

## Chapter 5

---

# *Business and the Professions*

A Stakeholder Theory of the Modern Corporation

The Moral Duties of Organizations: Dual-Investor Theory and the Nature of Organizations

Paternalism in the Marketplace: Should a Salesman Be His Buyer's Keeper?

Ethical Issues in Acquisitions and Mergers

Environmental Ethics and the Business Professional: Responsibilities and Opportunities

This chapter, the first in Part 2, is something of a transition. The issues addressed in the preceding chapters are common to all professions. The issue of employee rights, for example, cuts across the professions because many professionals are employees or manage employees, or maybe both. The issue of professional-client relations concerns questions of autonomy, confidentiality, and other items relevant to a variety of professions. In the chapters that follow, however, the focus will be on ethical issues arising within specific professions. This is not to suggest that there is no overlap whatsoever; some of the topics could certainly be relevant to more than a single profession. Whistleblowing, for example, is usually discussed in the context of engineering (as it will be here), but questions about the permissibility of whistleblowing and loyalty generally could certainly arise in other fields.

Before proceeding to those specific professions, however, there is an important consideration that warrants its own discussion, namely, the way in which business considerations enter into the professions. There is a tendency to think that professionals ought to be held to high ethical ideals; some views on this belief have been expressed in previous articles. There is also a tendency to think that business, being concerned primarily with profit, is not itself a profession, and that businesspersons therefore need not be held to the same ethical standards. But this way of looking at things is overly simplistic. Professionals, too, are concerned with financial matters and sometimes with profit as well, and so the two areas—business and the professions—overlap in such a way that they cannot be separated cleanly. First, some professions, such as engineering and journalism, are businesses; they are commonly thought to satisfy the criteria for being professions (see Bayles, Chapter 2), but they are also driven by the potential for economic gain. Second, and relatedly, some professional organizations are business organizations. Engineering firms and media firms are *firms*—for-profit entities—and as such are organized for the purpose of making money. Today, even certain educational institutions and medical facilities are business firms in this sense. The potential for ethical conflicts should be clear: in business corporations, it is thought that the primary ethical obligation is owed to the shareholders, who are the owners; in the professions, it is thought that the primary ethical obligation is to the clients or community to promote their well-being, and that financial considerations should take a backseat. So it seems that something has to give.

One way to handle this is to argue for a revised view of business, one that seems more in line with how we think the professions ought to be guided. Such an approach, if successful, would allow for consistency between business and the professions, and could thus perhaps be used to address ethical issues when the two overlap. This is the strategy taken by R. Edward Freeman in the first article in this chapter. Freeman argues that managers of corporations should use a more balanced approach. Shareholders are important but no more so than employees, customers, suppliers, and other groups that contribute to the success (or failure) of the organization. Each of these groups is labeled a “stakeholder” group by Freeman; each has a stake in the success (or failure) of the corporation, and so each has a vested interest in the company. Stockholders have their investments at stake, employees have their jobs and livelihoods at stake, suppliers have the continued business relationship with the company at stake, and so on. Freeman uses Rawlsian contractarianism to suggest that in the original position, in ignorance of the actual stake one will hold (customer, supplier, stockholder, member of the general community, or other stakeholder group), it will be agreed that organizations should afford equal consideration to these groups. More specifically, he offers six principles that would be agreed to behind this veil of ignorance, none of which recognizes stockholders as special. Thus, no investment is necessary in order to be the beneficiaries of significant ethical duties of organizations. While Freeman centers his discussion on business corporations, it should be clear how his

argument  
ness inter

Eugen  
ory, in hi  
traditiona  
of that co  
sharehold  
who prov  
such as ro  
sorts of s  
bite” prin  
the furthe  
with a dis  
approach  
profession  
uation of

James  
principal  
They argu  
business a  
to use the  
of exploit  
them is t  
tomers ab  
morally ap  
who claim  
their basic  
universitie  
employed

Even w  
managem  
themselves  
has often  
componen  
when corp  
well be pr  
of mergers  
are discuss  
to benefit  
ety in gene  
should (ac  
ally increas  
gation not  
group that  
flict of int  
avoid take  
designed t

The firm  
little atten  
that the er

arguments could perhaps be applied to a variety of professional organizations with business interests.

Eugene Schlossberger also makes use of a revised view of business, a dual-investor theory, in his discussion of the moral duties of corporations. Schlossberger agrees with the traditional view that only those who actually invest in a company can be the beneficiaries of that company's ethical obligations, but he disagrees with the traditional view that shareholders are the only ones who invest. Rather, there are two types of investors—those who provide specific capital (usually the shareholders) and those who provide social assets such as roads, police, education provided to the workforce, a currency system, and other sorts of social services. Schlossberger uses the dual-investor theory to generate the “no bite” principle as a minimum ethical requirement of organizations, and from there derives the further requirement of contributing to the good-in-general. He concludes the article with a discussion of how organizations can be morally evaluated. Because Schlossberger's approach pertains to organizations generally, it would be applicable to both business and professional organizations, and would thus provide a common basis for the ethical evaluation of issues that overlap business and the professions.

James M. Ebejer and Michael J. Morden claim that in the context of sales, which is a principal business component of any profession, a certain degree of honesty is required. They argue against a “buyer beware” approach to sales on the basis that salespersons in business are often experts with respect to the products or services they sell and ought not to use their expertise to their advantage against customers. Doing so, they claim, is a form of exploitation, and misleading customers or withholding important information from them is therefore unethical. While acting paternalistically—making decisions for customers about what is in their best interest—would be going too far, a middle ground is morally appropriate. This middle ground is labeled “limited paternalism” by the authors, who claim it is a rule that should be followed in most sales contexts. Presumably, then, their basic idea could be extended to sales and advertising strategies utilized by hospitals, universities, engineering firms, and other organizations, as well as by specific salespersons employed by those organizations.

Even where a corporation operates in a field that does not seem to be a profession, the management of the corporation—the CEO (and perhaps senior vice-presidents)—may themselves be professionals. Using the criteria established by Bayles, for instance, a CEO has often undergone extensive training, holds a job that requires a significant intellectual component, and runs an organization that provides an important service to society. Thus, when corporate management encounters certain conflicts of interest, these conflicts may well be properly classified as an issue for professional ethics. In this vein, ethical aspects of mergers and acquisitions in business, and the associated conflicts faced by managers, are discussed by Robert W. McGee, who points out that most stakeholder groups tend to benefit from mergers and acquisitions. This is true for employees, customers, and society in general, but it is especially true for stockholders, whose interests top management should (according to the traditional view) be principally concerned with: share prices usually increase as a result of a merger or acquisition, and so managers appear to have an obligation not to oppose takeover attempts, for example. However, management is the only group that stands to lose from a merger or acquisition, and this poses a significant conflict of interest problem. McGee reviews some of the strategies that managers utilize to avoid takeovers and suggests that most are ethically dubious, since those strategies are designed to protect the managers' own interests rather than those of the shareholders.

The final article addresses environmental ethics, a topic that still receives comparatively little attention in the literature on business and professional ethics. Philip Cafaro argues that the environmental responsibilities of businesspersons are significant, much more so

than is commonly thought. Ethics is concerned not only with restrictions on action but with opportunity and flourishing, and from both perspectives, there are good reasons for business professionals to act responsibly toward the environment. In terms of restrictions, the rights of others justify limiting the treatment of the environment as a mere resource—as a mere means to the end of profit. Further, the “others” whose rights are in question may in fact extend beyond the human community, to members of other species for example, and this point must be accounted for in any discussions of rights. In terms of opportunities, Cafaro suggests that individuals can flourish as professionals and as persons generally if they conduct business in environmentally friendly ways. These considerations suggest a commitment to community that we must begin to recognize.

## A Stakeholder Theory of the Modern Corporation

R. EDWARD FREEMAN

### *The Stakeholder Concept*

Corporations have stakeholders, that is, individuals who benefit from or are harmed by, and whose rights are violated or respected by, corporate actions. The concept of stakeholders is a generalization of the notion of stockholders, whom themselves have some special claim on the firm. Just as stockholders have a right to demand certain actions by management, so do other stakeholders have a right to make claims. The exact nature of these claims is a difficult question that I shall address, but the logic is identical to that of the stockholder theory. Stakes require action of a certain sort, and conflicting stakes require methods of resolution.

