plans, and proprietary formulas or other data.
- It is theft even if the original is not taken or changed but only copied, examined, or used without the consent of the owner.
- It violates the owner's right to have his property used as he chooses, even if the theft does not injure the owner.
- The skills one acquires from a company are not information, and so it is not theft to take them when leaving the company, although skills are often hard to distinguish from information.

TRADE SECRETS, OR PROPRIETARY INFORMATION Some information is referred to as a *trade secret*. A trade secret (sometimes called *proprietary information*) consists of nonpublic information that

- concerns a company's own activities, technologies, future plans, policies, or records and that if known by competitors would materially affect the company's ability to compete commercially against those competitors
- is owned by the company (although it might not be patented or copyrighted) because it was developed by the company for its private use from resources it owns or it was legitimately purchased for its own use from others
- the company indicates through explicit directives, security measures, or contractual agreements with employees that it does not want anyone outside the company to have

For example, if a company, using its own engineering and laboratory resources, develops a secret process to manufacture computer drives that can carry more data than any other company's drives, and it takes explicit measures to ensure that process is not known to anyone else, then detailed information about that process is a trade secret. Similarly, lists of suppliers or customers, research results, formulas, computer programs, computer data, marketing and production or strategic plans, and any other information developed by a company or its employees for the company's own private use from its own resources can all constitute trade secrets.

Because employees, especially managers and those involved in company research and development, have access to trade secrets that the company must entrust to them if it is to carry on its business, they often have the opportunity to use such secrets for their own personal benefit by dealing with competitors. Such unauthorized use of trade secrets by employees is unethical because they are using the property of an owner for a purpose not sanctioned by that owner, and because they have an implied (or even, in some cases, an explicit) contract not to use company resources for purposes not sanctioned by the company.[8] For example, an engineering employee who is hired to oversee the development of a secret manufacturing process that gives her company a competitive edge over others acts wrongly if she decides to leave that company to work for a competitor that promises her a higher salary in exchange for setting up the same process she developed while working for her former employer.

Carrying away information that employees acquire while working for a company raises an important question: How does such *information* differ from the *skills* one acquires while working for a company? The distinction is important because the skills that an employee acquires by working for a company can be and usually are considered part of his or her own person and, to that extent, are not the property of the employer, while proprietary information is. Unfortunately, it is not always easy to distinguish skills from proprietary information because many high-level skills consist, in part, of know-how that can be considered a kind of information. In such cases, it may be all but impossible to separate the skill from the information.

Ethical Application

Moving to a Competitor

Donald Wohlgemuth was a general manager who had become dissatisfied with his salary and his working conditions while he oversaw a BFGoodrich secret technology for making spacesuits for the government.[9] Wohlgemuth subsequently negotiated a job with International Latex, a BFGoodrich competitor, at a much higher salary with greater responsibilities. At Latex, however, he was hired to manage a division that involved, among other things, the manufacture of spacesuits for the government. BFGoodrich managers objected to his working for a competitor where he might use the proprietary information that BFGoodrich had developed as it became experienced in making spacesuits. When they questioned the ethics of his decision, Wohlgemuth angrily (and perhaps thoughtlessly) replied that "loyalty and ethics have their price and International Latex has paid the price," a reply that BFGoodrich interpreted as a confession that Wohlgemuth was in effect selling its trade secrets to Latex. The Ohio Court of Appeals ruled, however, that BFGoodrich could not keep Wohlgemuth from selling his *skills* to another competitor, although the court imposed on Wohlgemuth an injunction restraining him from disclosing to Latex any of the *trade secrets* of BFGoodrich. However, the court did not explain how Wohlgemuth, BFGoodrich, or Latex were to distinguish between the "information" and the "skills" Wohlgemuth had acquired while working for BFGoodrich. In the end, Wohlgemuth continued doing what he had been doing with Latex and, from BFGoodrich's perspective, he continued making use of—and so, stealing—the proprietary information BFGoodrich had worked years to develop.

HOW COMPANIES TRY TO LIMIT THEFT OF TRADE SECRETS Some companies have tried to avoid the problem of having employees steal trade secrets—or acquired skills—by having employees sign contracts agreeing not to work for competitors for one or two years after leaving the company. However, the courts have generally rejected the validity of such contracts. Other companies have dealt with these problems by agreeing to provide departing employees with continuing remuneration or future retirement benefits in exchange for their not revealing proprietary information, although doing so leaves the employee free to decide what part of what he or she learned while working for the company is information and what is part of his or her skill set.

Before leaving the subject of stealing a company's trade secrets, it is worth noting that a company's property rights over proprietary information are not unlimited. In particular, these rights are limited by the rights of other agents, such as the rights of employees to know the health risks associated with their jobs. A company's right to keep information secret is not absolute, but must be balanced against the legitimate rights of other parties.

On the Edge

Hewlett-Packard's Secrets and Oracle's New Hire

On August 6, 2010, the board of directors of computer company Hewlett-Packard (HP) fired Mark Hurd, CEO of the company. Earlier Hurd had been accused of sexual harassment by Jodie Fisher, who had been hired to work at HP marketing events that Hurd had attended. Investigators found that Hurd did not violate the company's sexual harassment policies, but said he had falsified some expense account entries, apparently to conceal his relationship with Fisher—a relationship that Hurd, who was married, insisted was not sexual. The falsified entries violated HP's written business ethics standards, the board said, so it had to fire him, although his contract required that HP give him about $30 million as a severance package. The size of the severance was in part due to the fact that when Hurd became CEO, HP was in trouble and he not only managed to turn it around but also increased company revenues by almost 50 percent, for which stockholders were extremely grateful. Although he said he did not prepare his own expense reports, Hurd admitted: "There were instances in which I did not live up to the standards and principles of trust, respect, and integrity that I have espoused at HP and which have guided me throughout my career."

About a month after leaving the company, Hurd announced he had been hired by Oracle Corporation as president with a salary of $950,000 a year, a bonus of $10 million, and stock options for 10 million shares of Oracle. Like HP, Oracle is also a computer company and so is a major direct competitor of HP.

At Oracle, Hurd replaced former president Charles Phillips, who had been fired after a woman, YaVaughnie Wilkins, said she was his mistress and announced on a series of large billboards posted along major roads in New York, San Francisco, and Atlanta: "You are my soulmate forever." Like Hurd, Phillips was also married, although Phillips divorced shortly after the billboards appeared.

As HP's former CEO, Hurd knew HP's weaknesses and its future products, pricing, margins, customers, planned acquisitions, research discoveries, and company strategies, including how it planned to compete against Oracle. Some news reports noted that Hurd's inside knowledge of "HP's strategy and markets and its enterprise customers" was certain to help Oracle. HP's board of directors agreed and sued Hurd, arguing that he had signed a confidentiality agreement to keep all HP information secret, especially from competitors and that in his new position, he could not perform his duties for Oracle without necessarily using and relying on HP's trade secrets and confidential information. Defenders of Hurd argued that HP had so many lines of business that the agreement would have effectively barred Hurd from any employment in which he could use his executive skills, so it was unfair and invalid both legally and morally. The confidentiality agreement Hurd had signed while at HP read:

> This agreement concerns trade secrets, confidential business and technical information, and know-how not generally known to the public . . . which is acquired or produced by me in connection with my employment by HP . . . I agree to use such information only in the performance of HP duties . . . and to use all reasonable precautions to assure that such information is not disclosed to unauthorized persons or used in an unauthorized manner, both during and after my employment with HP. . . . I agree that for a period of twelve months following the termination of my employment with HP . . . I will not provide services to a competitor in any role or position (as an employee, consultant, or otherwise).

WRITING PROMPT

Evaluate Consequences from an Ethical Perspective

1. **Assuming that Mark Hurd really had (intentionally or unintentionally) falsified some entries in his expense accounts, evaluate whether this act was enough of a reason for HP's board of directors to fire him, whether it was morally wrong for the board to fire him, and whether it was a wise decision.**
2. **Do you agree that Hurd could not perform his duties for Oracle without violating the agreement he had signed with HP? Why or why not? To what degree do you think Hurd could rely on the distinction between skills and information? Can you explain the position of Hurd's defenders in their argument that the confidentiality agreement was unfair and morally invalid?**
3. **Was it wrong for Hurd to accept the position of president at Oracle? Was it wrong of Oracle to hire him? Why or why not?**

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

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Characters in the Hewlett-Packard/Oracle Shake Up

Mark Hurd's move to Oracle Corporation, after a case of sexual harassment and a $30 million severance package, provoked his former company to sue him for breach of confidentiality.

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Mark Hurd was formerly CEO of HP.

INSIDER TRADING

> **As a start, we can define *insider trading* as buying or selling a company's stock on the basis of "inside" information about the company.**

Inside or *insider* information about a company is proprietary information about a company that is not available to the general public outside the company, but whose availability to the general public would have a material or significant impact on the price of the company's stock. For example, George, the president of a defense company, learns that the company is about to receive a multibillion-dollar contract from the government before anyone outside the company is aware of this. So George buys several shares of his company's stock, knowing that its value will rise when the news of the contract becomes public. His purchase of stock is considered to be insider trading. George might also tip off his father, who also buys the stock before the general public learns about the contract. His father's purchase is also considered to be insider trading.

Insider trading is illegal. During the past decade, a large number of stockbrokers, bankers, and managers have been prosecuted for insider trading. Insider trading is also unethical—not merely because it is illegal, but because, it is claimed, the person who trades on insider

Arguments in Defense of Insider Trading

Three arguments present a defense of insider trading: insider trading reveals the true value of a stock, insider trading does no harm, and using inside information is no worse than using any information to make decisions.

Interactive

Insider Trading Signals the True Value of a Stock

It is sometimes argued that insiders and their friends bring their inside information to the stock market and, by trading on it, bid up the price of the stock (or bid it down) so that its stock market price rises (or falls) to reflect the true underlying value of the stock. Experts on the stock market tell us that the stock market functions most efficiently when the market price of each company's stock equals the true underlying value of the stock as determined by all the information available. When insiders trade stocks on their inside information and bid up (or down) the value of stocks, they in effect bring their information to the market and, by their purchases, "signal" to others the information they have about what those stocks are really worth. So insider traders perform the valuable service of making their inside information available to the stock market, thereby ensuring that the market value of stocks more accurately reflects their true underlying value and securing a more efficient market.

Insider Trading Does No Harm

Using Inside Information Is No Worse Than Using Any Information

information in effect "steals" information and thereby gains an unfair advantage over members of the general public.[10] Several people, however, have argued that insider trading is socially beneficial and, on utilitarian grounds, should not be prohibited but encouraged.[11] We need to look at those arguments.

ARGUMENTS THAT INSIDER TRADING IS UNETHICAL Those who claim that insider trading is unethical, however, point out that defenders of insider trading ignore several important facts about insider trading.

INSIDER TRADING VIOLATES RIGHTS, JUSTICE, AND UTILITY Several arguments support the view that insider trading is unethical. These arguments suggest that insider trading violates the property rights of the company's owners, that it is based on an unjust informational advantage, and that it harms society's overall utility by reducing the size of the market and increasing transaction costs. In short, insider trading violates our moral standards of rights, justice, and utility. Nevertheless, the issue continues to be greatly debated and is still not completely settled.

Arguments Supporting Insider Trading as Unethical

Three arguments present insider trading as unethical: insider trading involves a theft of information, the insider's advantage is unfair or unjust, and insider trading does harm.[12, 13]

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Insider Trading Involves a Theft of Information

The information that the insider trader uses does not belong to him or her. The executives, managers, employees, and others who work inside a company and who are aware of inside events that will affect the price of the company's stock do not own the company. The resources they work with, including the information that the company makes available to them, are resources that belong collectively to the shareholders. Employees have an ethical (or "fiduciary") duty to refrain from using company information to benefit themselves or their friends. Just as all employees have an ethical duty to use company resources only for the benefit of the shareholder-owners, they also have an ethical duty to use company information only for the benefit of shareholder-owners. Therefore, an insider who takes confidential inside company information and uses it to enrich him or herself is in effect a thief stealing what is not his or hers.

The Insider's Advantage Is Unfair or Unjust

Insider Trading Does Harm

On the Edge

Insider Trading, or What Are Friends for?

Noah Freeman and Donald Longueuil were tight friends. When Freeman married his girlfriend, Hannah, in 2009, Longueuil was his best man. When Longueuil became engaged to his girlfriend, Mackenzie, he asked Freeman to be his best man. Freeman and Longueuil met shortly after Freeman graduated from Harvard University and Longueuil from Northeastern University. Both shared a passion for speed skating—Longueuil narrowly missed qualifying for the U.S. Olympic speed skating team. The two met when both joined the Bay State Speedskating Club in Boston. They remained close friends over the years, often skating in races together and taking ski trips together in Utah and New Hampshire. When a girlfriend of Freeman's broke up with him, he was distraught. He could not have made it through, he later said, without Longueuil's friendship. Sometimes, Freeman said, he felt so bad that he could not get out of bed, but Longueuil would come by his place and "get him going." Freeman later met his future wife, Hannah, and Longueuil met Mackenzie. Hannah and Mackenzie were also friends who attended Princeton University and were both on Princeton's rowing team, so the two couples often did things together, frequently involving sports activities.

Both Longueuil and Freeman worked for hedge fund companies where their jobs were to grow the funds by investing the fund's money in stocks. When Freeman got a position with Empire Capital, a large hedge fund company, he helped Longueuil land a position in the same company. Later, both worked for SAC Capital, a $12 billion hedge fund, and were each earning over $1 million a year. They met and became friends with Samir "Sam" Barai who also worked with hedge funds. In 2008, Barai started his own hedge fund, Barai Capital Management, with the help of a close friend, Jason Pflaum. To help them research stocks, Longueuil, Freeman, Barai, and Pflaum worked with Primary Global Research (PGR), an "expert network" firm that charges hundreds of thousands of dollars to introduce big investors to "consultants" whom PGR pays to provide expert advice about specific industries or companies. Consultants are often managers of companies in the industry about which they provide advice. Freeman, Barai, and Pflaum were introduced to Winifred Jiau, an expert on technology companies to whom they spoke by phone. Her advice cost them $200,000, but she was able to provide them with information about Marvell Technology Group. She told them what Marvell Technology's revenues, gross margins, and earnings per share would be before the company publicly announced this information. She told them that Marvell's earnings would be higher than expected so the stock was sure to increase in value. Freeman called Longueuil and gave him this information. Barai's hedge fund bought several thousand shares of Marvell stock and made $820,000; Longueuil's fund did the same and made $1.1 million. Another consultant gave Pflaum information about the earnings of two other companies: Advanced Micro Devices and Fairchild Semiconductor. Still other PGR consultants provided information about Nvidia Corporation, Actel Corporation, Cypress Semiconductor, and others. However, in 2010, the FBI approached Freeman and Pflaum, and said they would prosecute them for insider trading unless they provided evidence against their friends Longueuil and Barai. They agreed to testify. The four men are no longer friends. Don Longueuil and Mackenzie's wedding was cancelled. PGR denied knowing what its consultants told the former friends.

WRITING PROMPT

Actions and Words

1. Were the actions of Longueuil, Freeman, Barai, and Pflaum morally wrong? If they were wrong, then was Freeman and Pflaum's agreement with the FBI a betrayal? What would an ethic of care say about that agreement? Is insider trading something government should be spending its time prosecuting; why or why not?
2. Was PGR or Winifred Jiau in any way morally responsible for what the friends did, and if so, how?

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

Submit

INSIDER TRADING AND THE LAW The law on insider trading is fairly settled, although its exact scope is unclear. The Securities and Exchange Commission (SEC) has prosecuted a large number of insider trading cases, and court decisions in these cases have tended to establish that insider trading is illegal. It has been determined that insider trading consists of trading in a security while in possession of nonpublic information that can have a material effect on the price of the security and that was acquired, or was known to have been acquired, in violation of a person's duty to keep the information confidential.[14] As this definition indicates, it is not just company employees who can be guilty of insider trading, but anyone who knowingly buys or sells stock using information that they know was acquired by a person who had a duty to keep that information confidential. Specifically, anyone is guilty who buys or sells stock knowingly using stolen nonpublic information that can affect the stock's price.