Freeman and Reed<sup>1</sup> distinguish two senses of *stakeholder*. The “narrow definition” includes

<sup>1</sup>See E. Freeman and D. Reed, “Stockholders and Stakeholders: A New Perspective on Corporate Governance,” in C. Huizinga, ed., *Corporate Governance: A Definitive Exploration of the Issues* (Los Angeles: UCLA Extension Press, 1983).

those groups who are vital to the survival and success of the corporation. The “wide-definition” includes any group or individual who can affect or is affected by the corporation. I shall begin with a modest aim: to articulate a stakeholder theory using the narrow definition.

The stakes of each group—management, owners, employees, suppliers, customers, the local community, and perhaps others—are reciprocal, since each can affect the other in terms of harms and benefits as well as rights and duties. The stakes of each are not univocal and would vary by particular corporation. I merely set forth some general notions that seem to be common to many large firms.

### *Stakeholders in the Modern Corporation*

Owners have financial stake in the corporation in the form of stocks, bonds, and so on, and they expect some kind of financial return from them. Either they have given money directly to the firm, or they have some historical claim made through a

R. Edward Freeman is Elis and Signe Olsson Professor of Business Administration and Director of the Olsson Center for Applied Ethics, University of Virginia. Portions of this article appeared previously in R. Edward Freeman, “The Politics of Stakeholder Theory,” *Business Ethics Quarterly* 4 (1994), pp. 409–21. Reprinted with kind permission of the author.

series of morally justified exchanges. The firm affects their livelihood or, if a substantial portion of their retirement income is in stocks or bonds, their ability to care for themselves when they can no longer work. Of course, the stakes of owners will differ by type of owner, preferences for money, moral preferences, and so on, as well as by type of firm. The owners of AT&T are quite different from the owners of Ford Motor Company, with stock of the former company being widely dispersed among 3 million stockholders and that of the latter being held by a small family group as well as by a large group of public stockholders.

Employees have their jobs and usually their livelihood at stake; they often have specialized skills for which there is usually no perfectly elastic market. In return for their labor, they expect security, wages, benefits, and meaningful work. In return for their loyalty, the corporation is expected to provide for them and carry them through difficult times. Employees are expected to follow the instructions of management most of the time, to speak favorably about the company, and to be responsible citizens in the local communities in which the company operates. Where they are used as means to an end, they must participate in decisions affecting such use. The evidence that such policies and values as described here lead to productive company-employee relationships is compelling. It is equally compelling to realize that the opportunities for "bad faith" on the part of both management and employees are enormous. "Mock participation" in quality circles, singing the company song, and wearing the company uniform solely to please management all lead to distrust and unproductive work.

Suppliers, interpreted in a stakeholder sense, are vital to the success of the firm, for raw materials will determine the final product's quality and price. In turn the firm is a customer of the supplier and is therefore vital to the success and survival of the supplier. When the firm treats the supplier as a valued member of the stakeholder network, rather than simply as a source of materials, the supplier will respond when the firm is in need. Chrysler traditionally had very close ties to its suppliers, even to the extent that led some to suspect the transfer of illegal payments. And when Chrysler was on the brink of disaster, the suppliers responded with price cuts, accepting late payments, financing, and

so on. Supplier and company can rise and fall together. Of course, again, the particular supplier relationships will depend on a number of variables such as the number of suppliers and whether the supplies are finished goods or raw materials.

Customers exchange resources for the products of the firm and in return receive the benefits of the products. Customers provide the lifeblood of the firm in the form of revenue. Given the level of reinvestment of earnings in large corporations, customers indirectly pay for the development of new products and services. Peters and Waterman<sup>2</sup> have argued that being close to the customer leads to success with other stakeholders and that a distinguishing characteristic of some companies that have performed well is their emphasis on the customer. By paying attention to customers' needs, management automatically addresses the needs of suppliers and owners. Moreover, it seems that the ethic of customer service carries over to the community. Almost without fail the "excellent companies" in Peters and Waterman's study have good reputations in the community. I would argue that Peters and Waterman have found multiple applications of Kant's dictum, "Treat persons as ends unto themselves," and it should come as no surprise that persons respond to such respectful treatment, be they customers, suppliers, owners, employees, or members of the local community. The real surprise is the novelty of the application of Kant's rule in a theory of good management practice.

The local community grants the firm the right to build facilities and, in turn, it benefits from the tax base and economic and social contributions of the firm. In return for the provision of local services, the firm is expected to be a good citizen, as is any person, either "natural or artificial." The firm cannot expose the community to unreasonable hazards in the form of pollution, toxic waste, and so on. If for some reason the firm must leave a community, it is expected to work with local leaders to make the transition as smoothly as possible. Of course, the firm does not have perfect knowledge, but when it discovers some danger or runs afoul of new competition, it is expected to inform the local community

<sup>2</sup>See T. Peters and R. Waterman, *In Search of Excellence* (New York: Harper and Row, 1982).

and to work with the community to overcome any problem. When the firm mismanages its relationship with the local community, it is in the same position as a citizen who commits a crime. It has violated the implicit social contract with the community and should expect to be distrusted and ostracized. It should not be surprised when punitive measures are invoked.

I have not included "competitors" as stakeholders in the narrow sense, since strictly speaking they are not necessary for the survival and success of the firm; the stakeholder theory works equally well in monopoly contexts. However, competitors and government would be the first to be included in an extension of this basic theory. It is simply not true that the interests of competitors in an industry are always in conflict. There is no reason why trade associations and other multi-organizational groups cannot band together to solve common problems that have little to do with how to restrain trade. Implementation of stakeholder management principles, in the long run, mitigates the need for industrial policy and an increasing role for government intervention and regulation.

### *The Role of Management*

Management plays a special role, for it too has a stake in the modern corporation. On the one hand, management's stake is like that of employees', with some kind of explicit or implicit employment contract. But, on the other hand, management has a duty of safeguarding the welfare of the abstract entity that is the corporation. In short, management, especially top management, must look after the health of the corporation, and this involves balancing the multiple claims of conflicting stakeholders. Owners want higher financial returns, while customers want more money spent on research and development. Employees want higher wages and better benefits, while the local community wants better parks and daycare facilities.

The task of management in today's corporation is akin to that of King Solomon. The stakeholder theory does not give primacy to one stakeholder group over another, though there will surely be times when one group will benefit at the expense of others. In general, however, management must keep the relationships among stakeholders in balance. When these relationships become imbalanced, the survival of the firm is in jeopardy.

When wages are too high and product quality is too low, customers leave, suppliers suffer, and owners sell their stocks and bonds, depressing the stock price and making it difficult to raise new capital at favorable rates. Note, however, that the reason for paying returns to owners is not that they "own" the firm, but that their support is necessary for the survival of the firm, and that they have a legitimate claim on the firm. Similar reasoning applies in turn to each stakeholder group.

A stakeholder theory of the firm must redefine the purpose of the firm. The stockholder theory claims that the purpose of the firm is to maximize the welfare of the stockholders, perhaps subject to some moral or social constraints, either because such maximization leads to the greatest good or because of property rights. The purpose of the firm is quite different in my view.

"The stakeholder theory" can be unpacked into a number of stakeholder theories, each of which has a "normative core," inextricably linked to the way that corporations should be governed and the way that managers should act. So, attempts to more fully define, or more carefully define, a stakeholder theory are misguided. Following Donaldson and Preston, I want to insist that the normative, descriptive, instrumental, and metaphorical (my addition to their framework) uses of "stakeholder" are tied together in particular political constructions to yield a number of possible "stakeholder theories." "Stakeholder theory" is thus a genre of stories about how we could live. Let me be more specific.

A "normative core" of a theory is a set of sentences that includes among others, sentences like:

- (1) Corporations ought to be governed . . .
- (2) Managers ought to act to . . .

where we need arguments or further narratives which include business and moral terms to fill in the blanks. This normative core is not always reducible to a fundamental ground like the theory of property, but certain normative cores are consistent with modern understandings of property. Certain elaborations of the theory of private property plus the other institutions of political liberalism give rise to particular normative cores. But there are other institutions, other political conceptions of how society ought to be structured, so that there are different possible normative cores.

So, one no  
might be a f  
how we wou  
ity" along pr  
Another wou  
logical) norm  
scribe one a  
construct "a  
guised atten  
the unsophi  
academics w  
stockholder

If we be  
stand valu  
process am  
simplicity's  
as financie  
communit  
core that  
solidarity,  
Rawls, Ri  
building  
of how  
tracting  
"busines  
part, and  
equality  
presump

The  
tractual  
ness if  
stakeho  
are rea  
inequa  
raise th  
liberal  
ization  
agree  
solida  
mutu  
O  
is to  
ties  
of th

31.  
Uni  
Det  
Res  
Bey  
Bl

So, one normative core of a stakeholder theory might be a feminist standpoint one, rethinking how we would restructure "value-creating activity" along principles of caring and connection. Another would be an ecological (or several ecological) normative cores. . . . The attempt to prescribe one and only one "normative core" and construct "a stakeholder theory" is at best a disguised attempt to smuggle a normative core past the unsophisticated noses of other unsuspecting academics who are just happy to see the end of the stockholder orthodoxy.

If we begin with the view that we can understand value-creation activity as a contractual process among those parties affected, and if for simplicity's sake we initially designate those parties as financiers, customers, suppliers, employees, and communities, then we can construct a normative core that reflects the liberal notions of autonomy, solidarity, and fairness as articulated by John Rawls, Richard Rorty, and others.<sup>3</sup> Notice that building these moral notions into the foundations of how we understand value creation and contracting requires that we eschew separating the "business" part of the process from the "ethical" part, and that we start with the presumption of equality among the contractors, rather than the presumption in favor of financier rights.

The normative core for this redesigned contractual theory will capture the liberal idea of fairness if it ensures a basic equality among stakeholders in terms of their moral rights as these are realized in the firm, and if it recognizes that inequalities among stakeholders are justified if they raise the level of the least well-off stakeholder. The liberal ideal of autonomy is captured by the realization that each stakeholder must be free to enter agreements that create value for themselves, and solidarity is realized by the recognition of the mutuality of stakeholder interests.

One way to understand fairness in this context is to claim *à la* Rawls that a contract is fair if parties to the contract would agree to it in ignorance of their actual stakes. Thus, a contract is like a fair

bet, if each party is willing to turn the tables and accept the other side. What would a fair contract among corporate stakeholders look like? If we can articulate this ideal, a sort of corporate constitution, we could then ask whether actual corporations measure up to this standard, and we also begin to design corporate structures which are consistent with this Doctrine of Fair Contracts.

Imagine if you will, representative stakeholders trying to decide on "the rules of the game." Each is rational in a straightforward sense, looking out for its own self-interest. At least *ex ante*, stakeholders are the relevant parties since they will be materially affected. Stakeholders know how economic activity is organized and could be organized. They know general facts about the way the corporate world works. They know that in the real world there are or could be transaction costs, externalities, and positive costs of contracting. Suppose they are uncertain about what other social institutions exist, but they know the range of those institutions. They do not know if government exists to pick up the tab for any externalities, or if they will exist in the nightwatchman state of libertarian theory. They know success and failure stories of businesses around the world. In short, they are behind a Rawls-like veil of ignorance, and they do not know what stake each will have when the veil is lifted. What groundrules would they choose to guide them?

The first groundrule is "The Principle of Entry and Exit." Any contract that is the corporation must have clearly defined entry, exit, and renegotiation conditions, or at least it must have methods or processes for so defining these conditions. The logic is straightforward: each stakeholder must be able to determine when an agreement exists and has a chance of fulfillment. This is not to imply that contracts cannot contain contingent claims or other methods for resolving uncertainty, but rather that it must contain methods for determining whether or not it is valid.

The second groundrule I shall call "The Principle of Governance," and it says that the procedure for changing the rules of the game must be agreed upon by unanimous consent. Think about the consequences of a majority of stakeholders systematically "selling out" a minority. Each stakeholder, in ignorance of its actual role, would seek to avoid such a situation. In reality this principle translates into each stakeholder never giving up its

<sup>3</sup> J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), and R. Rorty, "The Priority of Democracy to Philosophy," in *Reading Rorty: Critical Responses to Philosophy and the Mirror of Nature (and Beyond)*, ed. Alan R. Malachowski (Cambridge, MA: Blackwell, 1990).

right to participate in the governance of the corporation, or perhaps into the existence of stakeholder governing boards.

The third groundrule I shall call "The Principle of Externalities," and it says that if a contract between A and B imposes a cost on C, then C has the option to become a party to the contract, and the terms are renegotiated. Once again the rationality of this condition is clear. Each stakeholder will want insurance that it does not become C.

The fourth groundrule is "The Principle of Contracting Costs," and it says that all parties to the contract must share in the cost of contracting. Once again the logic is straightforward. Any one stakeholder can get stuck.

A fifth groundrule is "The Agency Principle" that says that any agent must serve the interests of all stakeholders. It must adjudicate conflicts within the bounds of the other principals. Once again the logic is clear. Agents for any one group would have a privileged place.

A sixth and final groundrule we might call "The Principle of Limited Immortality." The corporation shall be managed as if it can continue to serve the interests of stakeholders through time. Stakeholders are uncertain about the future but, subject to exit conditions, they realize that the continued existence of the corporation is in their interest. Therefore, it would be rational to hire managers who are fiduciaries to their interest and the interest of the collective. If it turns out the "collective interest" is the empty set, then this principle simply collapses into the Agency Principle.

Thus, the Doctrine of Fair Contracts consists of these six groundrules or principles:

- (1) The Principle of Entry and Exit
- (2) The Principle of Governance
- (3) The Principle of Externalities

### Discussion Questions

1. What are some of the stakeholder groups Freeman mentions, and what do they have at stake?
2. How, exactly, might the term *equal consideration* be used in explaining what stakeholder theory is?
3. Describe how someone might use deontological ethics to criticize Freeman's claim that stockholders should not be the primary concern of business corporations.
4. Describe how Freeman uses contractarianism to support stakeholder theory. What other moral theories can be used to defend stakeholder theory?

- (4) The Principle of Contracting Costs
- (5) The Agency Principle

- (6) The Principle of Limited Immortality

Think of these groundrules as a doctrine which would guide actual stakeholders in devising a corporate constitution or charter. Think of management as having the duty to act in accordance with some specific constitution or charter.

Obviously, if the Doctrine of Fair Contracts and its accompanying background narratives are to effect real change, there must be requisite changes in the enabling laws of the land. I propose the following three principles to serve as constitutive elements of attempts to reform the law of corporations.

#### *The Stakeholder Enabling Principle*

Corporations shall be managed in the interests of their stakeholders, defined as employees, financiers, customers, employees, and communities.

#### *The Principle of Director Responsibility*

Directors of the corporation shall have a duty of care to use reasonable judgment to define and direct the affairs of the corporation in accordance with the Stakeholder Enabling Principle.

#### *The Principle of Stakeholder Recourse*

Stakeholders may bring an action against the directors for failure to perform the required duty of care.

Obviously, there is more work to be done to spell out these principles in terms of model legislation. As they stand, they try to capture the intuitions that drive the liberal ideals. It is equally plain that corporate constitutions which meet a test like the doctrine of fair contracts are meant to enable directors and executives to manage the corporation in conjunction with these same liberal ideals.

## The Moral and the

EUGENE

### Introduction

Are the moral  
ent from those  
have suggested  
persons they  
be judged good  
of organization  
tions as such  
nature of org  
are built into  
Dual-Investor  
business ethic  
erally have a  
ensure that th  
organizations  
responsibility.  
organization e  
eral is a funda  
Just as, accord  
nesses exist to  
organizations  
general by se  
good-in-gener  
tions.<sup>2</sup> Finally,  
gests that ther  
morally evaluat

Section I is  
zations. Sectio  
to organization  
Section I to ar  
organization is

<sup>1</sup>For a full expo  
Theory, see Schl  
Business: Dual-In  
v. 4, 1994, pp. 45

<sup>2</sup>More precisely, th  
ary of every organ

## The Moral Duties of Organizations: Dual-Investor Theory and the Nature of Organizations

EUGENE SCHLOSSBERGER

### Introduction

Are the moral obligations of organizations different from those of individual persons? Some people have suggested that because organizations are not persons they have no moral obligations and can't be judged good or bad: while members or officers of organizations can have moral duties, organizations as such cannot. But a careful analysis of the nature of organizations shows that moral duties are built into the very concept of an organization. Dual-Investor Theory, an alternative approach to business ethics,<sup>1</sup> suggests that organizations generally have a duty, as organizations, to try to ensure that their activities do not harm society—organizations have a duty of minimal social responsibility. Moreover, the very concept of an organization entails that serving the good-in-general is a fundamental goal of every organization. Just as, according to Dual-Investor Theory, businesses exist to serve society by making a profit, so organizations exist to contribute to the good-in-general by serving their specific purpose: the good-in-general is a beneficiary of all organizations.<sup>2</sup> Finally, the nature of organizations suggests that there are six key questions to ask when morally evaluating an organization's activities.