Quick Review 8.3

The Ethics of Insider Trading

- Insider trading is said to be unethical because it is theft of information that gives the insider an unfair advantage.
- Defenders argue (1) it ensures stock prices reflect the true value of the stock; (2) it harms no one; and (3) having an advantage over others in the stock market is not wrong in itself and is common with experts.
- These defenses have been criticized because (1) the information the insider uses is not his or hers and so is stolen; (2) trading on inside information has harmful effects on the stock market and increases the costs of buying and selling stocks; and (3) the advantage of the inside trader is not like the advantage of an expert because unlike the expert's, it is based on theft.

8.1.2: The Employer's Obligations to the Employee

The basic moral obligation that the employer has toward employees, according to the rational view of the firm, is to provide them with the compensation they have freely and knowingly agreed to receive in exchange for their services. Two main ethical issues are related to this obligation:

- the fairness of wages, a special problem in developing nations
- the fairness of employee working conditions[15]

Both wages and working conditions are aspects of the compensation employees receive for their services, and both are related to the question of whether the employee contracted to take a job freely and knowingly. If an employee was "forced" to accept a job with inadequate wages or inadequate working conditions, then the work contract would be unfair.

FAIR WAGES From a worker's point of view, wages are the principal (perhaps the only) means for satisfying the basic economic needs of the worker and the worker's family. From the employer's point of view, wages are a cost of production that must be kept low lest the product be priced out of the market. Therefore, every employer faces the dilemma of setting fair wages: How can a fair balance be struck between the employer's interests in minimizing costs and the workers' interest in providing a decent living for themselves and their families?

No simple formula exists for determining a "fair wage." The fairness of wages depends in part on the public supports that society provides the worker (Social Security, Medicare, unemployment compensation, public education, welfare, etc.), nonwage benefits companies traditionally provide, the freedom of labor markets, the contribution and productivity of the worker, the needs of the worker and the worker's family, and the competitive position and earnings of the firm.

WAGES IN DEVELOPING NATIONS Fair wages are difficult to determine even in industrialized nations where employers have access to a great deal of labor market information and workers are protected by numerous laws that regulate wages. They are much more difficult to determine in developing nations where wage regulations and protections are few and information is harder to obtain. Multinationals, of course, generally pay their workers in developing nations more than the prevailing local wage; that is, more than local companies there pay their workers. Nevertheless, the wages companies from the developed world pay their workers in developing nations are often criticized as being too low.

Factors Determining Fair Wages

Although there is no way to determine fair salaries with mathematical exactitude, we can identify a number of factors that should be taken into account in determining wages and salaries in most countries.[16]

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Going Wage in the Industry and the Area

Although labor markets in an industry or an area may be manipulated or distorted (e.g., by job shortages), they generally provide at least rough indicators of fair wages if they are competitive and if we assume that competitive markets are just. In addition, the cost of living in the area must be taken into account if employees are to be provided with an income adequate to their families' needs. In developing nations, employers should ensure that wages enable employees to live reasonably and to provide for their families.

Firm's Capabilities

Nature of the Job

Minimum Wage Laws

Relation to Other Salaries

Fairness of Wage Negotiations

Local Cost of Living

On the Edge

Beyoncé's Gym Clothes

Beyoncé, the star singer, teamed up with fashion tycoon Sir Philip Green to develop a line of women's gym clothes called Ivy Park.[17] In an interview, Beyoncé stated that her goal with Ivy Park was "to support and inspire women who understand that beauty is more than your physical appearance . . . I know that when I feel physically strong, I am mentally strong and I wanted to create a brand that made other women feel that way."

However, on May 7, 2016, the British tabloid the *Sun* revealed that it had interviewed several young women in Sri Lanka who were making Beyoncé's Ivy Park gym wear in a factory the tabloid described as a "sweatshop" that paid low wages. According to the tabloid, one young seamstress said she earned 65 cents an hour, or $6.23 a day. Another, a 22-year-old, said she worked 9 hours and 45 minutes a day, five days a week, for a basic wage of $126 a month. This wage was above the Sri Lankan minimum wage ($92 a month), but too little for her to survive on. So she also had to work on weekends and work overtime on weekdays to earn extra money. A living wage in Sri Lanka is estimated to be about $292 a month.

The work of the seamstresses involved stitching the same clothes over and over every day. Speaking about herself and her 19-year-old sister who had recently joined her, the 22-year-old seamstress said:

> All we do is work, sleep, work, sleep . . . We don't have much spare money and what we do have we send back to our family. We had to come and work here because our father could not afford to feed us and there are no jobs there. We have no choice. I have worked here for three years now . . . The work is hard—it's just the same, same, same every day. We don't get to go home much because we work all the time. They say if you work you can go up, up, up, but that's just office workers. For us it stays the same always.

The conservative magazine the *National Review* published an article arguing that it was better for the women to have the jobs they had than to have no job at all, and that the salaries they got were "better than prevailing wages in Sri Lanka, and . . . the factory is probably a relatively modern and safe place to work." Sri Lanka was going through a necessary stage of economic development, the article suggested, and "as those workers have more choices, salaries will rise, and so will quality of life."

WRITING PROMPT

Is This Job Better Than None?

1. **In your judgment, are the wages paid to the young women who make Beyoncé's line of clothing just wages? Explain why they are or are not fair wages.**
2. **Suppose that what the *National Review* article suggests is correct. Would that show that the wages of the young women are just? Explain.**

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

Submit

EXAMINING GLOBAL WAGE PRACTICES What are fair wages for workers in developing nations who are employed by global companies? Some critics have said that these wages are fair: they are too low relative to the wages of employees working in the industrialized nations where global companies are headquartered, but the counterargument says that local labor markets should set the standard. It has been posited that these wages are too low relative to what global companies can afford or relative to what they earn on the products, but the counterargument states that U.S. retail prices and company earnings are not directly correlated. Finally, it is argued that these wages are too low relative to the basic needs of workers in developing nations, but the counterargument is that the number of workers in a household makes a difference to the living wage.

WORKING CONDITIONS: HEALTH AND SAFETY Each year more than 4,500 workers are killed and 3,000,000 are injured while on the job.[18] Ten percent of the job force suffers a job-related injury or illness each year, for a loss of over 31 million workdays annually. Delayed occupational diseases resulting from exposure to chemical and physical hazards kill off additional numbers. Annual costs of work-related deaths and injuries in the United States were $183 billion in 2008.[19]

Workplace hazards include not only the more obvious categories of mechanical injury, electrocution, and burns but also extreme heat and cold, noisy machinery, rock dust, textile fiber dust, chemical fumes, mercury, lead, beryllium, arsenic, corrosives, poisons, skin irritants, and radiation.[20] Many workplace hazards are not recognized until many years after they begin to inflict damage on workers. Asbestos, for example, takes about 20 years before the lung cancers appear that we now know it causes. Although inhaling asbestos fibers was long suspected of being a cause of lung diseases, it was not definitively discovered to be associated with cancer until 1964, long after tens of thousands of workers had been exposed to asbestos in shipyards and other construction projects.

In a similar way, until recently many workers were being exposed to manganese. We now know that manganese inhaled as a vapor or in airborne particles can cause

Pro and Con: Is It Ethical for Global Companies to Pay Low Wages in Developing Nations?

Three criticisms have been made about the wages paid in developing nations to workers that assemble goods for companies that market those goods in the United States.

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Criticism 1: Disproportionately Low Relative to U.S. Wages

According to the U.S. Bureau of Labor Statistics, U.S. workers in the apparel industry were paid $15.29 an hour in 2007. The same year, according to the International Labor Organization (ILO), apparel workers in the Philippines received $0.82 an hour; in Bangladesh they received $0.31 an hour; in Mexico, $2.75 an hour; in Thailand, $1.52 an hour; in Egypt, $1.02 an hour; in China, $1.59 an hour; in India, $1.00 an hour; and in Sri Lanka, $0.38 an hour. These lower wages cannot be attributed to the "lower productivity" of workers in developing nations because the wage differences are disproportionate to the differences in productivity. According to the ILO, in an hour a U.S. worker produces about three times what a Filipino worker produces, but gets paid almost 20 times as much; a U.S. worker produces five times what a Bangladesh worker produces, but gets paid 50 times as much; a U.S. worker produces 1.5 times what a Mexican worker produces, but gets five times as much; a U.S. worker produces three times what a Thai worker produces, but gets 10 times as much; a U.S. worker produces four times what a Chinese worker produces, but gets 10 times as much; and a U.S. worker produces four times what an Indian worker produces, but gets 16 times as much. These wage differences, many activists have argued, are unjust.

Reply to Criticism 1

It is not clear that wages in one country (such as the United States) should be used as the basis for setting wages in other countries. Perhaps local labor markets should determine local wages.

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cognitive disorders, tremors, weakness, inability to coordinate movements, and troubled breathing. Workers who have been exposed to manganese vapors on a daily basis include welders, miners, steelworkers, some railroad workers, farm workers who have handled pesticides or fertilizers containing manganese, and plant workers involved in factory processes that use manganese. These workers face an uncertain future since many of them will become incapacitated and dependent on others for all their needs.

In 1970, the U.S. Congress passed the Occupational Safety and Health Act and created the *Occupational Safety and Health Administration (OSHA)* "to assure as far as possible every working man and woman in the nation safe and healthful working conditions."[21] Unfortunately, from the beginning, OSHA has been burdened with an inadequate number of field inspectors, and often inefficient forms of regulation. Nevertheless, the existence of OSHA has led many firms to create or improve their safety programs. One poll revealed that 36 percent of the firms surveyed had implemented safety programs as a result of OSHA, and 72 percent said that the existence of OSHA influenced them in their safety efforts.[22] This influence is reflected in occupational accident rates, which have been declining in the United States. For example, between 1995 and 2009, the rate at which workers were being killed on the job declined dramatically from 18 deaths per 100,000 workers to 3.3 deaths per 100,000. In absolute numbers, the decline was from a total of 6,275 deaths due to occupational injuries in 1995 to a total of 4,340 deaths from occupational injuries in 2009.[23] However, the absolute number of seriously injured workers (i.e., workers who were disabled or who died) increased from 2 million in 1985 to 3.2 million in 2008.[24]

LOOKING AT RISK IN OCCUPATIONS Risk is, of course, an unavoidable part of many occupations. A race-car driver, a circus performer, and a rodeo cowboy all accept certain hazards as part of their jobs. An employer should take reasonably adequate measures to do the following:

- become informed about and inform workers about workplace risks
- eliminate workplace risks
- fully compensate and insure workers for assuming risks that cannot be eliminated

If the above conditions are met and workers freely and knowingly accept those remaining risks in exchange for the added compensation, then we may generally conclude that the employer has acted ethically.[25]

When any of the three factors that may result in an unfair contract between employer and employee are present, that contract is no longer fair.

Quick Review 8.4
Job Risks . . .

- Are not justified when labor markets are uncompetitive and risks are unknown and uncompensated
- Are not justified when companies fail to collect information on risks and fail to inform workers of risk
- May not be justified when less risky jobs are unavailable, or when workers lack information about less risky alternatives.

Unfair Risk in Hazardous Occupations

The basic problem concerning risk is that in many hazardous occupations, particularly in less developed nations, the conditions that minimize risk and protect and compensate workers do not exist.

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Workers May Not Be Fully Compensated for Risks

Wages will fail to provide a level of compensation proportional to the risks of a job when labor markets are not competitive or when markets do not register risks because the risks are not yet known. There are large areas in some developing nations, for example, where a single mining company has a monopoly on jobs. Or the health risks involved in mining or using a certain mineral, such as manganese, may not be known until many years afterward. In such cases, wages will not fully compensate for risks.

Workers May Accept Workplace Risks Unknowingly

Workers May Accept Known Risks Because of Poverty or Desperation

THE EMPLOYER'S DUTY IN CASES OF RISK The employer has a duty to take steps to ensure that a worker is not being unfairly manipulated into accepting a risk unknowingly, unwillingly, or without due compensation. Assuming that the employer has eliminated all workplace health and safety hazards that violate local laws and has eliminated all other hazards that can be eliminated with a reasonable investment, then

1. If any workplace health and safety risks cannot be eliminated at a reasonable cost, the employer has an obligation to fund studies of those risks, to clearly and explicitly inform workers of the risks (particularly those involving health and life), and to compensate workers for any injuries they sustain
2. Employers should offer wages that reflect the risk-premiums paid in other similar but competitive labor markets, so that workers are adequately compensated for the risks their jobs involve
3. To insure their workers against unknown hazards, the employer should provide them with suitable health insurance programs and suitable disability insurance
4. Employers have an obligation (working singly or together with other firms, perhaps through industry associations) to collect information on the health hazards that accompany a given job and make all such information available to workers

Quick Review 8.5
Establishing Fair Working Conditions Requires . . .

- Eliminating risks when cost is reasonable, studying potential risks of a job, informing workers of known risks, compensating workers for injuries
- Providing compensation for job risks similar to risk-premiums paid in other jobs
- Providing adequate medical and disability benefits
- Working singly or with other firms to collect information about job risks and then make that information available to workers

HEALTH AND SAFETY IN DEVELOPING NATIONS Health and safety issues are particularly problematic in developing nations where worker health and safety laws sometimes set extremely low standards or where governments do not have the resources to enforce the standards that are in place.

> **The term *sweatshop* is sometimes used to describe a workplace that has numerous health and safety hazards and poor working conditions, as well as low wages.**

Quick Review 8.6
An Employer Is Morally Responsible for Bad Working Conditions

- When it knows about the conditions
- When it can and should improve them
- When it is not prevented from changing them

WORKPLACE VIOLENCE Another workplace safety issue that has grown in significance is workplace violence. An average of about 1.7 million workers are the victims of workplace assaults and violence each year in the United States, and about 700 of these result in death. Almost a fifth of all U.S. occupational deaths today are the result of assaults and other forms of violence in the workplace. Homicide was the third-leading category of fatal occupational injuries in the United States in 2009. According to the U.S. Bureau of Labor Statistics, out of a total of 4,340 fatal work injuries in 2009, some 788 deaths were due to workplace assaults and violence; 521 of these deaths were classified as homicides. The U.S. Department of Justice has even labeled the U.S. workplace as one of the "most dangerous places" to be in the United States. Seventy percent of all workplace killings occur during robberies of taxicab drivers (the most dangerous occupation), during store robberies (especially stores selling liquor, jewelry, or gasoline), during home deliveries, during truck deliveries, and in restaurant disputes. The other 30 percent are inflicted by angry co-workers (13 percent), customers (7 percent), acquaintances, spouses or former spouses, and relatives. Nonfatal workplace assaults occur primarily in hospitals, nursing homes, and social service agencies.

Clearly, employers have the same obligation to deal with the issue of workplace violence as they have to deal with other health and safety issues in the workplace: study the workplace in order to identify potential hazards, eliminate those hazards that can be eliminated at a reasonable cost, and educate themselves and their workers about any remaining workplace risks. Thus, employers should familiarize themselves with the issue of workplace violence and assess the potential risks for such violence in their own particular workplace. They should try to eliminate the risk of workplace violence by developing programs to deal with anger and violence among employees, and by putting physical mechanisms in place to protect employees from violent customers and clients. As well, they should train supervisors and employees to recognize the warning signs of violence and to learn how to deal with violence when it emerges.

Sweatshops in the United States and Developing Nations

Clearly, sweatshop conditions are unethical. In the United States, sweatshops are illegal and in violation of various occupational health and safety laws. (Yet, the U.S. Department of Labor estimates that perhaps half of the remaining sewing shops in the United States qualify as sweatshops.) The existence of sweatshops in developing nations is complicated by an added factor: many sweatshops are not owned by the companies for which they produce their goods.