Section I is an analysis of the nature of organizations. Section II applies Dual-Investor Theory to organizations. Section III uses the results of Section I to argue that an implicit goal of every organization is serving the good-in-general. That

is, while organizations may exist to serve some very specific good, such as obtaining dental benefits for a particular company's janitors, they are also committed to serving goodness generally. Organizations bear some fiduciary duties to what is good, right, and just. Section IV provides a framework for morally evaluating organizations.

### I. The Nature of Organizations

What is an organization? Not any collection of people count as an organization. Some people are left-handed, enjoy vanilla ice cream, and play tiddlywinks. Those people have something in common, but they are not an organization. The collection of all people who voted for Al Gore in the New Hampshire primary have a common goal, but they are not an organization.

What, then, is an organization? *An organization is a structured, co-operative venture, consisting of activities undertaken for the purpose of serving some perceived good, which has at least one relationship with a person or persons that is distinctly different from the relationships of its members as individuals.* This somewhat lengthy definition needs some explanation.

First an organization has members who participate in the venture by virtue of their place or role in the organization's structure. By "members" I mean persons or organizations that take themselves to be participants in the structured venture and are recognized as co-participants by the other participants in the venture. Members may be persons or other organizations, which are in turn composed of persons or other organizations. The membership structure of an organization may be highly complex and non-linear, but ground zero is persons, and all organization's membership touches ground somewhere: ultimately, the

<sup>1</sup>For a full exposition and discussion of Dual-Investor Theory, see Schlossberger, Eugene, "A New Model of Business: Dual-Investor Theory," *Business Ethics Quarterly* v. 4, 1994, pp. 459-474.

<sup>2</sup>More precisely, the objective good is an objective beneficiary of every organization.

membership of some organization in this chain includes persons. Organizational structures can be formal or informal, loose or strict. Typically organizational structures include specific roles (e.g., treasurer) and operating rules (e.g., dues must be paid by the first Friday in April). Though formal roles and rules are not necessary, organizations must be in some way organized. There might be no formal role of discussion leader, but members might generally look to Smith to lead the discussion. There may be no explicit or formal rules, but it might be generally understood by members that one doesn't reveal other members' names.

These features of organizations help explain why the various individuals voting for Al Gore in the New Hampshire primary do not constitute an organization. Those who voted for Al Gore might share a common goal, but their various activities (each pulling the lever in the voting booth) are not a structured, co-operative venture. They do not regard themselves (and are not regarded by other voters) as participating in the venture of electing Al Gore by jointly realizing, operating within, a set of rules and roles.

Organizations and institutions exist to serve a purpose, which is to advance or serve some good: there is something the organization, as an organization, takes to be a good and which it is devoted, as an organization, to serving.<sup>3</sup> Organizations are ventures, and a "venture," in this sense, is some set of activities (in the broadest sense of "activity") that center on the attempted fiduciary tending to some perceived good for some perceived benefici-

<sup>3</sup>The purpose for which an organization is founded may not be the same as the purpose for which it is currently maintained, and there may be, within the organization, debate and controversy about the purpose of the organization. A complete theory of organizations would have to explain how organizations can have goals. Some role is certainly played by all of the following: the history of the organization, the current views of the membership, the actual functioning and activities of the organization, and the role the organization plays as a social entity (how it is understood by others). For example, taxpayers have certain expectations concerning the IRS. We might call this the "social charge" given the organization and note that an organization's social charge is not irrelevant to determining its actual purpose. Any adequate, complete account of organizations must take account, in some way, of all of these factors.

ary. A venture is a co-operative set of activities in execution of a "charge." The range of goods an organization might serve is quite varied. A professional society of physicians might exist to serve the career interests of its members and/or the interests of medicine generally. A labor union serves to advance the job-related interests of its members, and, to some extent, the interests of labor generally. The Committee to Re-Elect the President served to advance the interests of Richard Nixon's being elected president in 1972, a specific state of affairs. The Metropolitan Opera Guild serves to advance the interests of the Metropolitan Opera Association, another organization. The Sierra Club serves to advance the interests of the environment. A social club might exist to serve a particular social or entertainment interest of its members. Organizations may exist to serve the interests of fatherhood, honesty and integrity in the used car business, high standards of scholarship, the education of left-handed descendants of Abraham Lincoln, the perpetuation of Tibetan culture, the general attainment of sartori, or the will of God on earth. Whatever the charge of an organization, it exists for the purpose of serving some good and has fiduciary duties related to serving that good—it is dedicated to serving faithfully the interests of some beneficiary, whether that beneficiary is a person or group of persons, another organization, an ideal, a state of affairs, a practice, a cause, an abstract object, or a supernatural being.<sup>4</sup>

What an organization takes to be good might not actually be good, and the intended beneficiary of an organization may not, in fact, exist. Imagine a Society for the Perpetuation of Racism (the

<sup>4</sup>Organizations do not exist in order to perpetuate their own existence, though formally the existence of the organization could be called a good. In some extreme cases, an organization might exist to preserve a tradition, at the heart of which is the existence of the organization. But the value of the survival of an organization is always derivative from some other, perhaps related, good, to which the organization's continued existence contributes. Thus when an organization functions so as to place its own existence as its primary end in itself, something has gone very wrong with the organization—it is an organization failing to pursue its purpose, like an investment club that deliberately seeks to lose all its money.

SPR).<sup>5</sup> The pe  
serving, racism  
SPR is simp  
Organization  
Mouse is the n  
serve the will o  
X, we must dis  
eficiary, the in  
tual beneficia  
Organization  
"intentional o  
following *idea*  
actual will of th  
eficiary is the s  
that description  
the objective b  
ity, Zeus' will  
beneficiary is a  
ary is a thing. T  
of things the c  
tion, to fit th  
organization b  
mands. If Org  
Mouse wills  
Halloween, th  
Halloween is p  
Organization  
really were Ze  
identified Mick  
ciary would be  
eficiary.) The  
good of an org  
and between th  
tual beneficiar  
when morally  
organization c  
beneficiary, eve  
(corresponds to  
Finally, an c  
relationship th  
vidual relations  
Joe Smith's sig  
Association of  
APO) is differe  
sonal contract.

<sup>5</sup>The organization  
fictitious. If some  
exists, nothing is  
that organization.

SPR).<sup>5</sup> The perceived good the SPR is devoted to serving, racism, is, in fact, not good at all. The SPR is simply mistaken. Similarly, suppose Organization X, which believes that Mickey Mouse is the modern incarnation of Zeus, exists to serve the will of Zeus. In the case of Organization X, we must distinguish between the objective beneficiary, the intended beneficiary and the conceptual beneficiary. The intended beneficiary of Organization X is what some philosophers call an "intentional object." Roughly speaking, it is the following *idea*: whatever fits the description "the actual will of the actual Zeus." The objective beneficiary is the set of real things that actually do fit that description. Since Zeus does not, in fact, exist, the objective beneficiary is the empty set. (In reality, Zeus' will does not exist.) So the intended beneficiary is an idea while the objective beneficiary is a thing. The conceptual beneficiary is the set of things the organization takes, as an organization, to fit that description, namely, what the organization believes to be Mickey Mouse's commands. If Organization X believes that Mickey Mouse wills that people wear costumes on Halloween, then people's wearing costumes on Halloween is part of the conceptual beneficiary of Organization X. (Of course, if Mickey Mouse really were Zeus and Organization X correctly identified Mickey's will, then the objective beneficiary would be identical with the conceptual beneficiary.) The differences between the perceived good of an organization and what is really good, and between the intended, objective, and conceptual beneficiaries of an organization, are important when morally evaluating an organization. An organization can faithfully serve its conceptual beneficiary, even when that beneficiary isn't real (corresponds to the empty set).

Finally, an organization has at least one social relationship that is different from that of the individual relationships of its members. For example, Joe Smith's signing a contract as president of the Association of Professional Orthopedists (the APO) is different from Joe Smith's signing a personal contract. It is different from each of the

<sup>5</sup>The organizations given acronyms in this paper are purely fictitious. If some actual organization with the same name exists, nothing is implied about the actual functioning of that organization.

members of the APO signing the same contract as individuals. Organizations have relationships as structured ventures. The contractual duties of the APO do set limits on the permissible behavior of each member, but these limits apply to the members' behavior as members of the APO, not as individuals. If the APO contracts with General Mills not to sell chocolate as a form of fundraising, in exchange for a donation, Joe Smith is obligated not to sell chocolate for the APO. He is still free to sell chocolate for himself as an individual. The APO's contract does not obligate Joe Smith to give up his family candy store.<sup>6</sup> This is the second way in which the various people who voted for Al Gore in New Hampshire do not count as an organization—they do not, as a group, have social relationships different from those each has as an individual.

If these remarks about the nature of organizations are correct, organizations have moral duties. Dual-Investor Theory suggests that all organizations have a duty to be "good citizens," to try to ensure that, in pursuing their goals, they do not harm society. But I will make a stronger claim as well. All organizations and institutions have a dual purpose: they serve the specific purpose for which they were founded or currently maintained and they serve the general purpose of contributing in some way, directly or indirectly, to the good-in-general.

## *II. Dual-Investor Theory and the Duty of Minimal Social Responsibility*

Dual-Investor Theory is a theory about businesses, but it can be expanded to show that all

<sup>6</sup>The claim made here is neutral about whether, ontologically, the relationships of organizations reduce to relationships of members. Perhaps the obligations of the Sierra Club to the environment may be parsed as obligations of individual members to participate in the Sierra Club in a way that serves, rather than harms, the environment. The point is rather that by being a member of an organization, one enters into relationships that are distinctly different from any of one's personal relationships. The obligations people acquire by joining the Sierra Club center on their participation, in the broadest sense, in the organization's activities—on striving to ensure that the activities of the Club faithfully execute its charge, adhere to its contracts, etc.

organizations have a duty of minimal social responsibility.

Dual-Investor Theory begins by recognizing that businesses are organizations formed for the purpose of providing a good return for their investors—the good a business serves is return on investment and the beneficiaries of a business are its investors. What Dual-Investor Theory points out is that there are two types of investors. No business can function without the specific capital provided by the stockholders, proprietors, or partners. Just as essential to a business, however, are the assets provided by society. Businesses depend upon roads, currency systems, police protection, and other social services. In addition, businesses make essential use of the knowledge base provided by the hard work of generation after generation of people across the globe. Henry Ford did not begin constructing the Model T by re-inventing the wheel. Businesses also depend upon an educated work force and customer base, and education in the United States is widely subsidized by public funds, private donors, or both. This knowledge base, currency system, and so forth may be called a business's "opportunity capital." The valuable opportunity capital society invests in a business is at least as essential to the business as is the specific capital invested by stockholders or proprietors. Thus, there are two categories of investors in any business venture, the "owners," who provide the specific capital, and society, which provides the opportunity capital. Businesses have a fiduciary duty to give each a good return on its investment. Thus the purpose of business is to make a profit (or, more precisely, to increase shareholder value) by serving society.

Dual-Investor Theory combines some of the insights of the two most prevalent approaches to business ethics, shareholder and stakeholder theories. Shareholder theories suggest that the sole or primary purpose of a business is to increase shareholder value, or, more loosely, make a profit for the owners. Stakeholder theories suggest that a business exists to serve all of those who have a stake in, are significantly affected by, the business's operations (for example, customers, suppliers, employees, and members of the larger community). Some stakeholder theorists seem not to recognize that businesses have special obligations to those who own them. Some shareholder theorists

seem not to recognize that businesses have important responsibilities toward the society in which they flourish. Dual-Investor Theory agrees with the shareholder theory that businesses exist to serve the investors, but, because society is an investor in every business venture, Dual-Investor Theory captures the stakeholder view's insight that businesses have major social responsibilities.

Dual-Investor Theory applies to all organizations, whether they are businesses or not, when one other principle is considered. Duties of gratitude and reciprocity seem to justify what one might call the limited "don't bite the hand that feeds you," or "no bite" principle. If people help you, don't use their assistance against them. More precisely, when one knowingly and deliberately makes use, for a particular purpose, of what another has provided, one has a duty to strive to ensure that one's pursuit of that purpose is not inconsistent with one's benefactor's needs, welfare, and projects, to an extent commensurate with the magnitude of what one has used. For example, suppose I knowingly and deliberately use a gift of money from you to start a business. It is a large sum and represents 2/3 of my capital. I should go to some length to avoid my business's putting yours out of business, because it is wrong to turn your generosity toward me around to your peril. Next, as Dual-Investor Theory points out, society is an essential benefactor of every organization—every organization makes extensive use of the "opportunity capital" society provides. Hence, by the no-bite principle, every organization has a duty to go out of its way to ensure that in pursuing its purpose it does not undermine the good of society.

The argument may be summarized as follows:

- 1) Society provides every organization with extensive help without which it cannot function.
- 2) Every organization knowingly and deliberately employs that help in pursuing its purpose.
- 3) Therefore every organization knowingly and deliberately makes use of, for its purpose, benefits of great magnitude provided by society.
- 4) When one knowingly and deliberately makes use, for a particular purpose, of what another has provided, one has a duty to strive to ensure that one's pursuit of that purpose is

not inconsistent with welfare, and projects rate with the magnitude (the no-bite principle) 5) Therefore, every duty to strive to ensure purpose is not inconsistent with welfare, and projects minimal social respon

*Illustrating Case* The Public Accountants (ACPA) organization that provides a view for its members, must in its code of ethics that or reduced rate activities member accountants with any form of unpaid accounting assistance (at standard rates) to nonpublic as battered women's Synagogues, or to local

*Discussion* The ACPA's opportunity capitalization could not exist if society did not maintain professional skills of its the organization could through an educational society and employ accountants developed through concepts developed through individuals. The organization's expensive bulk rate mailings subsidized by taxes and fees the ACPA passes a measure struggling organization needed accounting services members currently provide choose to remain members out the professional services example, a battered woman assisted at no charge by have to close because accounting services require federal laws, regulations, unable to find a qualified an ACPA member, willing time. Thus passing the measure no-bite principle: the ACPA currency system, education

not inconsistent with one's benefactor's needs, welfare, and projects, to an extent commensurate with the magnitude of what one has used (the no-bite principle).

5) Therefore, every organization has a strong duty to strive to ensure that its pursuit of its purpose is not inconsistent with the needs, welfare, and projects of society (the duty of minimal social responsibility).

*Illustrating Case* The Association of Certified Public Accountants (ACPA), a tax-exempt organization that provides a variety of important services for its members, must vote on a proposed change in its code of ethics that would prohibit *pro bono* or reduced rate activities. If the measure passes, member accountants will be expelled if they offer any form of unpaid accounting assistance (or accounting assistance at rates lower than their standard rates) to nonprofit social agencies, such as battered women shelters, to Churches or Synagogues, or to local Boy Scout troops.

*Discussion* The ACPA makes heavy use of society's opportunity capital. For example, the organization could not exist in its present form if society did not maintain a currency system. The professional skills of its members, without which the organization could not exist, were obtained through an educational system subsidized by society and employ accounting techniques and concepts developed through the years by numerous individuals. The organization employs inexpensive bulk rate mailings, which are partially subsidized by taxes and first-class postage rates. If the ACPA passes a measure, a number of worthy, struggling organizations will be deprived of needed accounting services, since at least some members currently providing such services will choose to remain members rather than do without the professional services the ACPA offers. For example, a battered woman's shelter, currently assisted at no charge by an ACPA member, may have to close because it cannot afford the accounting services required by local, state, and federal laws, regulations, and agencies and is unable to find a qualified accountant, who is not an ACPA member, willing to donate his or her time. Thus passing the measure would violate the no-bite principle: the ACPA would be using the currency system, educational system, etc. pro-

vided by society to the detriment of the society providing those benefits.