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Outsourcing Creates the Situation

Many companies in the United States and other industrialized nations now "outsource" their manufacturing to foreign factories. Nike, for example, pioneered the strategy of designing its athletic shoes in the United States and contracting with factories in Asia to make its shoes in accordance with its designs. While Nike determines the materials, design, quality, and quantity of shoes the factory will produce, the factory itself is owned and managed by someone other than Nike. Virtually all athletic shoe companies today have adopted Nike's strategy of having their shoes manufactured by foreign factories they do not own. Many of these foreign factories are sweatshops with a great many health and safety hazards (and low pay) that can take a heavy toll on their workers.

How Can a Global Company Define Its Responsibility?

8.2: The Political Organization

OBJECTIVE: Analyze the political model of the organization in terms of power and rights and justice

To anyone who has ever worked within a large organization, the goal-directed and efficient structure that the rational model of the organization attributes to business firms will seem somewhat incomplete, if not altogether unreal. Although much of the behavior within organizations accords with the orderly picture drawn by the rational model, a great deal of organizational behavior is neither goal-directed, efficient, or even rational. Employees within organizations often find themselves embroiled in intrigues, ongoing battles for organization resources, feuding between cliques, arbitrary treatment by superiors, scrambles for career advancement, controversies over what the organization's "real" goals are or should be, and disagreements over strategies for pursuing goals. Such behaviors do not seem to fit within the orderly pattern of the rational pursuit of organizational goals.[26] To understand these behaviors and the ethical issues they raise, we must turn to a second model of the firm—one that focuses less on its rational aspects and more on its political features: the **political model of the organization.**[27]

The political analysis of the organization that we now sketch is a more recently developed view of organizations than the rational analysis. Unlike the rational model, the political model of the organization does not look merely at the formal lines of authority and communication within an organization, nor does it presume that all organizational behavior is rationally designed to achieve an objective and a given economic goal such as profitability or productivity. Instead, the political model of the organization sees the organization as a system of competing power coalitions and formal and informal lines of influence and communication that radiate from these coalitions.[28]

8.2.1: Where Is the Power?

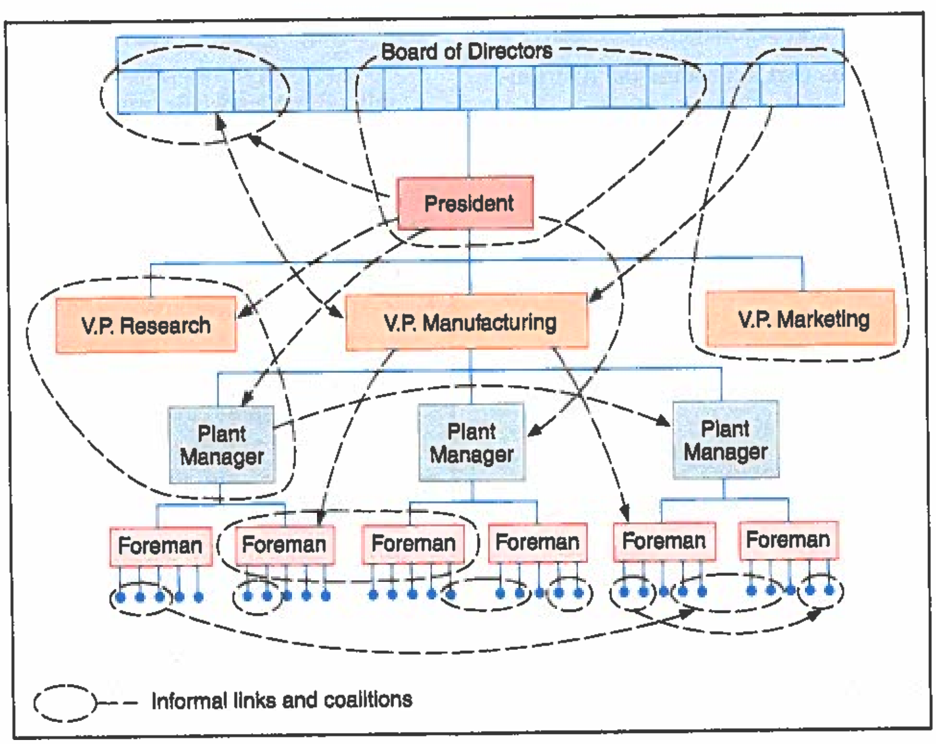
In place of the neat hierarchy of the rational model, the political model postulates a messier and more complex network of clustered power relationships and criss-crossing communication channels (see Figure 8.2).

The political model of the organization recognizes that individuals in all organizations often group together to form coalitions that then compete with each other for resources, benefits, and influence. Consequently, the goals of the organization become those established by the historically most powerful or dominant coalition.[29] Goals are not given by "rightful" authority, but are bargained for among more or less powerful coalitions. The fundamental organizational reality, according to this model, is not formal authority or contractual relationships, but power: the ability of the individual (or group of individuals) to modify the conduct of others in a desired way without having one's own conduct modified in undesired ways.[30]

Behavior within an organization may not be aimed at rational organizational goals such as efficiency or productivity, and both power and information may travel completely outside (even contrary to) formal lines of authority and communication. Nonetheless, formal managerial authority and formal communication networks provide rich sources of power. The formal authority and sanctions put in the hands of managers are a basic source of the power they wield over workers.

If we focus on power as the basic organizational reality, then the main ethical problems we will see when we look at an organization are problems connected with the acquisition and exercise of power. The central ethical issues will focus not on the contractual obligations of employers and employees (as the rational model would focus them), but on the moral constraints to which the use of power within organizations must be subjected. The ethics of organizational behavior as seen from the perspective of the political model focus on this question: What are the moral limits, if any, to the exercise of power within organizations? In the sections that follow, we discuss two aspects of this question: (1) What, if any, are the moral limits to the power owners and managers acquire and exercise over their subordinates? (2) What, if any, are the moral limits to the power employees acquire and exercise on each other?

Figure 8.2 A Company's Political Organization



8.2.2: Employee Rights and the Similarity Argument

Observers of corporations have repeatedly pointed out that the power of modern corporate management is similar to that of a government.[31] This similarity is the basis of what we can call the "similarity argument" in support of employee rights. We will start with an analysis of the similarity argument and progress to an expanded discussion of employee rights.

The similarity argument is as follows. A government is defined in terms of four features:

- it is composed of a centralized decision-making body of officials;
- its officials have the power and recognized authority to enforce their decisions on subordinates (citizens);
- its officials make decisions that determine the public distribution of social resources, benefits, and burdens among their subordinates; and
- its officials have a monopoly on the power to which their subordinates are subject.

These same four features, observers have argued, also characterize the managerial hierarchies that run large corporations:

- like a city, state, or federal government, the top managers of a corporation constitute a centralized decision-making body that has considerable power;
- managers wield power and legally recognized authority over their employees—a power that is based on their ability to fire, demote, or promote employees and an authority that is based on the law of agency that stands ready to recognize and enforce managerial decisions;
- managers make decisions that determine the distribution of income, status, and freedom among the corporation's constituencies; and
- through the law of agency and contract, through their access to government agencies, and through the economic leverage they possess, managers of large corporations effectively share in the monopoly on power that political governments possess.[32]

Quick Review 8.7
Similarity Argument

- Similarities between the power of management and government imply that employees should have rights similar to citizens' rights.
- A company's management is a centralized decision-making body that exercises power, like a government's centralized decision-making body of officials.
- Managements wield power and authority over employees, like governments wield power over citizens.
- Management has the power to distribute income, status, and freedom among the corporation's constituencies, like government does with respect to citizens.
- Management shares in the monopoly on power that government possesses.
- Since management's power over employees is so similar to government's power over citizens, employees should have rights that protect them from managers' power, just as citizens' rights protect them from government power.

ARGUMENTS SURROUNDING THE SIMILARITY COMPARISON The major objection to the similarity argument for employee rights is that there are a number of important differences between the power of corporate managers and the power of government officials, and these differences undercut the argument that the power of managers should be limited by employee rights comparable to the civil rights that limit the power of government.

Advocates of employee rights have responded to the major objection in a number of ways:

1. Corporate assets are no longer controlled by private owners; they are now held by a dispersed and almost powerless group of stockholders. This kind of dispersed ownership implies that managers no longer function as agents of the firm's owners and, consequently, that their power no longer rests on property rights.[33]
2. Although some workers are unionized, most today are not, and these nonunionized workers have moral rights that managers do not always respect.[34]
3. Changing jobs is sometimes as difficult and traumatic as changing citizenship, especially for the employee who has acquired specialized skills that can be used only within a specific organization.[35]

Quick Review 8.8
Replies and Counter-Replies to the Similarity Argument

- The power of government is based on consent and so is unlike the power of managers, which is based on ownership of the company; supporters of the similarity argument respond that today the power of managers does not come from owners.
- Unlike government, the power of management is limited by unions; supporters of the similarity argument respond that most workers today are not unionized.
- While it is hard for citizens to escape the power of a government, it is easy for employees to escape the power of managers by changing jobs; supporters of the similarity argument respond that changing jobs is not always so easy.

Basic Differences between Business Power and Government Power

Consent, limits, and mobility are three basic differences between the power of corporate managers and the power of government officials.[36, 37, 38]

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The power of government officials (in theory, at least) is based on consent, whereas the power of corporate managers is (in theory, again) based on ownership. Government officials rule because they have been elected or because they have been appointed by someone who has been elected; corporate managers *rule* (if that is the right word) because they own the firm for which workers freely choose to work or because they have been appointed by the owners of the firm. Consequently, because the power of government rests on the consent of the governed, that power can legitimately be limited when the governed choose to limit it. However, because the power of managers rests on ownership of the firm, managers have the right to impose whatever conditions they choose to impose on employees, who freely and knowingly contracted to work on their firm's premises.

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8.2.3: Employees' Right to Privacy

Recall that the **right to privacy** can be defined as the right people have to determine what, to whom, and how much information about themselves shall be disclosed to others.

These innovations have made a person's privacy more vulnerable, and they have come at a time when managers are particularly anxious to learn more about their employees. Advances in industrial psychology have demonstrated relationships between an employee's private home life or personality traits and on-the-job performance and productivity.

On the Edge

Sergeant Quon's Text Messages

Jeff Quon worked as a sergeant on the SWAT team of the Ontario, California Police Department.[39] The department provided him and all other officers with pagers that allowed text messaging with a monthly limit of 25,000 characters, above which the city of Ontario had to pay extra. The city issued a written "Communication Usage, Internet, and E-Mail Policy" that said "the use of these tools for personal benefit is a significant violation of City of Ontario Policy," but "some incidental

Technology and Employee's Right to Privacy

The employee's right to privacy has become particularly vulnerable with the development of recent technologies, particularly electronic and computerized technologies.[40]

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Employees who use telephones and computers can be legally monitored by their employer, who may wish to check how fast they are working, whether they are engaged in personal or business-related activities, or simply what they are doing.

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and occasional personal use of the e-mail system, if limited to light personal communications" is permitted. In addition, the policy continued, "The City of Ontario reserves the right to monitor and log all network activity including e-mail and Internet use, with or without notice; users should have no expectation of privacy or confidentiality when using these resources." The policy reminded officers that all such "messages are also subject to 'access and disclosure' in the legal system and the media"; that is, they could be revealed if a court subpoenaed them during a trial or if reporters requested them under a freedom of information statute or a public records disclosure statute. Sergeant Quon signed an acknowledgement that he read and understood the policy. In addition, he attended a meeting where all officers were told that pager messages were considered e-mails under the policy "and could be audited." A few days later, he received a memo reminding him of that policy.

When Quon went over the 25,000-character monthly limit on his pager for the first time, he was approached by a superior, Lieutenant Steve Duke. Lieutenant Duke reminded him that his messages "could be audited." However, the lieutenant explicitly added that he would not "audit employees' text messages to see if the overage was due to work-related transmissions" as long as the employee "reimbursed the City for [the] overage." Only if Quon did not pay for the overage would it be necessary to "audit the transmission to see how many messages were work-related." Sergeant Quon paid the overage in full and when he went over the limit three or four more times, he also paid each overage in full and, as the lieutenant had said, his messages were not examined. However, when he went over the limit a fifth time, Lieutenant Duke did not ask Quon to pay for the overage but instead obtained a transcript of all his messages and read through them. He discovered that some messages were to or from Quon's wife, "while others were directed to or from his mistress" and some of these were sexually explicit. The lieutenant showed these to his superior, Chief Scharf, and pointed out that the department's policy expressly prohibited "the use of inappropriate, derogatory, obscene, suggestive, defamatory, or harassing language" in messages.

WRITING PROMPT

Evaluate the Sergeant's Predicament

1. What, ethically, should Chief Scharf do? What should Lieutenant Duke do?
2. Was Lieutenant Duke's assurance that he would not examine Sergeant Quon's messages as long as Quon paid for any overage an implicit agreement, which Quon was entitled to rely on? Was it an implicit agreement that Duke was morally required to keep?
3. Did Lieutenant Duke or Chief Scharf violate Sergeant Quon's right to privacy? If they did, explain why; if they did not, then explain what additional events would have to happen for the incident to be a violation of the right to privacy and why those additions are necessary.

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

Submit

PSYCHOLOGICAL PRIVACY AND PHYSICAL PRIVACY As we saw earlier, there are two types of privacy: psychological privacy, which is privacy regarding one's inner thoughts, plans, beliefs, values, feelings, and wants; and physical privacy, which is privacy with respect to one's physical activities, particularly those that reveal one's inner life and those that involve physical or personal functions that are culturally recognized as private.[41]

Hence, it is clear that employees, like others, have a significant interest in maintaining privacy over information about themselves, and so employees must be recognized as having a right to privacy. However, this right must be balanced against the rights and needs of others. In particular, employers sometimes have a legitimate right to inquire into the activities of employees or prospective employees. The employer is justified in wanting to know, for example, what a job candidate's past work experience has been and whether the candidate has performed satisfactorily on previous jobs. An employer may also be justified in wanting to identify the culprits when the firm finds itself the subject of pilferage or employee theft and of subjecting employees to on-the-job surveillance to discover the source of thefts. How are these rights to be balanced against the right to privacy?[42]

THREE ELEMENTS OF PRIVACY Three elements must be considered when collecting information that may threaten the employee's right to privacy: relevance, consent, and method.

RELEVANCE The employer must limit inquiry into the employee's affairs to those areas that are directly relevant to the issue at hand. Although employers have a right to know the person whom they are employing and to know how the employee is performing, employers are not justified in inquiring into any areas of the employee's life that do not directly and significantly affect the employee's performance. To investigate an employee's political beliefs or social life, for example, is wrong because doing so is an invasion of the employee's right to privacy. For the same reason, if a firm acquires information about an employee's personal life in the course of a legitimate investigation, it is wrong to record and keep the information, especially when such data would embarrass or otherwise injure the employee if it were leaked.

The dividing lines between justified and unjustified investigations are fairly clear with respect to lower-level employees: Clearly, little justification exists for investigating the marital problems, political activities, or emotional characteristics of clerical workers, salespeople, or factory laborers. The dividing line between what is and is not relevant, however, becomes less clear as one moves higher in the firm's management hierarchy. Executives are called on to represent their company before others, and the company's reputation can be significantly damaged by an executive's private activities or emotional instability. A CEO's drinking problem or membership in a disreputable association, for example, will affect his or her ability to represent the firm. When hiring for such positions, the firm may be justified in inquiring into a candidate's personal life or psychological history because they can be relevant to what the candidate is being hired to do.

CONSENT Employees must be given the opportunity to give or withhold their consent before the private aspects of their lives are investigated. Every person, as Immanuel Kant argued, has the moral right to be treated only as they have consented to be treated. The firm, therefore, is justified in inquiring into the employee's life only if the employee understands that the inquiry is being made and clearly consents to it as part of the job (or the employee can freely choose to refuse the job). The same principle holds when an employer undertakes some type of surveillance of employees for the purpose of, say, uncovering or preventing pilferage. Employees should be informed of such surveillance so they can ensure they will not inadvertently reveal their personal lives while under surveillance. Announcing such surveillance, moreover, may itself be sufficient to stop the pilferage.

Protecting Privacy with the Protection of a Right

Each of us has a significant interest in privacy, which justifies protecting privacy by surrounding it with the protection of a right.

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Privacy Protects Us	Privacy Empowers or Enables Us

Privacy lets us protect information about ourselves that could embarrass or shame us, it protects us from having others interfere in our lives merely because they disagree with our values, it lets us protect those we love from knowledge about ourselves that might hurt them, and, more generally, it protects our reputation.

METHODS The employer must distinguish between methods of investigation that are both ordinary and reasonable, as well as methods that are neither. Ordinary methods include the supervisory activities that are normally used to oversee employees' work and that employees can be presumed to know about and to consent to as part of their explicit or implicit contract with the firm. Extraordinary methods include using devices such as hidden microphones, secret cameras, wiretaps, lie detector tests, personality inventory tests, and spies. Such extraordinary methods are unreasonable and unjustified unless the circumstances are extraordinary. Extraordinary methods of investigation might be justified if a firm is suffering heavy losses from employee theft that ordinary supervision has failed to stop. Extraordinary methods, however, are not justified merely because the employer hopes to be able to pick up some interesting information about employee loyalties. In general, the use of extraordinary methods is justified only when the following conditions have been met:

- The firm has a problem that can be solved in no other manner than by employing such extraordinary means.
- The problem is serious and the firm has well-founded grounds for thinking that the use of extraordinary means will identify the culprits or put an end to the problem.
- The use of the extraordinary means is not prolonged beyond the time needed to identify the wrongdoers or after it becomes clear that the means will not work.
- All information that is uncovered but not directly relevant to the purposes for which the investigation was conducted is disregarded and destroyed.

- The failure rate of any devices employed (such as lie detectors, drug tests, or psychological tests) is taken into account, and all information derived from devices with a known failure rate is verified through independent methods that are not subject to the same failures.

Quick Review 8.9

Employee Right to Privacy . . .

- Is threatened by today's technologies
- Is justified because of the interest we have in the protective and enabling functions of privacy
- Requires that managers consider relevance, consent, and methods when collecting information about employees

8.2.4: Employees' Right to Freedom of Conscience

Employees sometimes discover that the corporation they work for is doing something that they believe is seriously and morally wrong. Indeed, individuals inside a corporation are usually the first to learn that the corporation is marketing unsafe products, polluting the environment, suppressing health information, or violating the law.

Responsible employees who find that their company is injuring society in some way will normally feel they have a moral obligation to get the company to stop its harmful activities and, consequently, will bring the matter to the attention of their superiors. Unfortunately, if the internal management of the company refuses to do anything about the matter, the employee has few other legal options available. If, after being rebuffed by the company, the employee has the temerity to take the matter to a government agency outside the firm or, worse, to disclose the company's activities to the public, the company has the legal right to punish the employee by firing him or her. Furthermore, if the matter is serious enough, the company can reinforce this punishment by putting the matter on the employee's record and, in extreme cases, seeing to it that the employee is blackballed by other companies in the industry.[43]

Several authors have argued that such a punitive response is in effect a violation of an individual's right to freedom of conscience.[44] It is a violation of the right to freedom of conscience because the individual is forced to cooperate with an activity that violates the individual's personal moral beliefs. What is the basis of this right? The right to freedom of conscience derives from the interest that individuals have in being able to adhere to their religious or moral convictions.[45] Individuals who have religious or moral convictions commonly see them as absolutely binding and can transgress them only at great psychological cost. The right to freedom of conscience protects this interest by requiring that individuals not be forced to cooperate in activities that they conscientiously believe are wrong.

These arguments, however, have had only a small impact on the law, which still by and large supports the employee's duty of maintaining loyalty and confidentiality toward the employer's business.[46] A few laws have been passed, however, that afford some protection to the employee who is concerned that his or her company is violating the law or is engaged in immoral activities. These laws protect the practice of what is called **whistleblowing**.[47] We will look at those laws shortly, but first we will discuss what whistleblowing itself is.

WHISTLEBLOWING Whistleblowing is an attempt by a member or former member of an organization to disclose wrongdoing in or by the organization including violations of the law, fraud, health or safety violations, bribery, or a potential or actual injury to the public.

Ethical Application

An Inspector Is Thwarted

Mr. Mackowiak was hired as a welding inspector by University Nuclear Systems, Inc. (UNSI), a firm responsible for installing the heating, ventilating, and air-conditioning system at a nuclear power plant owned by the Washington Public Power Supply system. Mackowiak was supposed to inspect the work of UNSI employees and make sure it conformed to federal quality and safety standards—a task that was mandated by federal regulations requiring builders of nuclear power plants to give their inspectors the authority and organizational freedom they needed to fulfill their role as independent observers of the construction process. However, some UNSI employees refused to give Mackowiak access to areas in which work was being done in a manner that violated federal specifications. Mackowiak went to his superiors and told them that he believed the company was violating federal regulations, but he was illegally being prevented from inspecting the areas where the violations were taking place. When he was unable to get them to respond to his concerns, Mackowiak *blew the whistle* on the company. He met with officials of the Nuclear Regulatory Commission (NRC) at his home and disclosed to them his concerns about the safety and quality control of the work of UNSI. The NRC took his allegations seriously and conducted a full investigation of UNSI that verified the problems and forced the company to correct them. However, UNSI discovered that it was Mackowiak who had talked to the federal agents and early the following year, the company fired him because, the company said, he had a "mistrustful attitude toward management," although his "inspection qualifications/expertise is excellent and he is a good inspector."[48]

Whistleblowing can be internal or external. If the wrongdoing is reported only to higher-ups within the organization, as Mackowiak initially did, it is internal whistleblowing (see the "Ethical Application"). When the wrongdoing is reported to external individuals or bodies such as government agencies, newspapers, or public interest groups, the whistleblowing is said to be external. When Mackowiak reported his concerns to the NRC, for example, his act became external whistleblowing.

As Mr. Mackowiak's experience shows, blowing the whistle is often a brave act of conscience that can carry heavy personal costs. A study of whistleblowers found that the average whistleblower is a 47-year-old family man who has been a conscientious employee for seven years and who has a strong belief in universal moral principles.[49] The same study reported that 100 percent of the whistleblowers surveyed who worked for private businesses were fired by their employers; 20 percent could still not find work at the time of the survey; 25 percent had suffered increased financial burdens on their family; 17 percent lost their homes; 54 percent had been harassed by their peers at work; 15 percent viewed their subsequent divorce as a result of their whistleblowing; 80 percent suffered physical deterioration; 86 percent reported emotional stress, including feelings of depression, powerlessness, isolation, and anxiety; and 10 percent reported having attempted suicide. Nevertheless, most of the whistleblowers surveyed had few regrets and would do it again. Typical of the comments they made to the survey team were the following: "This has turned out to be

Justifying External Whistleblowing

When an employee accepts a job, the argument goes, the employee implicitly agrees to keep all aspects of the business confidential and to single-mindedly pursue the best interests of the employer. The whistleblower violates this agreement and thereby violates the rights of the employer. Although part of what this argument asserts is true, the conclusion is false.

Interactive

It is true that an employee enters an agreement to act on behalf of the employer in all matters pertaining to the business and that the employee also implicitly or explicitly agrees to keep trade secrets and other proprietary information secret. However, this agreement is not unqualified, and it does not impose on the employee unlimited obligations toward the employer. As we saw in an earlier discussion, agreements and contracts are void if they require a person to do something immoral. Consequently, if an employee has a moral obligation to prevent other people from being harmed and the only way to prevent the harm is by blowing the whistle on one's employer, an employment agreement cannot require the employee to remain silent. In such a situation, the employment agreement would be void because it would require immorally failing to do what the employee is morally obligated to do. Thus, external whistleblowing is justified if it is necessary to prevent a wrong that one has a moral duty to prevent, or if it will yield a benefit that one has a moral right or duty to provide.

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the most frightening thing I have ever done. But it has also been the most satisfying. I think I did the right thing, and I have caused some changes to be made in the plant," "Do what is right. Lost income can be replaced. Lost self-esteem is more difficult to retrieve," and "Finding honesty within myself was more powerful than I expected."

TRUE AND FALSE OF WHISTLEBLOWING It is sometimes argued that external whistleblowing is always wrong because employees have a contractual duty to be loyal to their employer and to keep all aspects of the business confidential.

JUSTIFICATION, OBLIGATION, AND RETALIATION To say that external whistleblowing is *justified* is not the same as saying that it is *obligatory*. Although it may be morally permissible for a person to blow the whistle on a company, this does not mean that the person also has a moral duty or moral obligation to do so.[50] Under what conditions is it not only permissible but also obligatory for a person to engage in external whistleblowing? Whistleblowing is merely a means to an end—the end of correcting or preventing a wrong—therefore, a person has an obligation to take this means only to the extent that there is an obligation to achieve the end. Clearly, a person has a moral obligation to engage in whistleblowing only when there is a moral obligation to prevent the wrong that whistleblowing will prevent.

Quick Review 8.10
The Right to Whistleblow

- It is justified by the interest we have in remaining true to our religious and moral convictions.
- It must be balanced against the legitimate rights of the firm, its stockholders, and fellow employees.

Whistleblowing: Obligation and Retaliation

When does a person have an obligation to prevent a wrong?[51, 52]

Interactive

Obligation to Whistleblowing | Protection from Retaliation

Assuming that the four conditions that morally justify external whistleblowing are met, so that whistleblowing is at least permissible, a person has an obligation to blow the whistle when:

1. that person has a moral duty to prevent the wrong, either because it is part of the person's professional responsibilities (e.g., as an accountant, environmental officer, professional engineer, lawyer) or because no one else can or will prevent the wrong in which the company is involved; and
2. the wrong involves serious harm to society's overall welfare, serious injustice against a person or group, or serious violation of the basic moral rights of one or more people. For example, when a company is involved in activities that can result in substantial health injuries to many people who have a right to be protected from such injuries, and no one else in the company is willing to bring these activities to a halt, then I have an obligation to prevent the wrong, even if it means resorting to whistleblowing.

In many companies, conscientious employees have to resort to external whistleblowing because the company has not provided a way for them to voice their concerns internally, or because they fear reprisals if they do so. To overcome these problems, many companies have set up "ethics hotlines"—toll-free telephone numbers—that employees can use to report legal or ethical violations anonymously to upper management or to an "ethics officer" who is empowered to investigate the allegations.

- It implies that whistleblowing to prevent a wrong that violates our moral convictions is *morally justified* when: (1) the wrong is clear, (2) other methods to prevent the wrong have failed, (3) it will prevent the wrong, and (4) the wrong is serious enough to justify the personal and other costs of whistleblowing.
- Whistleblowing is a *moral obligation* for a person when (1) to (4) hold, and when the person has a moral duty to prevent the wrong or is the only person who will or can prevent the wrong, and the wrong involves serious harm to society's overall welfare, serious injustice against a person or group, or serious violation of basic moral rights.

8.2.5: Employees' Right to Participate in Decisions That Affect Them

A democratic political tradition has long held that government should be subject to the consent of the governed because individuals have a right to liberty, and this right implies that they have a right to participate in the political decisions that affect them. Within a democracy, therefore, political decision-making usually has two characteristics:

1. Decisions that affect the group are made by a majority of its members.
2. Decisions are made after full, free, and open discussion.[53]

Steps Toward Organizational Democracy

A number of authors have proposed that these ideals of democracy should be embodied in business organizations. Some have argued that enabling individual employees within the organization to participate in the decision-making processes of the organization is an "ethical imperative."[54, 55, 56]

Interactive

First Step: Company Makes Decisions in Open Communication

As a first step toward organizational democracy, some have suggested that although decisions affecting workers should not be made by workers, they should, nonetheless, be made only after full, free, and open discussion with workers. This step would entail open communication between workers and their supervisors and the establishment of an environment that encourages consultation with workers. Employees would be allowed to freely express criticism, receive accurate information about decisions that will affect them, make suggestions, and protest decisions.

Second Step: Workers Make Decisions About What Affects Them

Third Step: Workers Make Policy Decisions That Affect the Company

Either all the members of the group participate in these decision-making processes or they do so through elected representatives.

Full organizational democracy has not been particularly popular in the United States. Part of the reason, perhaps, is that employees have not shown a great deal of interest in participating in the firm's broader policy decisions. A more important reason, however, is that U.S. ideology distinguishes sharply between the power exercised in political organizations and the power exercised within economic organizations: power in political organizations, it is assumed, should be democratic, whereas power in economic organizations should be left in the private hands of managers and owners.[57] Whether this ideological distinction is valid is something the reader must decide.

VIEWS ON BRINGING DEMOCRATIC PROCESSES INTO THE WORKPLACE Some management thinkers have urged managers to bring democratic processes into business organizations in the guise of **participative management**. They have argued that bringing democratic leadership styles into business organizations will increase worker satisfaction and productivity. So on utilitarian grounds, more democracy should be integrated into the organization.

If democratic participative management styles make organizations more effective and productive, then, on

Participative Management Styles

Democratic participative management styles are advocated in different ways by three theorists: Douglas McGregor, Raymond Miles, and Rensis Likert.[58, 59, 60]

Interactive

Douglas McGregor's View | Raymond Miles's View | Rensis Likert's View

Douglas McGregor described two "theories" managers can have about employees. In one theory, "Theory X," managers assume that employees are naturally lazy and need to be rewarded, punished, and controlled to get them to work toward organizational objectives. Managers who subscribe to Theory X tend to be more authoritarian, controlling, and so less democratic. In the other theory, "Theory Y," managers assume that employees want and can develop the capacity to accept responsibility and can be trusted to find the best means for achieving these goals on their own. Theory Y, McGregor held, is a more accurate description of modern workers, and so managers should use a participative and democratic style of management if they want to create a more effective and productive organization.

utilitarian grounds, managers should bring these elements of democracy into organizations. However, the research on whether a more democratic participative management style leads to greater worker satisfaction and a more effective and productive organization has not come to firm conclusions. In some companies (e.g., Semco, a Brazilian company),[61] participative management has been spectacularly successful, enabling entire plants to be turned from unproductive "disasters" into highly efficient "dynamos."[62] In other companies, participative management has not had substantial positive effects on performance or productivity, although it usually has positive effects on employee job satisfaction.[63] Moreover, critics of the participative approach to management have argued both that people are different and do not all want to participate in management decision-making and that organizations and organizational tasks are different and are not all suited to participatory decision-making. If this is correct, then the utilitarian argument in favor of democracy as "participative management" at most shows that managers should use participative management and its democratic processes, but only with the right people and in the right organizational contexts.[64] Organizational democracy might not be for everyone! Nevertheless, many authors have argued, given the large place that business organizations now occupy in our daily lives, democracy will touch only the peripheral areas of our lives if it is restricted to political organizations.[65]

Quick Review 8.11
The Right to Participate

- It is based on the right to freely decide how I will lead my life and to participate in decisions that affect my life.
- It can mean open discussion, consultation, or full participation in policy decisions.
- It supports the kind of participative management advocated by McGregor's Theory Y model, Miles's human resource model, and Likert's System 3 consultative and System 4 participative systems of organization.
- McGregor, Miles, and Likert supported their views with the utilitarian argument that adopting their theories made organizations more productive.

8.2.6: The Right to Due Process versus Employment at Will

Until recently, U.S. labor law has given a prominent position to *employment at will*, the doctrine that employers "may dismiss their employees at will . . . for good cause, for no cause, or even for causes morally wrong, without being thereby guilty of legal wrong."[66] The "Ethical Application" below presents an example of the application of this doctrine.