### *III. The Good-in-General as a Goal of All Organizations*

It follows from the nature of organizations that serving the good-in-general is an implicit goal of all organizations. Organizations need not serve the good-in-general directly: they may devote themselves to playing a role within a practice or institution that, as a general practice or institution, serves the good-in-general. But having some form of commitment to the good-in-general is an essential part of what it means to function as an organization.

#### SERVING THE GOOD-IN-GENERAL IS AN IMPLICIT GOAL OF ALL ORGANIZATIONS

Organizations exist solely for the purpose of serving some or other good and have a fiduciary duty to serving that good. The idea of a good presupposes the idea of a general framework of standards that makes good things good. (Without a framework of values, nothing is good or bad.) The idea of a fiduciary obligation presupposes a general moral framework that generates such values as loyalty, trust, and good faith. Hence organizations are committed to the existence of a general moral framework that defines their purpose and *raison d'être*. To work against that framework is hence to oppose the very thing that gives point to the organization's existence. Put another way, the organization's goals are only goals at all because of the underlying moral framework. To deny that framework is hence to turn the organization's goal into a non-goal, and hence to dissolve the organization as an organization. Of course, organizations can eliminate their goal by achieving it (for example, an organization might eliminate its goal of eradicating smallpox by wiping out smallpox). In that case, the goal is an accomplished goal. The organization can then end or find a new goal. When an organization ceases to recognize the good-in-general, it cannot have a goal at all, and so it no longer counts as an organization. Thus, in pursuing their fiduciary obligation to serve their specific good, organizations have an implicit obligation to serve

the general moral framework that both makes that specific good into a good and is the ground for the idea of fiduciary obligations generally. Hence all organizations have an implicit fiduciary obligation to the good-in-general, understood loosely here as whatever is affirmed by the general moral framework that makes some things good and others not and that gives rise to fiduciary obligations such as loyalty.

### ROLE SPECIFIC ORGANIZATIONS

Organizations need not serve the good-in-general directly. They can do so by playing a particular role within a practice or institution, where the practice or institution is justified by its contribution to the good-in-general.

Attorneys sometimes argue that their only obligation is to advance the interests of their clients, within the limits of the law. They justify this principle of full advocacy by arguing that the clash of combating attorneys in the courtroom, each dedicated solely to the interests of his or her client, is the best system of justice yet devised. Advocates of this view may be mistaken in their claims (I would argue they are), but the logical structure of the view is important. Attorneys, on this view, serve justice without directly trying to serve justice. Rather, in concentrating on their clients' interests, attorneys serve justice by playing their part in a system of advocacy that, taken as a whole, serves justice. The claim that the system as a whole best serves justice makes sense of the attorney's claim to have a fiduciary obligation to advance her clients' interests: the attorney's fiduciary duty to a client derives, ultimately, from a general (indirect) fiduciary duty to serve justice.

Organizations too can have the same sort of indirect fiduciary duty to the good-in-general, which they serve by fulfilling some specific role within a practice or institution that, taken as a whole, serves the good-in-general. This requirement imposes significant restraints on organizations while giving them certain types of latitude.

The Better Business Bureau of Akron, Ohio (the BBBA), does not have to address the problem of world hunger. It is free to concentrate on business in Akron, so long as the general practice of business associations functioning as the BBBA does serve the good-in-general. Suppose, for example, that the BBBA tries to attract new busi-

nesses to Akron by publishing lies about competing cities, such as Hammond, Indiana. Would a general practice of municipal Better Business Bureaus broadcasting lies about each other's cities best serve the good-in-general? If not, then the Better Business Bureau of Akron betrays its mission by publishing lies about Hammond.

*Illustrating Case* Image, an advertising firm, creates a television ad for Health Powder, a powdered extract of ginger root. The ad states: "a study in the *New England Journal of Medicine* showed that Health Powder is as effective in curing cancer as a drug approved by the FDA." In fact, the FDA-approved drug to which the ad refers is a beta-blocker, included in the study as a control. The study concluded that while neither Health Powder nor the beta-blocker had any significant effect in controlling cancer, several other new drugs did.

*Discussion* This deceptive ad is likely to cause some cancer patients to forego medical treatment that could help them. Image may be serving its perceived good of advancing the public relations interests of its clients. However, by engaging in harmful deception, it is not serving the good-in-general. Since a general practice of advertisers engaging in harmful deception is not likely to serve the good-in-general, Image is not serving the good-in-general by playing its role in a general practice that serves the good-in-general.

### IV. Moral Evaluation of Organizations

Moral evaluation of individual persons is very complex.<sup>7</sup> Moral evaluation of organizations is in some ways simpler. Moral evaluation of a person involves the whole of that person's worldview. Since there are numerous aspects and facets of the life of a person, moral evaluations of persons can be very complicated. An organization, unlike a person, exists to serve a limited purpose (its charge). Hence there is a limited list of questions to ask about an organization when evaluating it morally.

- a) Does the organization make a good faith effort to serve its intended, objective, and conceptual beneficiaries?

<sup>7</sup>See Schlossberger, Eugene, *Moral Responsibility and Persons* (Philadelphia, Temple University Press, 1992).

- b) Is the perception truly a good?
- c) Does the effort that its efforts the good-in-general play a role with good-in-general?
- d) Is the organization good-in-general?
- e) Does the effort?
- f) Do the organization other firm preceptified by the core five questions?

Organizations ca respects. An organi-  
 ciary obligations to  
 it does not act in g  
 ceptual beneficiary  
 objective beneficiary  
 pable because its po  
 good—the Society fo  
 however faithfully it  
 cient because racism  
 organization can be  
 serves faithfully a wo  
 hostile to the good-in  
 ple, that the America  
 calculates that it can e  
 ing rules on physician  
 so high that a third e  
 health care. The ASP,  
 not care—its only co  
 being of its members.  
 ness interests of phys  
 goal for an organizati  
 way that knowingly le  
 essary deaths is not mo  
 ization may be morally  
 an incorrect understa  
 eral. For example, sup  
 example mentioned ab  
 the deaths of many poo  
 the world of "undesir  
 Then the ASP would be  
 standing of the good-i  
 standing is, quite simpl  
 may be morally flawed i

- b) Is the perceived good of the organization truly a good?
- c) Does the organization attempt to ensure that its efforts serve what it understands to be the good-in-general, either directly or by serving a role within a practice that serves the good-in-general?
- d) Is the organization's understanding of the good-in-general correct?
- e) Does the organization succeed in those efforts?
- f) Do the organization's activities violate some other firm precept of morality in a way not justified by the considerations raised in the first five questions?

Organizations can be deficient in each of these respects. An organization can fall short of its fiduciary obligations to its beneficiaries, either because it does not act in good faith or because its conceptual beneficiary does not correspond to its objective beneficiary. An organization can be culpable because its perceived good is not, in fact, good—the Society for the Perpetuation of Racism, however faithfully it serves racism, is morally deficient because racism is an evil, not a good. An organization can be morally faulted, even if it serves faithfully a worthy or legitimate goal, if it is hostile to the good-in-general. Suppose, for example, that the American Society of Physicians (ASP) calculates that it can enrich its members by imposing rules on physicians forcing them to charge fees so high that a third of the society is left without health care. The ASP, let us suppose, simply does not care—its only concern is the financial well-being of its members. While tending to the business interests of physicians may be a legitimate goal for an organization, pursuing that goal in a way that knowingly leads to thousands of unnecessary deaths is not morally permissible. An organization may be morally at fault if it strives to serve an incorrect understanding of the good-in-general. For example, suppose that the ASP, in the example mentioned above, took the position that the deaths of many poor people would, by purging the world of “undesirables,” be a good thing. Then the ASP would be striving to serve its understanding of the good-in-general, but its understanding is, quite simply, wrong. An organization may be morally flawed because, while it acts with

the best of intentions in all these ways, its activities, through some form of culpable negligence, defeat their purpose. Finally, an organization may be at fault by violating some independent moral precept. For example, if the Organization of American Engineers (OAE) excludes African Americans from membership, it is guilty of racism. The OAE's racism is not justifiable in terms of the OAE's perceived good, fiduciary duties, or role in a practice that serves the good-in-general.