Ethical Application

Corporate Justice

General Motors' internal investigation uncovered what it considered sufficient evidence of a secret employee scheme to defraud the company. Without consulting the employees the investigative team felt were involved, GM quickly doled out what one journalist called "an almost ruthless brand of corporate justice" in his description of the subsequent firings at GM's Tarrytown, New York, offices. Only a few days before their paid Christmas holidays were to begin, and with no previous warning, GM officials called 25 salaried employees into a series of three offices. Employees were fired in the first office, then stripped of their company cars and other benefits in the second office, and finally, in the third office, were given the cab fare they needed to get home. One employee who had worked for the company for more than 20 years later indicated that he "recalls watching in disbelief as a GM functionary with a map and a ruler measured off the distance to his home and handed him $15." Within a matter of hours, the GM officials fired virtually the entire staff that had formerly supervised all Chevrolet dealers in New York City.[67]

Quick Review 8.12
Arguments Supporting Employment at Will

- The employer owns the company, and ownership gives him or her the right to decide whether and how long an employee will work in his or her company.
- Everyone has the right to do what he or she chooses (provided that the rights of others are not violated), and so has the right to make whatever agreements he or she chooses (including an agreement with employees to hire and fire them at will).
- Businesses will operate most efficiently if employers have the freedom to hire or fire employees as they see fit.

ARGUMENTS AGAINST EMPLOYMENT AT WILL The doctrine of employment at will has come under considerable attack.[68]

First, opponents argue, employees often are not free to accept or reject employment without suffering considerable harm because they may have no other job available. Moreover, even when they are able to find alternative employment, workers pay the heavy costs involved in engaging in a job search and of struggling to live without an income while they are searching. Consequently, one of the fundamental assumptions on which employment at will is based—that employees "freely" accept employment and are "free" to find employment elsewhere—does not always hold.

Arguments for the Doctrine

The doctrine of employment at will has been defended on several grounds, each of which appeals to ethical considerations.

Interactive

Property Rights Argument

One argument in support of the doctrine of employment at will is the property rights argument. This argument is based on the claim that because she owns the company, the employer has the right to decide who will work in the company and who will not. Just as the owner of a house has the right to decide who can come into her house to live with her and can base her decision on whatever criteria she wants, so too the owner of a business has the right to decide who will work with her in her business and can base her decision on whatever criteria she wants. Private property rights, as we have seen, include the right to decide how one's property can be used and who can use one's property. In this view, then, the employee has no right to object to or to contest the employer's decisions because as a non-owner, the employee has no right to determine how the business will be run while the employer has the right to hire or fire at will.

Freedom of Contract Argument

Utilitarian Argument

Second, critics of employment at will claim that employees generally make a conscientious effort to contribute to the firm, but do so with the understanding that the firm will treat them fairly in return. Workers surely would not freely choose to work for a firm if they believed the firm would treat them unfairly. Therefore, there is a tacit agreement that the firm makes to treat workers fairly, and workers, therefore, have a quasi-contractual right to fair treatment which excludes being fired "for no cause or even for causes morally wrong."

Third, critics argue that workers have a right to be treated with respect as free and equal persons. Part of this right is the right to nonarbitrary treatment and the right not to be forced to suffer harm unfairly or on the basis of false accusations. Because firings, reductions in pay, demotions, and reprisals harm employees—particularly when they have no other job alternatives—these violate the employee's right when they are arbitrary or based on false accusations.

Employees, therefore, have a right not to be fired arbitrarily as the doctrine of employment at will would allow. Finally, while it may be true that ownership gives the owner the right to decide how his or her property will be used, this right, like all rights, has to be balanced against, and is limited by, the rights of others. Even the owner of a house, for example, has no right to treat the occupants unfairly, and if the owner has led the occupants to believe they can rely on him for shelter, the owner has no right to arbitrarily toss them out. For all these reasons, a recent trend has developed away from the doctrine of employment at will, and the doctrine has gradually been replaced by the view that the employer's right to fire, demote, or penalize is limited by the employee's right to "due process."[69]

THE RIGHT TO DUE PROCESS For many people, the right to due process is the most critical right employees have.

> **In employment, *the right to due process* refers to the right to a fair process of decision-making when decision makers impose sanctions on employees.**

The right to due process is based on the idea that every human being has a right to be treated fairly and that this right includes the right to a fair and impartial application of rules, as well as the right to be allowed to explain oneself and to know that one is being sanctioned for true and legitimate reasons.

An ideal system of due process would be one in which individuals were given clear antecedent notice of the rules they were to follow, which gave a fair and impartial hearing to those who are believed to have violated the rules, which administered all rules consistently and without favoritism or discrimination, which was designed to ascertain the truth as objectively as possible, and which did not hold people responsible for matters over which they had no control.

It is obvious why the right to due process is seen by many people as the most critical right of employees: if this right is not respected, employees stand little chance of seeing their other rights respected. Due process ensures that individuals are not treated arbitrarily, capriciously, or maliciously by their superiors in the administration of the firm's rules, and it sets a moral limit on the exercise of the superior's power.[70] If the right to due process were not operative in the firm, then even if the rules of the firm protected the employee's other rights, these protections might be enforced sporadically and arbitrarily.

The most important area in which due process plays a role is in the hearing of grievances. By carefully spelling out a fair procedure for hearing and processing employee grievances, a firm can ensure that due process becomes an institutionalized reality. Trotta and Gudenberg identify the following as the essential components of a fair and effective grievance procedure:

1. Three to five steps of appeal depending on the size of the organization. Three steps usually suffice.
2. A written account of the grievance when it goes past the first level. This facilitates communication and defines the issues.
3. Alternate routes of appeal so that the employee can bypass his or her supervisor if he or she desires. The personnel department may be the most logical alternate route.
4. A time limit for each step of the appeal so that the employee has some idea of when to expect an answer.
5. Permission for the employee to have one or two co-workers accompany him or her to each interview or hearing if he chooses. This support helps overcome fear of reprisal.

> ***Quick Review 8.13***
> **The Right to Due Process . . .**
> - Is justified because without it all other employee rights are at risk
> - Requires that individuals be notified of the rules they must follow, that they be given a fair and impartial hearing when accused of violating the rules, that rules be applied consistently, that processes through which sanctions are decided be designed to determine the truth objectively, and that people not be held responsible for what they could not avoid
> - Is institutionalized through fair grievance procedures

8.2.7: The Right to Work

Article 23.1 of the United Nations' Universal Declaration of Human Rights states: "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment." The *right to work*, as the Universal Declaration of Human Rights understands the concept, is the moral right to earn one's living by working. It is not, as some state laws use the phrase, the right to refuse to join a union without losing one's job. At one time, workers in some companies had to join the company union or leave the company. Today, 26 states have laws that prohibit being forced to join a union in this way and these laws are generally called "right to work laws."[71] However, the Universal Declaration of Human Rights means something very different by the "right to work." As the United Nations states in Article 6 of another fundamental document—the International Covenant on Economic, Social, and Cultural Rights—the right to work implies "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts." The assumption here is that "to gain his living by work" is such a fundamental value for a person that it should be surrounded with the protections afforded by having the status of a right.

Why would anyone claim that for a person "to gain his living by work" is a fundamental value worthy of being granted the status of a right? For many people, work is only a necessary evil: it is an activity characterized by drudgery, exhaustion, tediousness, and difficulty, and nothing more than a necessary means to the money we need to survive. In this common view, work has only an instrumental value (something we have a duty to do), and the question is: Why would anyone claim we have a "right" to something we would rather avoid? The answer is that even in this very narrow understanding of work, it is still something of tremendous importance precisely because it is a means to our survival. So important is its **instrumental value** as a means to survival that it should be protected and guaranteed by having the status of a right.

The reason why we can be said to have a right to work, then, is clear. Work is a means to our survival, it is our main economic contribution to society, it is part of our self-identity, it allows the development of our character, and it is a source of our self-esteem and self-respect. Because work is of such critical value, it is worth protecting with the status of a right even if we often find it tedious, arduous, and difficult.

Although we can argue that everyone has a right to work, the reality is that workers are often out of a job. In 2016, for example, about 5 percent of the U.S. population was unemployed, a total of 7.5 million men and women. Among U.S. teenagers, the unemployment rate was about 16 percent; among blacks it was 8 percent; and among Hispanics it was 6 percent. Unemployment is widespread, and it can be even worse in other countries. Portugal's unemployment rate was 13 percent; Ireland's rate was 8 percent; Spain's rate was 21 percent; Bosnia and Herzegovina's rate was 42 percent; South Africa's rate was 26 percent; Mongolia's rate was 12 percent; Latvia's rate was 10 percent; Egypt's rate was 13 percent; and the Dominican Republic's rate was 14 percent. Unemployment is a persistent feature of all modern economies.[73]

ECONOMIC ISSUES AND THE RIGHT TO WORK Economic downturns account for much unemployment. However, economic downturns do not happen in a vacuum. A number of factors have combined to change the current U.S. economy, alter the work landscape, and threaten the right to work.

The Intrinsic Value of Work

A broader understanding of work is built on reasoning that supports belief in the intrinsic value of work.[72]

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Work Is the Basic Economic Contribution

Work is the basic economic contribution that each person makes to his or her society. The work you and I do for our employer ultimately produces something that provides a benefit to society and that constitutes our main economic contribution to society. Through work we feel useful and our recognition of work as a contribution to society is demonstrated by the kind of negative effects that a lack of work has on us. Several studies have shown that when people are unemployed, they become depressed, feel ashamed and anxious, feel self-doubt, and report that they feel "worthless," or "useless." So deep are these feelings that even after a person finds work, he or she will continue to feel stigmatized by the period of unemployment, and this stigma will often accompany the person throughout his or her life. These psychological responses to unemployment are the natural reaction to the belief that through work we make a contribution to society that we no longer make when we are unemployed, and so we feel shame, worthless, and useless. Such feelings may not be appropriate in view of the fact that it is possible for us to make other, noneconomic contributions to society. They are, nevertheless, indicative of the fact that at very deep levels we recognize that our work, however menial, has value.

Work Develops Potential

Work Develops Character

Work Is a Fundamental Source of Self-Esteem

Threats to the Right to Work

New technologies, increased outsourcing, free trade agreements, and layoffs and plant closings—at least in the United States—are all factors that threaten the right to work.[74, 75, 76, 77]

Interactive

Technology

Improvements in technology have made workers more productive, and this in turn has made it possible for U.S. companies to manufacture more goods with fewer workers.

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Changes in the economy that affect work are unavoidable in a market economy for many of the reasons we have already seen. However, much can be done to protect the right to work by helping workers who are out of a job find new jobs, or by ensuring that workers do not lose their jobs. Some studies suggest that other nations do much more to protect workers from losing their jobs than the United States does. In a major study of industrialized nations, for example, a team of scholars led by Peter J. Kuhn found that governments take two approaches to deal with layoffs:[78]

- Governments in some countries take a "palliative approach" that provides help to workers only *after* a layoff has occurred, when government may step forward to provide "retraining, mobility assistance, and income support." These countries include the United States, Canada, Great Britain, Australia, and Denmark.
- Governments in other countries do more than take these palliative measures. They also take a "preventive approach" that tries to prevent layoffs *before* they happen by requiring, for example, "extensive consultation and bargaining" between workers, business, and government in order to find a way to avoid a plant closing. Countries who follow this approach include the Netherlands, Japan, France, Germany, and Belgium. If a company cannot avoid closing one of its plants, then these countries require the company to transfer employees to other plants within the company and

to provide outplacement services for employees who cannot transfer so no one is laid off. If some layoffs are still unavoidable, then these countries try to prevent unemployment by requiring long advance-notice periods during which workers can search for another job. The experience of this second group of countries shows that much more can be done to help workers than what the United States and other nations do for them. Countries such as Sweden, Germany, and Great Britain all require longer advance notice of impending plant closings than the United States does.[79] In Germany, France, Sweden, and the Netherlands, workers have a right to participate (e.g., through their unions) in closure decisions, perhaps even by being given the opportunity to purchase the plant and operate it themselves. It is significant that these particular countries have tended to have lower unemployment rates than the United States.

Quick Review 8.14
The Right to Work

- It is justified because of the interest we have in the instrumental and intrinsic value of work.
- Work has a critical instrumental value because it is a means to our survival.
- Work has an intrinsic value because (1) it is our basic economic contribution to society and helps us feel worthwhile and useful, (2) it lets us develop our potential and identity as a particular human being, (3) it lets us

Eight Steps to Minimize the Threats to the Right of Work

The ethical considerations surrounding the rights of workers are nicely folded together in the suggestions that William Diehl, a former senior vice president in the steel industry, makes concerning eight steps that companies can take to minimize the harmful effects of layoffs, plant closings, and involuntary job losses:[80]

Interactive

1. Advance Notice

If the company can notify workers of a closing date 12 to 18 months in advance, they would have time to prepare for it. . . . [A few] days' notice of closing is totally unjust and unacceptable.

2. Severance Pay

3. Health Benefits

4. Early Retirement

5. Transfer

6. Job Retraining

7. Employee Purchase

8. Phasing Out of Local Taxes

develop our character and virtues, and (4) it is a source of self-esteem and self-respect.

- The right to work is threatened by unemployment, which in the United States has many causes, including recessions, new technologies, outsourcing of jobs to low-wage countries, free trade agreements, and our shift from a manufacturing to a service economy.
- Company layoffs also threaten the right to work and have many causes, including a decline in consumer demand, product obsolescence, the pursuit of cheaper workers, mismanagement, and the need to consolidate operations.

PROTECTING THE MORAL RIGHTS OF WORKERS Even when shutdowns are necessary, the moral rights of workers involved should continue to be respected. Among the rights that must be respected are the workers' right to be informed about impending shutdowns that will affect them. Moreover, utilitarian principles imply that the harm caused by layoffs should be minimized. If workers have a right to work, then firms should do what they can to enable their laid-off workers to prepare themselves to find future jobs. Firms can do so by offering retraining programs, job transfers, and relocation. Finally, considerations of justice imply that workers and communities that have made substantial contributions to a plant during its operating life should be repaid by company assurances that it will not unjustly abandon worker pension plans or worker health plans.

The Right to Unionize

The same rights of free association that justify the formation and existence of corporations also underlie the right of workers to form the worker organizations we call *unions*.[81, 82, 83, 84, 85, 86]

Interactive

Right to Be Treated as Free and Equal Persons

The worker's right to organize into a union also derives from the right of all people to be treated as free and equal persons. Corporate employers, especially during periods of high unemployment or in regions where only one or a few firms are located, have much more power in negotiations with individual employees than the employee does. Unions have therefore traditionally been justified as a means for balancing the power of the corporation and the power of the worker so that the worker, in solidarity with other workers, can achieve an equal footing when negotiating with the corporation. Thus, unions achieve an equality between worker and employer that the isolated worker could not secure, and they thereby secure the worker's right to be treated as a free and equal person in job negotiations.

Right to Call a Strike

Quick Review 8.15
Protecting the Right to Work

- The United States and other countries (e.g., Canada, Great Britain, Australia, and Denmark) protect the right to work with "palliative" policies that help workers find new jobs after they have lost their jobs; other countries (e.g., the Netherlands, Japan, France, Germany, and Belgium) also use "preventive" policies that try to ensure workers do not lose their jobs to begin with.
- Companies that have to lay off workers can respect their employees' right to work by providing advance notice, severance pay, health benefits, early retirement, job transfers, job retraining, and the possibility of employee purchase of the plant. They can also reduce the harmful effects of layoffs by phasing out their local tax contributions instead of reducing them suddenly.

8.2.8: Employees' Right to Organize

Just as owners have the right to freely associate with one another to establish and run a business, so too workers have the *right to organize*, which is the right of workers to associate with one another to establish and run a union.