*Illustrating Case* The Maryland state legislature is currently considering changing its laws to conform to the Tarasoff ruling in California—all therapists would have a duty to break clients' confidentiality and warn appropriate authorities when a client poses a danger to herself or to others. Committee hearings are now in progress. The Organization of American Therapists (OAT) passed a resolution to present before the Committee arguing that all communications from clients should remain confidential. OAT's position is that, in the long run, keeping communications confidential would result in fewer suicides and violent acts by clients: increasing communication between clients and therapists would give therapists a better chance of working with clients to prevent suicide or violent acts, while imposing a duty to warn would make many clients wary of revealing to a therapist suicidal or violent feelings.

*Discussion* OAT is dedicated to serving the good of benefiting clients who use therapy, with a secondary commitment to the professional interests of members. OAT is concerned about the social harm caused by violent clients, but argues that therapists can best serve the good-in-general (and prevent client acts of violence) by serving a particular role. OAT suggests, in other words, that the good-in-general is served when therapists provide clients with someone to whom anything may be said, under the guarantee of confidentiality. OAT is faithfully serving its perceived good, which is, in fact, good. (Benefiting clients who use therapy is indeed a good thing.) OAT is performing its fiduciary duty to clients of therapy. OAT's relevant conception of the good-in-general (reducing violent acts) is correct, and OAT is striving to serve that good. The remaining question, whether OAT's recommendation would in fact reduce the incidence of violent acts, is controversial. Finally,

OAT does not appear to be violating any other general precept of morality not justified by the considerations already discussed. If OAT is at fault, then, it would be because OAT is incorrect in its judgment that its proposal would actually reduce the number of violent acts.<sup>8</sup>

<sup>8</sup>OAT's recommendation concerns a widespread policy that helps define a role within a practice. It is thus significantly different from the moral problem confronting an individual therapist in the absence of a well-defined policy. For a more detailed treatment of the duty to warn, see Schlossberger, Eugene and Hecker, Lorna, "HIV and Family Therapists' Duty to Warn: A Legal and Ethical Analysis," *Journal of Marital and Family Therapy* 22 (Jan. 1996), pp. 27-40.

### Discussion Questions

1. How is dual-investor theory different from the theory offered by Freeman?
2. Use two moral theories to support the dual-investor theory of business.
3. How does Schlossberger use dual-investor theory to support the "no bite" principle?
4. Does a car salesman who fails to tell a customer about a faulty tailpipe violate the "no bite" principle? Does it make a difference if the customer never asks whether the car has any problems?
5. How would a lawyer who is solely concerned for the good of her client claim that by serving this specific role she is actually serving the good-in-general? Can the car salesman above claim that he is serving the good-in-general by serving a specific role?
6. Use virtue ethics to defend Schlossberger's claim that organizations have a moral obligation to serve the good-in-general.

## Paternalism in the Marketplace: Should a Salesman Be His Buyer's Keeper?

JAMES M. EBEJER AND MICHAEL J. MORDEN

THE MORAL RELATIONSHIP between salespersons and their customers can range from *caveat emptor* exclusively to paternalism. We propose that

between these extremes is a realistic professional ethic for sales that we will refer to as "limited paternalism."

*James M. Ebejer held a Master's of Business Administration and was employed in the marketing division of IBM. Michael J. Morden was Adjunct Professor of Philosophy at Beloit College and at various colleges and universities in the Detroit area.*

"Paternalism in the Marketplace: Should a Salesman Be His Buyer's Keeper?" *Journal of Business Ethics* 7 (1988), pp. 337-39. Reprinted with kind permission of Kluwer Academic Publishers.

### V. Conclusion

The very nature of organizations, of structured ventures on behalf of some perceived good with distinctive relationships, implies that some general moral duties apply to all organizations, whatever their particular function and whatever specific duties are implied by their charter or charge. All organizations must make good faith efforts to serve an objectively good goal, and those efforts must generally serve, directly or indirectly, the broader realm of what is good and right. In this sense, organizations are like persons: they are not simply tools or soulless objects, but members of the moral community.

At one e  
buyer beware  
inherently in  
that it is no  
Games can be  
participants  
horse-traders  
understood  
misrepresent  
buyer was wa  
situation wa  
knew the rule  
tarily, and h  
merchandise.  
sumer frequ  
which he can  
The working  
rious to us as  
her superior  
exploit our i  
to play the g  
were unders  
beware."

At the oth  
ism. A stand  
interference  
fied by reason  
good, happin  
person being  
words, patern  
sumably in  
makes a decis  
other from se  
that the first  
of autonomy  
justified beca  
is "for his  
refused to se  
felt he was  
often enough  
ing on the c  
rior knowled  
good (and p  
merchant wa  
Most of u  
tions. If the s  
dectomy, we  
case the surg  
we need the  
profession to  
tion. The ole

At one extreme is *caveat emptor*—“let the buyer beware.” We do not claim there is anything inherently immoral about such a position, only that it is no longer appropriate in our society. Games can be played by various rules, as long as all participants know those rules. When two old horse-traders tried to strike a bargain, it was understood that the seller could be assumed to misrepresent the condition of the animal and the buyer was warned to be on his guard. Perhaps this situation was not unfair since both participants knew the rules, entered into the agreement voluntarily, and had the opportunity to examine the merchandise. However, the contemporary consumer frequently purchases goods or services which he cannot be expected to judge for himself. The workings of an insurance policy are as mysterious to us as those of a VCR. A salesperson, with her superior understanding, is in such a position to exploit our ignorance, that few of us would want to play the game if the rule of the marketplace were understood to be strictly “let the buyer beware.”

At the other extreme is the practice of paternalism. A standard definition of paternalism is “the interference with a person’s liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests, or values of the person being coerced” (Dworkin, 1971). In other words, paternalism occurs when an individual, presumably in a position of superior knowledge, makes a decision for another person to protect this other from some type of harm. Paternalism implies that the first person deprives the second of liberty of autonomy. This infraction on liberty is thought justified because, in the mind of the first person, it is “for his own good.” Recently, a merchant refused to sell tropical fish to a patron because she felt he was not changing the water in his tank often enough. Although the merchant was infringing on the customer’s liberty based on her superior knowledge, the interference was for his own good (and presumably the good of the fish). The merchant was being paternalistic.

Most of us expect paternalism in certain situations. If the service we are purchasing is an appendectomy, we typically allow the salesman (in this case the surgeon) a major role in deciding whether we need the service. We rely on the ethics of the profession to protect us from the possible exploitation. The old-fashioned physician considered such

paternalism part of his role, but modern medicine emphasizes the patient’s informed consent. The professionals use their superior knowledge to make the medical diagnosis, but they are expected to explain treatment options available to the patient so the latter can make the moral decision. Thus even in the most paternalistic of contexts we find that professionalism justifies only a limited paternalism.

This limited paternalism, which is typically an element in professionalism, applies when an individual in a position of superior knowledge has an active duty to explain the consequences of a decision. Here, the “father-like” individual does not make the decision for the other. The only liberty that is violated is the freedom to be ignorant: the consumer is protected from an uninformed decision that could be detrimental to him.

To claim that a salesperson is professionally required to inform customers fully about a product or service, to disclose fully all relevant information without hiding crucial stipulations in small print, to ascertain that they are aware of their needs and the degree to which the product or service will satisfy them, is to impose upon the salesperson the positive duty of limited paternalism. According to this standard a salesperson is, to a limited degree, “his buyer’s keeper.”

Consider the following example: A woman takes her car to an auto repair shop and tells the mechanic she needs a new muffler and exhaust pipes because her car makes too much noise. While examining the car, the mechanic concludes that the excessive noise occurs because there is a hole in the tail pipe. The mechanic was told to replace the exhaust pipes and the muffler. He has three options: (1) replace the exhaust pipes and the muffler as requested by the car’s owner and collect (say) \$90.00; (2) talk to the owner, refuse to do as requested since all that is needed is a \$20.00 tail pipe; (3) talk to the owner, explain the situation, and let her decide for herself if she really wants to spend \$70.00 more than is necessary to fix the car.