RIGHT TO ORGANIZE IN DEVELOPING NATIONS Workers in many developing nations have much more restricted rights to organize into unions than U.S. workers. In fact, many U.S. companies moved to locations such as Mexico, Central America nations, Indonesia, Thailand, India, and other Asian nations because weak unions there lead to weak wage demands and low worker protections, all of which adds up to lower costs. The key ethical issue for companies that operate in countries with weak union rights is this: What obligation does a company have to respect the right to unionize for workers in its factories when these rights are either not recognized by the local government or are only weakly enforced by local government? This question is especially difficult to answer when a company contracts with a foreign company in a developing nation. As we noted earlier, U.S. apparel and shoe companies such as Nike, Adidas, Reebok, Gap, Limited, Dress Barn, Lane Bryant, Wal-Mart, Tommy Hilfiger, Calvin Klein, Levi Strauss, Abercrombie & Fitch, Talbots, and many others do not make their own products, but have them made in factories owned by foreigners in developing nations. What responsibility, if any, does a company have for the respect or lack of respect that such foreign factories show toward their workers? As we suggested earlier, questions about the responsibility of one company for the way a hired factory treats its workers depend on whether the company (1) can and should do something to change the way the factory is treating its workers, (2) knows about the way the factory is treating its workers, and (3) is not prevented from acting or pressured by external or uncontrollable forces.

Quick Review 8.16
Key Points on the Right to Organize

- This right derives from the same right owners have to join together to form a company (i.e., from the right to freely associate with others to establish and run an organization as well as the right to be treated as an equal in negotiations with organizations).
- Unions have a right to strike that derives from every worker's right to quit working as long as doing so does not violate others' rights.
- Union membership declined from 35 percent of workers in 1947 to 12 percent in 2010.
- Many developing countries do not protect the right to organize, but U.S. companies can often allow their workers there to unionize anyway.

8.3: Informal Power Relationships in Organizations

OBJECTIVE: Explain informal power relationships in organizations from an ethical perspective

The discussion so far has focused primarily on formal power relationships within organizations—that is, the ethical issues raised by the power that the formal structure of the organization allows managers to exercise over their subordinates. These power relations are sanctioned and overt: they are spelled out in the firm's organizational chart, inscribed in the contracts and job descriptions that define the employee's duties to the firm, recognized by the law (of agency), openly employed by superiors, and largely accepted as legitimate by subordinates.

The ethical constraints on the use of this formal power that we reviewed have also been approached from a largely formal perspective. The rights to privacy, due process, freedom of conscience, and consent can all be formalized within the organization (by formulating and enforcing rules, codes, and procedures) just as the power relationships they constrain are formalized.

However, as we have already seen, organizations also contain informal pockets and channels of power: sources of power that do not appear on organizational charts and uses of power that are covert and perhaps not recognized as legitimate. We turn now to look at this underbelly of the organization: organizational politics.

8.3.1: Organizational Politics

There is no settled definition of *organizational politics*. For our purposes, however, we can adopt the following definition: the processes in which individuals or groups within an organization use informally sanctioned power tactics to advance their own aims; we call such tactics *political tactics*.[87] A word of caution is necessary, lest the reader interpret their own aims to mean "aims in conflict with the best interests of the organization." Although the aims of a coalition in a firm may conflict with the best interests of the firm, such conflict is neither inevitable nor even, perhaps, frequent. Two factors tend to suppress such conflicts:

1. The careers of individuals often depend on the health of their organizations.
2. Long-time association with an organization tends to generate bonds of loyalty to the organization.

Often, therefore, what one person perceives as a conflict between a certain group's aims and the best interests of the organization is in fact a conflict between the beliefs of that person and the beliefs of the group concerning what the "best interests" of the organization are. The group may genuinely believe that X is in the best interests of both the organization and itself, whereas the person may genuinely believe instead that Y, which conflicts with X, is what is in the best interests of the organization.

Because organizational politics aim at advancing the interests of one individual or group (such as acquiring promotions, salary or budget increases, status, or even more power) by exerting informally sanctioned power over other individuals or groups, political individuals tend to be covert about their underlying intents or methods.[88]

See Table 8.2 for more information on different kinds of political tactics.

Table 8.2 Different Kinds of Political Tactics

The fact that political tactics are usually covert means that they can easily become deceptive or manipulative. This point is evident if we examine some examples of the kinds of tactics used in organizational politics. In one study, managers were asked to describe the political tactics they had experienced most frequently in the organizations in which they had worked. They reported the following kinds of tactics.[89]

Interactive

Political Tactic	Description
Blaming or attacking others	Minimizing one's association with plans or results that are failing or have failed and blaming one's rivals for the failure or "denigrating their accomplishments as unimportant, poorly timed, self-serving, or lucky."
Controlling information	Withholding information detrimental to one's aims or distorting information "to create an impression by selective disclosure, innuendo," or overwhelming the subject with "objective" data (graphs, formulas, tables, summations) designed to create an impression of rationality or logic and to obscure important details harmful to one's interests.
Developing a base of support for one's ideas	Getting others to understand and support one's ideas before a meeting is called.
Image building	Creating the appearance of being thoughtful, honest, sensitive, on the inside of important activities, well-liked, and confident.
Ingratiation	Praising superiors or those with power and making them feel that one admires them or developing good rapport with them.
Associating with the influential	Trying to get one's superiors or those with power to feel that one is a friend.
Forming power coalitions and developing strong allies	Forming or joining groups that are already formed and that can help one in pursuing one's interests.
Creating obligations	Making others feel obligated to oneself by performing services or favors for them.

Check Your Understanding

Ethical Application

Political Tactics in Action

Virginia E. Schein gave the following illustration of a department head intent on strengthening her position in an organization:[90]

> The head of a research unit requests permission to review another research group's proposal in case she can add information to improve the project. Her covert intent is to maintain her current power, which will be endangered if the other research group carries out the project. Using her informational power base, her covert means are to introduce irrelevant information and pose further questions. If she sufficiently confuses the issues, she can discredit the research group and prevent the project from being carried out. She covers these covert intents and means with the overt ones of improving the project and reviewing its content.

Some researchers have argued that the basic source of power is the creation of dependency: A acquires power over B by making B dependent on A for something. Some authors identify the following two categories of political tactics as encompassing the main kinds of tactics by which such dependencies can be created:[91]

1. *Getting control over scarce resources desired by others.* Controlling employees, buildings, access to influential persons, equipment, and useful information.
2. *Establishing favorable relationships.* Getting others to feel obligated to oneself, making others think one is a friend, building a reputation as an expert, and encouraging others to believe that one has power and that they are dependent on that power.

8.3.2: The Ethical Dilemma of Organizational Politics

Organizational politics can have a significant impact on the lives of its targets. It is often used by individual managers and coalitions in internal struggles to get control of a corporation, and individuals caught up in such struggles can have their careers destroyed.

Ethical Application

Bendix Corporation

When the dynamic CEO of Bendix Corporation, Bill Agee, began transforming Bendix from a stodgy manufacturing company into a diversified high-tech firm, he angered managers whose organizations and budgets he cut. Many secretly complained to William Panny, the company's president, who was known to disagree with Agee's plans for Bendix, and who was rumored to be Agee's successor. That year Agee hired Mary Cunningham, a recent graduate of Harvard Business School, to be his executive assistant. Friends said she was "brilliant," "sophisticated," and "a financial genius." Cunningham used her considerable financial skills to identify and analyze acquisitions that were in line with Agee's new vision for the company, and Agee followed her advice, which was always on target. The next year Agee promoted her to vice president for Strategic Planning. The promotion upset managers who felt she had not been there long enough to deserve it. They told Panny that Agee now listened only to Cunningham and was inaccessible to others. When Cunningham later prepared a three-volume analysis of the company's auto division, Panny and other managers harshly criticized it, saying it was useless and contained nothing they did not already know. Behind her back, they derisively referred to her and her staff as "Snow White and the Seven Dwarfs." They began spreading rumors that Agee had promoted her only because the two had a romantic relationship. When Agee learned that Panny was about to ask the company's board of directors to "investigate their relationship," Agee fired him. Then the directors began receiving anonymous letters with malicious innuendos about Agee and Cunningham. Agee called a special meeting of 600 corporate staff. In a brief talk he said "I know it has been buzzing around that Mary Cunningham's rise in this company . . . has something to do with a personal relationship we have." Those rumors, he asserted, were completely false: he had no romantic involvement with Cunningham and had promoted her solely on her merits. However, after his talk someone leaked it to the local newspaper, which ran a front page story the next morning on the "romantic rumors." By evening the story was national news. Cunningham was forced to resign and Agee's standing in the company was significantly weakened. A director later confided to Cunningham that she had been used to get at Agee.[92]

Obviously, political behavior in an organization can easily become abusive. As the incident at Bendix illustrates, political tactics can be used to advance private interests at the expense of organizational and group interests, they can be manipulative and deceptive, and they can seriously injure those who have little or no power or political expertise. However, political tactics can also be put to the service of organizational and social goals, they may sometimes be necessary to protect the powerless, and they are sometimes the only defense a person has against the manipulative and deceptive tactics of others. The dilemma for the individual in an organization is knowing where the line lies that separates morally legitimate political tactics from those that are unethical.

Very few authors have discussed this dilemma.[93] This is unfortunate because although few organizations are totally pervaded by political behavior, no organization is completely free of politics. We are all political animals,

Addressing Ethical Issues in Organizational Politics

Analyzing ethical issues in the use of political tactics can best be approached by addressing four questions that focus attention on the morally relevant features.[94]

Interactive

The Utilitarian Question

Are the goals one intends to achieve by using the tactics socially beneficial or socially harmful?

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even if our political campaigns are largely confined to the office. Here we only start to analyze the many complex ethical issues raised by the political maneuvering that inevitably goes on within organizations.

8.3.3: Ways to Look at the Ethics of Politics in Organizations

The utility of goals, moral rights and political tactics, the justice of the results, and the impact on caring are among the considerations that affect ethics in organizational politics.

THE UTILITY OF GOALS In terms of the utility of goals, utilitarian principles require that managers pursue those goals that will produce the greatest social benefits and the least social harm. If we assume that business organizations generally perform a socially beneficial function and that activities that harm the organization will probably diminish these social benefits, then utilitarianism implies that the individual manager should avoid harming the organization and should work to ensure that the organization carries out its beneficial social functions as efficiently as possible. For example, the basic function of most businesses is to produce goods and services for consumers. Insofar as a business organization is serving this function in a socially beneficial and nonharmful way, the employee should avoid harming the business and should strive to ensure that the business carries on its productive function with a minimum of waste.

Examples of Political Tactics That Contradict Utilitarian Principles

Two kinds of political tactics directly contradict the utilitarian norm and are, therefore, typically judged unethical: political tactics that involve the pursuit of personal goals at the expense of the organization's productive goals, and political tactics that knowingly involve inefficiency and waste.

Interactive

Suppose that the director of a research unit secretly withholds critical information from other research units in the same company so that his or her own unit will look better than the others. As a result, the director's career ambitions are advanced and his or her unit gets a larger budget allocation the following year. Was the director's tactic of withholding information to gain an edge over others morally legitimate? No. The tactic was clearly inconsistent with the efficient pursuit of the company's productive functions.

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MORAL RIGHTS AND POLITICAL TACTICS Some political tactics are obviously deceptive, as when a person creates the impression of having an expertise that the person does not in fact have. Other tactics are manipulative. For example, it is manipulative to feign love to extract favors from a person. Deception and manipulation are both attempts to get people to do (or believe) something that they would not do (or believe) if they knew what was going on. These sorts of political tactics are unethical to the extent that they fail to respect a person's right to be treated not merely as a means, but also as an end; that is, they fail to respect a person's right to be treated only as they freely and knowingly consented to be treated.

THE JUSTICE OF THE RESULTS Political tactics can create injustices by distorting the equality of treatment that justice demands. An individual who controls an organization's budget or information system, for example, may covertly administer that system unjustly by showing favoritism to those persons or groups who can advance the individual's career. Such political tactics violate the basic principle of distributive justicediscussed in Chapter 2: individuals who are similar in all relevant respects should be treated similarly, and individuals who are dissimilar in relevant respects should be treated dissimilarly in proportion to their dissimilarity.

Political tactics can also create injustices among those employees who have few or no political skills. Those without political skills are easily maneuvered into accepting a smaller share of the organization's benefits than their abilities or needs may merit in comparison to others. Benefits are then no longer distributed to these people on the basis of their relevant characteristics—an injustice is committed against them.

Rights and Manipulative Political Tactics

Many of the political tactics that take advantage of our emotional dependencies and vulnerabilities show moral disrespect. Deceptive and manipulative tactics provide others with the cheapest and most reliable levers for acquiring power over us.

Interactive

A skilled administrator can become adept at pretending friendship and concern and adept at getting others to look at him or her with affection, respect, loyalty, indebtedness, trust, gratitude, and so on. The administrator can then exploit these feelings to get subordinates to do things that they ordinarily would not do, especially if they knew the deception involved and knew the covert motives on which the administrator acted. A skillful administrator might also learn to take advantage of particular individuals' personal vulnerabilities, such as vanity, generosity, sense of responsibility, susceptibility to flattery, gullibility, naivete, or any of the other traits that can lead people to unwittingly put themselves at the mercy of others. By covertly taking advantage of these vulnerabilities, the manager can get employees to serve the manager's aims, although they would not do so if they knew the covert motives on which the manager acted. Or, as happened at Bendix, managers can use ridicule, false rumors, or deceptive innuendo to undermine another person's position.

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Not only can political tactics leave others better or worse off than they deserve, but politics can also be used to gain unjust advantages for oneself. An engineer who is competing with another engineer for promotion to department head, for example, may cultivate and flatter his or her superiors while using innuendo to discredit his or her rival. As a result, he or she may get the promotion, although the other engineer was more qualified. Using political tactics in this way to acquire advantages on the basis of nonrelevant characteristics is also unjust.

THE IMPACT ON CARING In addition to these inequities, the prolonged prevalence of political tactics within an organization can have long-term and debilitating effects on the quality of the personal relationships that pervade the organization. Several researchers have found that the use of power in organizations tends to routinize the dehumanized treatment of less powerful individuals. David Kipnis, for example, found that individuals who exercise power find themselves increasingly tempted to (1) increase their attempts to influence the behavior of the less powerful, (2) devalue the worth of the performance of the less powerful, (3) attribute the cause of the less powerful's efforts to power controlled by themselves rather than to the less powerful's motivations to do well, (4) view the less powerful as objects of manipulation, and (5) express a preference for the maintenance of psychological distance from the less powerful.[95] Power, in short, corrupts.

Chris Argyris and others have maintained that those who are controlled by the powerful "tend to feel frustration, conflict, and feelings of failure"; that such people "adapt" by leaving the organization, trying to climb the organization's ladder, retreating to aggression, daydreaming, regression, or simple apathy; and that the organization becomes characterized by competition, rivalry, and hostility.[96] Therefore, in deciding whether to use political tactics, one should seriously consider the long-range consequences that the exercise of power implied by these tactics can have on oneself and one's relationships with those in the organization.

Quick Review 8.17
Approaches to the Ethics of Political Tactics

- Utilitarian: Are the goals one intends to achieve by using the tactics socially beneficial or socially harmful?
- Rights: Do the tactics employed treat others in a way that is consistent with their moral rights?
- Justice: Will the tactics lead to an equitable distribution of benefits and burdens?
- Caring: What impact will the tactics have on the web of relationships within the organization?

8.4: The Caring Organization

OBJECTIVE: Evaluate the ethical characteristics of the caring organization

So far we have looked at organizations as having two aspects. First, we have considered organizations as hierarchical collections of individuals who are connected to one another and to the organization by contractual agreements and formally defined hierarchies of authority. We have called this aspect of the organization the rational organization. Overlying the rational organization's formal lines of authority is a second system, which we have called the political organization: the network of power relationships, coalitions, and informal lines of communication through which individuals seek to achieve their goals and what they see as the goals of the organization.

It is possible to conceive of organizations as consisting of yet a third, quite different kind of system. Recent thinkers have suggested that organizations can and should be thought of as networks of relationships in which "connected selves" form webs of ongoing personal relationships with other "connected selves." In this model of the organization, the focus of employees is not on the pursuit of power, profit or personal goals, but on the caring interpersonal relationships that exist among the individuals within the organization and those external individuals with whom the organization interacts. We encounter this aspect of the organization when we become mutual friends with the people with whom we work, come to care for them, look out for their well-being, and seek to deepen and preserve these caring relationships. Employers, too, may grow close to their employees, deepening their relationships with employees and coming to seek ways of caring for the particular needs of these particular individuals and of developing their potential. When a fire destroyed the main plant of Malden Mills, for example, CEO Aaron Feuerstein refused to lay off the idled workers, but continued to pay them from his own pocket even though they were not working. He said that they were "part of the enterprise, not a cost center to be cut. They've been with me for a long time. We've been good to each other, and there's a deep realization of that." The members of an organization may befriend even their clients and customers, truly caring for them and genuinely seeking the well-being of those particular clients with whom they deal. Such caring for the well-being of clients can be most evident in organizations of professionals that provide services for their clients, such as hospitals, schools, law firms, and consulting firms that have ongoing relationships with the people they serve.

This aspect of organizational life is not adequately described by the contractual relationships that underlie the rational model of the organization, nor by the power relationships that underlie the political model. Perhaps, this aspect of the organization is best described as the **caring model of the organization**, because its dominant realities are those that are emphasized by an ethic of care: interpersonal relationships.

8.4.1: Characteristics of the Caring Organization

Jeanne M. Liedtka described the caring organization as an organization, or part of an organization, as an entity in which the following qualities appear.

1. Focus is not on how best to improve profits or quality, but on caring for the persons that make up the organization.
2. Caring is not something done as an instrumental means to enhance quality or profits but as an end undertaken for its own sake.
3. Caring is directed at particular individuals at a subjective level and is something in which each becomes engrossed.
4. Caring aims at enhancing the growth of those who are cared for by moving them to develop and use their full capacities to fulfill the needs and aspirations that they have defined for themselves.[97]

Although organizations such as W. L. Gore are rare, still most organizations, to a greater or lesser extent, have aspects of the caring organization. In some organizations, such as W. L. Gore, the caring organization dominates the rational and political aspects of the organization. In most others, however, the contractual and political aspects are more prominent. Yet, in many there are at least some employees and managers who respond to the demands of caring by nurturing the relationships they have with one another and by attending to the concrete and particular needs of fellow employees and of their customers.

Benefits of Maintaining Caring Business Relationships

Arguments in favor of the caring organization include the prospect of increased profit and value for both sides of the business–customer relationship.[98, 99, 100, 101]

Interactive

Better Economic Performance

Creation of Customer Value

It has been argued that business organizations in which caring relationships flourish will exhibit better economic performance than the organization that restricts itself to the contractual and power relationships of the rational and political organization. In the caring organization, trust flourishes because "one needs to be trusting if one sees oneself as interdependent and connected." Because trust flourishes in the caring organization, the organization does not have to invest resources in monitoring its employees and trying to make sure that they do not violate their contractual agreements. Thus, caring lowers the costs of running an organization and reduces the "costs of disciplinary actions, theft, absenteeism, poor morale and motivation." In the genuinely caring organization, caring is not motivated by the desire to reduce such costs, but is pursued for its own sake.

Ethical Application

W. L. Gore & Associates

There may be few, perhaps even no, organizations that perfectly embody the caring organization, but some well-known firms come close. W. L. Gore & Associates, Inc., for example, the extremely successful company that invented and now manufactures the GORE-TEX line of fabrics, is an organization that has no managers, no titles, and no hierarchy.[102] Instead, every employee is trusted to such an extent that he or she is left free to decide what job each will voluntarily commit to do according to where each feels he or she can make the best contribution. Leaders emerge when employees are willing to follow them because they are convinced the leader has a worthwhile idea or project. Every employee has one or more "sponsors" who work closely as coaches to help the employee develop to full potential and who serve as the employee's "advocates" when a "compensation team" (consisting of fellow employees) reviews the contribution the employee has made to decide what compensation the employee should receive the following year. Company units are kept small (under 200 people) so that people can get to know one another and so that all communications are open, direct, and person to person. In such an unstructured and unmanaged organization, all work done within the organization must ultimately rely on the relationships that employees form with one another. Over time, employees come to care for one another and for the customers for whom they are trying to create value.

Quick Review 8.18
The Caring Model of the Organization

- Caring is focused entirely on persons, not on "profit" or "quality."
- Caring is undertaken as an end in itself, not as a means to productivity.
- Caring is essentially personal.
- Caring is growth enhancing for those who receive care.

8.4.2: Key Ethical Issues of the Caring Organization

In the contractual model, the key ethical issues arise from the potential for violations of the contractual relation. In the political model, the key ethical issues arise from the potential for the misuse of power.

How should these kinds of moral issues be resolved? Unfortunately, at this time the answers are not clear. Research and thinking on the caring organization and caring in organizations is so recent that no clear consensus has emerged on how issues such as these should be resolved. We have come here to the very edges of current thinking about ethics and organizations.

Quick Review 8.19
Problems of the Caring Organization

- Caring too much for others can lead to "burnout" when the needs of others are given too much weight compared with the needs of the self.
- Not caring enough for others may be due to fatigue, self-interest, or disinterest that leads us to ignore others' needs. At the organizational level, the organization may systematically drive out caring with layoffs, bureaucracy, managerial styles that see employees as disposable, or rewards that encourage competitiveness and discourage caring.

Too Much Caring—or Not Enough

The key ethical issues from the perspective of the caring organization are the potential for caring too much and the potential for not caring enough.[103, 104, 105, 106]

Interactive

The Moral Problem of Caring Too Much

The needs of those for whom we care can demand a response from us that can overwhelm us, leading eventually to "burnout." Here the conflict is between the needs of others and the needs of the self. Several writers have argued that the ethic of care requires achievement of a mature balance between caring for the needs of others and caring for one's own needs. Others have argued that "burnout" occurs not because people are overwhelmed by the needs of others, but because organizations place bureaucratic burdens on caregivers and limit their autonomy and influence in decision making. In addition to conflicts between the needs of the self and the needs of others, the demands of caring can lead to a different kind of conflict: the needs of those for whom we care can demand a response that conflicts with what we may feel we owe others. This is the problem of balancing partiality toward those for whom we care with the impartial demands of other moral considerations, such as the impartial demands of fairness or of moral rights. For example, a person may be torn between caring for a friend who is violating company policy and fairness toward the company that requires that such violations be reported. Which demand should be satisfied: the demands of caring partiality or the demands of impartial morality?

The Moral Problem of Not Caring Enough

Web Resources

Readers who want to conduct online research on the topic of ethical issues related to employees and organizational life might want to start with Occupational Safety and Health Association (*http://www.osha.gov*); the National Institute for Occupational Safety and Health (*http://www.cdc.gov/niosh*); the labor and employment law content at HG.org (*http://www.hg.org/employ.html*); and the 'Lectric Law Library (*http://www.lectlaw.com/temp.html*). Information on unions is provided by the American Federation of Labor—Congress of Industrial Organizations (*http://www.aflcio.org*). The Campaign for Labor Rights of the Alliance for Global Justice provides information on labor issues (*http://afgj.org/campaign-for-labor-rights*). Information on sweatshops around the world can be found at several websites, including the following: *http://www.greenamerica.org/programs/sweatshops*, *http://www.globalexchange.org/fairtrade/sweatfree/faq*, *http://usas.org*, *http://www.labourbehindthelabel.org*, and *http://www.maquilasolidarity.org*.

SHARED WRITING

Relate Employee Rights to Basic Rights and Justice

1. Relate the employee's obligations to the employer discussed in this chapter to what you know about contractual rights and duties. Are there any inconsistencies between them? Why or why not?
2. Relate the seven factors for determining fair wages in this chapter to the standard of distributive justice (see Chapter 2. Are the seven factors consistent with the standard of distributive justice? Does the standard of distributive justice imply or suggest that any other factors should be considered in setting fair wages? Explain your answer.
3. Relate the discussion of employee rights to the discussion of moral rights. Are these two discussions consistent? Does your review of the discussion of moral rights suggest to you that there are other important employee rights that are not discussed in this chapter? If so, what are they?

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

Submit **0 characters | 140 minimum**

SHARED WRITING

Organizational Models and the Similarity Argument

1. Compare and contrast the rational model of the organization with the political model and the caring model. Would you agree with the following statement: "The rational model of the organization assumes that the corporation is based on consent, while the political model assumes that the corporation is based on power, and the caring model assumes that the corporation is based on interpersonal relationships"? Why or why not? Which of the three models do you think provides the more adequate view of organizations you are familiar with, such as the university or college you attend or companies you have worked for? Explain your answers.
2. Do you agree or disagree with the claim that corporate managements are so similar to governments that employees should be recognized as having the same "civil rights" as citizens? Explain the reasons for your answer.

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

Submit **0 characters | 140 minimum**

Case Study 8.1: Death at Massey Energy Company

It happened around 3:00 P.M. on Monday, April 5, in the Upper Big Branch coal mine at Montcoal, West Virginia, one of several mines owned by the Massey Energy Company. The morning shift of miners was still in the process of changing places with the afternoon shift. Members of each group were being shuttled in and out of the entrance in transport vehicles called "mantrips." Nine of the morning shift miners had just come out of one of the mantrips, and were walking out of the mine when they suddenly felt a blast of air blow past them, so strong it almost pushed them over. They all knew what it meant. Turning around, several hurried back into the mine, and shortly came upon seven of their fellow miners, dead, next to the mantrip that had just brought them up from below. Two others were alive but injured.

Company Background

From the first day after the explosion, newspapers had been reporting that Massey Energy mines in general, and the Upper Big Branch mine in particular, had been cited thousands of times for safety violations by the U.S. Mine Safety and Health Administration (MSHA), an agency of the federal government charged with overseeing employee safety in the mining industry. In fact, the Upper Big Branch mine had been cited more than 50 times for safety violations during the previous month alone, and many of Massey Energy's other coal mines had equally poor safety records.[1]

Massey Energy Company was founded in 1920 in Richmond, Virginia, as a coal-brokering business. The company acquired its first coal mine in 1945. In 1981, the company was acquired by Fluor Corporation, and with its backing, the mining business rapidly grew. In 1992, Don Blankenship, who had joined the company in 1982, was appointed chair and CEO of Massey Energy. In 2000, he oversaw Massey Energy's transformation into an independent company when it split off from Fluor Corporation's non–coal-related businesses. Over the next several years, the company continued to grow and by 2010, it was annually producing about 40 million tons of low-sulfur bituminous coal in 42 underground mines and 14 surface mines scattered throughout West Virginia, Kentucky, and Virginia. Massey Energy processed and distributed the coal through 22 processing and shipping centers. The company had 5,851 employees, and in 2009 it had net profits of $104 million on total revenues of $2.7 billion.[2]

Under the leadership of CEO Don Blankenship, the company's operations had aroused considerable controversy, much of it related to their impact on the environment. In 1984, when Blankenship was president of Rawl, a subsidiary of Massey Energy, he was faced with the problem of disposing of the millions of gallons of coal slurry the mines were producing. Coal slurry is a watery mud that runs off as coal is washed to remove its impurities. The slurry carries with it several toxic substances commonly found in coal, such as arsenic, lead, and cadmium. Blankenship came up with the idea of disposing of the slurry by piping it deep into abandoned coal mines. However, there were cracks running through the walls and floors of the mines, and apparently the toxics in the slurry leaked through the cracks and ended up contaminating the underground aquifer that fed the wells from which the surrounding communities drew their drinking water. The company was forced to pay $3.5 million in fines for the environmental disaster it had created. Then, in 2000 the dam of a small lake filled with coal slurry collapsed, sending 250 million gallons of toxic slurry flooding through Kentucky's rivers, leaving behind over 100 miles of contaminated waterways and destroying the drinking water sources of surrounding towns. That same year, two of its other coal mines had to pay fines for contaminating West Virginia's waterways. In 2006, the company paid additional fines of $1.4 million to settle five environmental lawsuits and 14 environmental enforcement actions. In 2008, the company paid another $20 million to settle a government lawsuit charging the company with 4,000 violations of the Clean Water Act.[3]

In 2010, most of the criticisms leveled against Massey Energy focused on the company's lack of attention to employee safety. In the days following the Upper Big Branch mine explosion, in fact, Massey Energy was repeatedly accused of having the worst safety record in the industry. The average number of worker injuries in U.S. mines is 4.03 injuries per 200,000 miners. Yet, 10 of Massey Energy's underground coal mines, including the Upper Big Branch coal mine, had accident injury rates ranging between 4.49 and 9.78 injuries per 200,000 workers. Not only did these mines have more injuries than the national average, but at least four had more than twice the national average.[4]

Explosion in Massey Energy's Coal Mine

A deadly explosion had ripped through the underground coal mine, killing or trapping an unknown number of the miners inside. At the time of the explosion, a total of 61 miners were working underground.[5, 6, 7]

Interactive

Stanley Stewart, one of the miners, later described what the explosion had been like:

> On April 5th, I was sitting on a mantrip at about 3 pm with several other miners approximately 300 feet underground. We were getting ready to head to the section when I felt a breeze coming from inside the mine. The intensity picked up quickly and I realized that something bad was happening so I left the mantrip and started making my way toward the outside. Before I could get out the air velocity increased to what I felt was "hurricane strength" and I felt my feet wanting to leave the ground. The air was full of dust debris and I couldn't see. Although I didn't have far to go I panicked, afraid that I might not make it out to safety.

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Rick Melberth, director of OMB Watch, a regulatory watchdog group, pointed out that Massey Energy and its Upper Big Branch mine were unusually lax in the area of worker safety. "There are huge mines out there that produce a lot more coal, have a lot more hours worked and can operate without violations," he said.[8]

The explosion in the mine was not the first time that Massey Energy's safety problems were said to have led to the loss of lives. In January 2006, a fire had erupted in a Massey Energy coal mine in Logan County, West Virginia, and two miners were killed. A state investigation concluded that the deadly fire was due to several safety violations that the company had failed to correct. Safety violations included the failure to fix a conveyor belt that caught fire, allowing the accumulation of combustible materials that had fed the fire, the absence of carbon monoxide monitors that could have alerted the miners to the fire, the absence of required fire extinguishers, and improper ventilation controls. A few months before the 2006 fire, CEO Blankenship had written a memo suggesting that managers should concentrate on producing coal and not waste time responding to requests to fix things: "If any of you have been asked by your group presidents, your supervisors, engineers, or anyone else to do anything other than run coal . . . you need to ignore them and run coal. This memo is necessary only because we seem not to understand that the coal pays the bills." In 2009, the company paid $4.2 million in criminal and civil penalties to settle federal charges that the company had willfully violated federal safety standards and that those violations were responsible for the two miners' deaths.[9]

Safety at Upper Big Branch Mine

Safety violations had plagued the Upper Big Branch mine for some time.

At the center of the storm of criticism that engulfed the company after the mine explosion was CEO Blankenship. The families of several miners accused him of putting profits ahead of safety. Born in 1950, Blankenship grew up in Stopover, Kentucky, a poor village made up mostly of shacks and trailer homes. His mother divorced his father shortly after he was born, and Blankenship ended up being raised by his mother. A childhood friend of his said, "He was a very competitive kid—he didn't like to fail . . . He was always trying to figure out what he could get away

Safety Violations at Upper Big Branch Mine

A year before the 2010 explosion, the mine had been cited eight times for "substantial" violations related to its methane monitors.[10, 11]

Interactive

Regulations required that the mine have methane monitors to warn of any dangerous buildup of methane gas. Methane gas is an odorless gas that gathers in the seams of coal deposits, and it is common for the gas to leak out and accumulate in coal mines, creating a deadly risk since methane is highly flammable and explosive.

The mine's operator was supposed to calibrate the methane monitors in the tunnels at least once a month to ensure they were in working order and capable of accurately sensing when the gas had reached dangerous levels. Yet, twice, federal inspectors had found that Massey Energy was calibrating its methane monitors only once every three months, creating a risk that the monitors might not be able to properly detect dangerous levels of methane.

Federal regulators also found that the company was not ventilating the mine properly. Ventilation prevents accumulations of methane gas, as well as of coal dust which, like methane, is combustible and can add to an explosion. The inspectors had forced the company to temporarily stop work in some sections of the mine until the ventilation problems had been corrected. While it was not clear exactly what had ignited the explosion of April 5, it was almost certain that it was caused by accumulations of methane and coal dust.

1 of 2

Previous Next

with." In high school, Blankenship played baseball and was elected president of his class. When he graduated, he enrolled in Marshall University in Huntington, where he majored in accounting and managed to graduate within three years. Afterward, he worked as an accountant for the Keebler Company, married, and had two children. Then, in 1982, the Massey Energy Company contacted Blankenship and offered him a job in one of its subsidiaries, named Rawl. He accepted the offer and, two years later, he was named president of Rawl. Blankenship continued his rise up the company's ranks until, in 1992, he was named CEO and chair of the entire company.

Families of the dead miners accused Blankenship of "always cutting corners on safety, pushing for more coal."[12] Blankenship vehemently denied this accusation:

> From the day I became a member of Massey's leadership team 20 years ago, I have made safety my number one priority. . . . The result has been a 90 percent reduction in our lost time accident rate, which has been better—often dramatically better—than the industry average for 17 of the last 19 years. So let me state for the record—Massey does not place profits over safety. We never have, and we never will.[13]

While Blankenship acknowledged that Massey Energy had received a large number of safety citations, this was not unusual, he said, for a coal company:

> Violations are unfortunately a normal part of the mining process. . . . There are violations at every coal mine in America, and Upper Big Branch was a mine that had violations. . . . I think the fact that MSHA, the state, and our fire bosses and the best engineers that you can find were all in and around this mine, and all believed it to be safe in the circumstances it was in, speaks for itself as far as any suspicion that the mine was improperly operated.[14]

In a startling move, Blankenship also suggested that MSHA itself might have been responsible for the deaths of the 29 miners:

> Against the advice of our own experts, MSHA required several changes since September 2009 that made the ventilation plan significantly more complex. This change in ventilation significantly reduced the volume of fresh air to the face of the longwall mining operation during this period. . . . We opposed the changes because our own engineers believed they made the mine less safe, not because they were more costly or because they interfered with production.[15]

Testimonials of Survivors and Deceased Miners' Families[16, 17, 18]

Interactive

Stanley Stewart: Survivor

My name is Stanley Stewart. Most people know me as "Goose." I have worked in coal mines for 34 years and at the Upper Big Branch mine for 15 of those years. I worked at the Upper Big Branch mine until the day of the accident and was 300 feet underground the day the explosion occurred.... The area of the mine we were working was liberating [releasing] a lot of methane. Mine management never fully addressed the air problem when it would be shut down by inspectors. They would fix it just good enough to get us to load coal again, but then it would be back to business as usual.... My experience in the mines showed me that the ventilation system they had didn't work. And with so much methane being liberated, and no air moving it gave me the feeling that area was a ticking time bomb. I was told prior to the April 5th explosion that they had experienced at least 2 fireballs [small flare-ups of methane] on the drum of the shearer. This leads me to believe the methane was indeed building in that area, showing lack of air and ventilation problems.... No one felt they could go to management and express their fears or the lack of air on our sections. We knew that we'd be marked men and the management would look for ways to fire us. Maybe not that day, or that week, but somewhere down the line, we'd disappear. We'd seen it happen and I told my wife, I felt like I was working for the Gestapo at times.

Alice Peters: Relative of a Deceased Miner

Leo Long: Relative of a Deceased Miner

Testimony of Miners and Families

During congressional hearings, however, survivors of the explosion and relatives of those who had died testified that conditions in the mine were not always up to standards, and that the miners felt too threatened to raise objections.

Criticisms of a Federal Agency

While many people blamed the company for the deaths of the miners, some critics also faulted MSHA, the federal agency that is supposed to protect miners. For one thing, the agency was understaffed and its inspectors were overworked. In addition, a government audit of the agency released the week before the mine explosion said that more than half of the agency's inspectors failed to attend required training courses and the agency neither kept track of their attendance nor did it sanction them.

Critics also pointed out that regulations passed in 2007 hampered MSHA's ability to sanction mining companies. Mining companies, Massey Energy in particular, regularly challenged the citations of MSHA inspectors, a process that required MSHA to submit the challenge to a panel of judges called the Federal Mine Safety and Health Review Commission (MSHRC). However, because MSHRC did not have enough judges to review the challenges in a timely fashion, years often passed before companies were forced to address the citations.[19]

Although MSHA had the authority to close down a mine if the mine had a substantial number of citations, it had not been able to close the Upper Big Branch mine.[20] On December 6, 2007, MSHA had sent a letter to Rick Hodge, superintendent of the Upper Big Branch mine, stating that the mine had accumulated so many violations that it would be closed down if it received any more "Significant and Substantial" violations. The letter read:

> In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 and 30CFR Part 104, the Mine Safety and Health Administration has conducted a pattern of violation (POV) screening of compliance records for the Upper Big Branch Mine . . . for the 24 months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial be issued as closure orders with all persons withdrawn from the affected area, except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no Significant and Substantial violations. This letter is your notification that a potential pattern of violation exists at the Upper Big Branch Mine.[21]

After receiving the letter, however, officials of Massey Energy challenged several of the citations on which it was based. They also corrected enough of the significant and substantial violations the mine had received during the previous 24 months to allow its total violations to fall below the level needed to force its closure. Consequently, although MSHA had frequently closed down sections of the mine when it demanded the company remedy a particular ventilation problem, it never forced the entire mine to shut down and make significant changes.

In October 2009, MSHA had again reviewed the citations the Upper Big Branch mine had received. However, regulators later discovered that the computer program that processed the review had an error in it. According to Secretary of Labor Hilda L. Solis, "Had the error in the computer program been corrected, the mine could have been placed into potential pattern of violation status in October of 2009." However, the error was not corrected until after the 29 miners were killed in the explosion.[22]

The Union Weighs In

Cecil Roberts, president of the United Mine Workers of America (UMWA), the largest miners' union in the United States, focused the union's criticisms on Massey Energy and connected its lack of union representation with its poor record of mine safety. A union, he felt, would have fought for better enforcement of safety regulations to protect the miners. However, CEO Blankenship was aggressively anti-union. In 1996, he had convinced the company to leave the collective bargaining agreements with the UMWA that all the other major coal companies had accepted. That same year, Blankenship testified in a federal lawsuit during which he said, "No [coal] operator in their right mind would go union."[23] At his urging, the company gradually phased out and closed down any mines that had earlier been unionized. By 2009, only 76 out of the company's 5,851 workers were still unionized. The company had fought particularly hard to make sure that the Upper Big Branch mine was not unionized. When the UMWA mounted a drive to unionize the workers at the mine, the company threatened to close the mine if its workers unionized, and in 1997 they narrowly voted down the union. During the congressional hearings on the mine disaster, several miners testified on the difference a union might have made:

> My name is Gary Quarles. I am the father of Gary Wayne Quarles who was killed as a result of the explosion at the Upper Big Branch mine on April 5, 2010. Gary Wayne was my only son and my best friend. . . . . I also am a coal miner. . . . I worked in union mines for 23 years and have worked in non-union mines the rest of the time. . . . Safety inspections were much different in the union mines I've worked at versus the non-union Massey mines. When an MSHA inspector comes onto a Massey mine property, the code words go out "we've got a man on the property." Those words are radioed from the guard gates and relayed to all working operations in the mine. . . . When the word goes out, all effort is made to correct any deficiencies or direct the inspector's attention away from any deficiencies. . . . When I worked at union mines, workers at the mine would accompany the MSHA inspectors during their inspections . . . . When the MSHA inspector comes to a Massey mine, the only people accompanying him are Massey company people. No coal miner at the mine can point out areas of concern to the MSHA inspector. . . . The Upper Big Branch mine was clearly not safe and as a result 29 miners died, including my son. Someone needs to be held responsible for these deaths.[24]

Other miners pointed out that in unionized mines, miners do not have to enter areas that are unsafe:

> My name is Eddie Cook. I'm Adam Morgan's uncle. Adam was 21 [when] the explosion took him away from us. I worked at Cleveland Cliffs Pinnacle mine [which is] union. . . . As a union person, we have the right to refuse to do work we think is unsafe. Non-union mines, you don't have that. You don't have the right to refuse. If you refuse, they tell you to "get your bucket and go home," you know. "If you don't want to work here, we've

got people out on the street wanting your jobs. And if you don't like the way we run it, you can go home."[25]

Stanley Stewart made a similar point:

I worked close to 20 years in the union and 15 years non-union so I've been on both sides of the fence long enough to know the difference in how miners feel in both types of working environments. In the union if you had safety concerns you had the right to refuse to work in unsafe conditions without fear of your job. You felt at ease and comforted by your rights. Working at a non-union mine you do not feel that comfort. You know you have to operate with a lack of air or in unsafe conditions.[26]

Discovering the Cause and Experiencing the Aftermath

On June 15, 2010, investigative teams exploring the mine discovered a large crack in the floor of the mine. Speaking for his company, Blankenship said that the crack may have allowed methane to leak into the tunnel before the explosion on April 5, which would then have been an unforeseeable and unpreventable event. Blankenship also released a letter that MSHA had written to the company on July 15, 2004, in which MSHA noted that the mine had been subject to several methane "outbursts." He claimed that the memo showed that the mine should have had a ventilation system that provided more air than normal to compensate for the periodic increases of methane, yet, he also claimed, MSHA had mandated a ventilation system that provided less air than normal.[27] On July 22, 2010, investigators announced that an examination of data from the mine's primary ventilation exhaust fan had found that on the day of the accident a sudden and large surge of methane gas had occurred within the mine. The mysterious release of gas was so large, experts said, that it could have rapidly filled a large part of the mine's interior.[28] Investigators also found near the bodies of some of the miners who had been killed a portable handheld methane monitor that showed methane levels in the area had gone from zero to 5 percent in 3 minutes. Methane gas is not explosive until it reaches concentrations of 5 percent to 15 percent.[29] It was unclear whether there was any connection between the crack in the mine's floor and the surge of methane gas, and between either of these and the explosion on April 5.

On Friday, December 3, 2010, Massey Energy announced that at the end of the year, Blankenship would step down from his position as CEO and chair of the company. It was not clear whether the company's board of directors had asked him to resign or he had decided to do so on his own. In a statement, Blankenship said only, "After almost three decades at Massey, it's time for me to move on." However, his resignation did not end his involvement with Massey Energy. On November 13, 2014, a federal grand jury indicted him for conspiring to violate federal mine safety and health standards, conspiracy to impede federal mine safety officials, and securities fraud. Although conviction of all the charges could have resulted in 30 years in prison, a jury in December 2015 found him guilty of only conspiring to commit mine safety violations, a misdemeanor that carried a maximum prison sentence of one year in jail. On April 6, 2016, a federal judge sentenced Blankenship to a year in prison plus a $250,000 fine.

WRITING PROMPT

Apply an Ethical Framework to Massey Energy

1. **In your judgment, and given only the facts described in this case, should the management of Massey Energy Company be held morally responsible for the deaths of the 29 miners? Explain your answer.**
2. **Suppose that nothing more is learned about the explosion other than what is described in this case. Do you think Don Blankenship should be held morally responsible for the deaths of the 29 miners?**
3. **Given only the facts described in this case, should the MSHA be held morally responsible (at least in part) for the deaths of the 29 miners?**
4. **List all of the ethical obligations that you believe the management of Massey Energy did NOT fulfill. Explain the ethical basis of each of the obligations on your list.**

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

Submit

Case Notes

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Case Study 8.2: Who Should Pay?

The stakes were high for Gene Elliot, whose on-the-job injuries were estimated to be serious enough to merit at least a $2.4 million settlement.[30] Yet who should pay for his injuries: Turner Construction or B&C Steel? Or should Elliot be forced to pay for at least part of his injuries because of his own carelessness?

Lawsuit and Reverberations

Elliot sued Turner Construction and B&C Steel for negligence resulting in economic losses of $28,000, noneconomic injuries of $1,200,000, and permanent impairment of $1,200,000. These

Background for a Complicated On-the-Job Injury Case

Interactive

Gene Elliot worked for Mabey Bridge and Shore, a small business that rented temporary steel pedestrian foot bridges to other companies. The temporary bridges had to be put together by the renter, and Elliot's job was to go to the site where the steel bridge was going to be installed, show the renter how to bolt the bridge sections together and how to install the bridge over a river or waterway, and inspect the bridge to make sure it was done properly and according to Mabey Bridge's high standards. Elliot was a devoted hard worker who strove to do everything possible to ensure that a bridge installation was successful and according to Mabey Bridge's standards.

1 of 4

Previous Next

Arguments by Turner Construction, B&C Steel, and Gene Elliot

Interactive

Turner Construction | B&C Steel | Gene Elliot

Turner Construction denied its responsibility in relation to the event. It claimed that Turner was Elliot's temporary employer and workers' compensation law required employers to pay only the economic losses, here only $28,000, suffered by their employees. Turner Construction pointed to the law, which stated: "Any company leasing or contracting out any part of the work to any lessee or subcontractor, shall be construed to be an employer and shall be liable to pay [only] compensation for injury resulting therefrom to said lessees and subcontractors and their employees." Turner Construction claimed that Mabey Bridge was a subcontractor to Turner to the extent that it provided the services of Elliot to Turner, so Turner should be construed to be Elliot's temporary employer. Moreover, Colorado's workers' compensation law, which was designed to ensure that employers always paid for worker injuries, "grants an injured employee compensation from the employer without regard to negligence and, in return, the responsible employer is granted immunity from common law negligence liability."

figures were established by a qualified expert in the field of worker injuries and were not seriously contested.

WRITING PROMPT

Determine Responsibility

1. In your judgment, and from an ethical point of view, should Turner Construction and/or B&C Steel pay for all or part of the $2,428,000 damages to Gene Elliot (if part, indicate which part)? Explain your view.
2. In your judgment, and from an ethical point of view, should Elliot be held wholly or partially responsible for his injuries and left to shoulder all or part of the $2,428,000 cost of his injuries (if part, indicate which part)? Explain your view.
3. In your judgment, is the Colorado worker's compensation law to which Turner Construction appealed fair? Explain your view.

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

Submit

Case Notes

30. This case is based entirely on Eugene Elliot v. Turner Construction Company and B&C Steel, United States Court of Appeals, Tenth Circuit, August 24, 2004, Case No. 03-1209.

Summary

1. This chapter considers employee issues related to three models of the organization: the rational organization, the political organization, and the caring organization.
2. A rational organization comprises formal hierarchies of authority and relies on contracts that obligate both the employee to loyally pursue the organization's goals and the employer to provide a just wage and just

working conditions. Conflicts of interest, accepting gifts designed to sway the recipient's judgment, stealing information that belongs to the company, and insider trading all violate the employee's contractual duty of loyalty. The employer violates his or her contractual duties toward employees by failing to pay workers a fair wage—an important issue when it involves wages paid to workers in developing nations—and by imposing unjustified workplace risks on employees or failing to inform employees of such risks.

3. A political organization comprises the competing power coalitions that develop within organizations and the formal and informal sources of organizational power that managers can use to pursue their own ends. Many argue that we should recognize that employees have rights that protect them from being harmed by managers who may use their power against employees. The "similarity argument" holds that corporations are similar to a government. Therefore, just as citizens of nations have rights that protect them from the power of government, so too employees of corporations have rights that protect them from the power of the corporation and its managers. Critics argue, however, that corporations are not really similar to governments. Others have argued that employees have certain interests that are so important that they justify rights that protect them, including the right to privacy, the right to freedom of conscience, the right to participate in decisions that affect one's life, the right to due process (which is opposed by arguments supporting employment at will), the right to work, and the right to organize. Organizational politics consists of the processes by which individuals or groups in organizations use power tactics to advance their own aims. Political tactics are justified only if they advance socially beneficial goals, do not violate the rights of others, have just outcomes, and do not undermine valuable caring interpersonal relationships.
4. A caring organization includes those aspects of the organization that are related to the caring interpersonal relationships employees form with other organizational members. In organizations that are focused on such caring, caring is treated as an end in itself and not just as a means to improving productivity.