When confronted with this situation, many repairmen or auto parts salespersons would choose the first option: collect as much money as possible. This is perfectly legal since the car’s owner did authorize complete replacement. Some perhaps would act paternalistically by following the second option: replace the tail pipe for \$20.00, but refuse

to replace the longer exhaust pipe and the muffler because it is not necessary. But now he has infringed on the owner's right to decide for herself. Perhaps the owner wanted to be absolutely certain that her exhaust system was perfect and would not need work again soon. Maybe she is rich and does not mind spending the extra money. In any case, it is her car, her money, and her decision. Option number three is the best ethical choice and the standard required for professional responsibility: the mechanic has a duty to inform the owner of facts of which she might not be aware since she is not the expert. The choice should be left to the owner.

But consider a different situation: a customer in a store that specializes in stereo equipment is consulting a salesperson about the specifications, quality and prices of various amplifiers. The salesperson is considered an expert on all equipment available for sale in the show room. After some deliberation, the customer tentatively decides he would like to own a Super Max amplifier. But before making the purchase, he asks the salesperson one more question: "Is there anything else I should know about this particular model before giving you the cash?" Now, to the best of her knowledge, the salesperson has accurately communicated the advantages of the amplifier, told him the price—\$400, and that this particular unit does meet his needs. However, she also knows that the same model is being sold at an appliance store across the street for only \$350! Does our standard require that she tell the buyer about this possible savings? Clearly not. Although the person was aware of the competitor's price, she did not withhold information that only an expert would know. Anyone could easily find out how much the amplifier sold for at the other stores. The knowledge was not part of

the technical expertise that marks her as a professional and which the buyer was presumably relying upon. However, if she held back information, relevant to the decision, which a non-expert could not be expected to know, then her behavior would be unethical by our standard.

Nearly all "hard sell" techniques are unethical according to this standard. Many salespersons intentionally keep information from potential buyers. They try to sell the most expensive product a customer will buy without regard to the needs of that person. Granted, some revenue may be lost in the short term from telling customers the bad as well as the good about a product or service, but profits will increase in the long run. Once a salesperson earns a reputation for being "honest"—i.e., ethical, interested in mutual exchange to mutual advantage rather than exploitation—he will have more satisfied customers, more referrals, and, eventually, greater income from an overall increase in sales. Even where the policy might not profit the salesperson in a specific case, it is a rule which if generally followed would produce the greatest good for the greatest number. Furthermore, it treats the customer the way we ourselves would want to be treated; it is a rule we would agree to even if we didn't know whether we were going to be the salesperson or the customer; finally, it bases sales ethics on widely accepted standards of professionalism. Clearly it is consistent with our ordinary ethical assumptions.

### Reference

Gerald Dworkin: 1971, "Paternalism," in *Morality and Law*, ed. Richard Wasserstrom (Belmont, CA: Wadsworth), p. 108.

### Discussion Questions

1. Describe the three main approaches to sales discussed by the authors.
2. How, exactly, does limited paternalism represent a middle ground between the extremes of "buyer beware" and paternalism?
3. The authors implicitly suggest that limited paternalism would be supported by deontology (since it "treats the customer the way we ourselves would want to be treated") and by contractarianism (since "it is a rule we would agree to even if we didn't know whether we were going to be the salesperson or the customer"). Choose one of these theories and go into more detail about how it could justify limited paternalism.

4. F  
b  
t  
t

Et

RO

Int

Ther  
tions  
segr  
lowe  
agen  
does  
but  
sion.  
recei  
ers b  
that  
petit  
beca  
the t  
turec  
qual  
Emp  
prov  
petit  
E  
caus  
threa  
beco  
ch  
ti  
or

1 Diet  
and J

Robe  
"Ethi  
(199

4. How would the authors reply to the claim that some deception, along the lines of buyer beware, is expected in business and is thus morally permissible? How would they respond to business leaders who claim that some deception must take place if their companies are to make any profit and stay in business?

## Ethical Issues in Acquisitions and Mergers

ROBERT W. MCGEE

### Introduction

There is ample evidence to suggest that acquisitions and mergers are generally beneficial to a wide segment of society because they shift assets from lower uses to higher uses, from less efficient managements to more efficient managements. Space does not permit a detailed analysis of this point, but many studies have already drawn this conclusion. The old shareholders benefit because they receive a premium for their stock. New shareholders benefit because they are buying into a company that is about to become more efficient and competitive. Nontendering shareholders benefit because their stock increases in value as a result of the tender offer. Society benefits because a restructured, lean and efficient company provides higher quality goods and services at lower prices. Employees benefit because a healthy company provides more job security than a weak, noncompetitive, inefficient company.

Even an unsuccessful takeover attempt can cause these groups to benefit because the mere threat of a takeover often causes management to become better managers. A takeover is a

change in the controlling interest of a corporation. A takeover may be a friendly acquisition or an unfriendly bid that the target company

may fight with "shark repellent techniques." A hostile takeover (aiming to replace existing management) is usually attempted through a public tender offer. Other approaches might be unsolicited merger proposals to directors, accumulations of shares in the open market, or proxy fights that seek to install new directors.<sup>1</sup>

The only group that stands to lose as a result of an acquisition or merger is top management, which stands to be replaced if the takeover is successful. Thus, it follows that attempts to prevent takeovers reduce the welfare of all these groups, with the exception of management, which stands to gain by thwarting a takeover attempt.

Many of the ethical problems connected with takeovers relate to top management's attempt to prevent their company from being taken over. Management has a fiduciary duty to act in the best interest of shareholders, yet a successful takeover will often result in some members of top management losing their jobs and perhaps forcing them into early retirement. Given this scenario, there is tremendous pressure on top management to breach their fiduciary duty and pull out all stops to either prevent a takeover attempt from being successful or make plans to cushion their fall in the event the takeover attempt is successful.

### Poison Pills

Poison pills are financial schemes made by management to make the company a less attractive

<sup>1</sup> *Dictionary of Finance and Investment Terms* (John Downes and Jordan Elliot Goodman, eds., 5th ed. 1998), at 618.

Robert W. McGee is Professor of Accounting, Seton Hall University. "Ethical Issues in Acquisitions and Mergers," *Commentaries on the Law of Accounting & Finance* 2 (1998), pp. 197-223. Reprinted with kind permission of the author and the Dumont Institute.

takeover target. A more complete definition of a poison pill is a

strategic move by a takeover-target company to make its stock less attractive to an acquirer. For instance, a firm may issue a new series of preferred stock that gives shareholders the right to redeem it at a premium price after a takeover.<sup>2</sup>

Poison pills may take several forms, including

a *poison put provision*: an indenture giving bondholders the privilege of redemption . . . if certain designated events occur, such as a hostile takeover, the purchase of a big block of shares, or an excessively large dividend payout. Poison puts, or superpoison puts as the more stringent variations are called, are popular antitakeover devices because they create an onerous cash obligation for the acquirer. They also protect the bondholder from the deterioration of credit quality and rating that might result from a leveraged buyout that added to the issuer's debt.<sup>3</sup>

a *poison pill rights plan*: allows a shareholder of a potential takeover target to acquire its stock at a discount upon certain designated trigger events.<sup>4</sup>

a *people pill*: [a] defensive tactic to ward off a hostile takeover. Management threatens that, in the event of a successful takeover, the entire management team will resign at once, leaving the company without experienced leadership.<sup>5</sup>

a *suicide pill*: poison pill with potentially catastrophic implications for the company it is designed to protect. An example might be a poison pill providing for an exchange of stock for debt in the event of a hostile takeover: that would discourage an acquirer by making the takeover prohibitively expensive, but its implementation could put the target company in danger of bankruptcy.<sup>6</sup>

a *pension parachute*: pension agreement that specifies that in the event of a hostile takeover attempt, any excess assets in a company pension plan can be used for the benefit of pension plan participants, such as increasing pension payments.

This prevents the raiding firm or individual from using the pension assets to finance the takeover, and therefore acts as an additional deterrent to help the firm ward off the acquisition.<sup>7</sup>

An important question to ask is who benefits and who loses by the introduction of a poison pill?

The obvious losers are the potential raiders. A raider may decide not to attempt a takeover because of the poison pill. If an attempt is made, it may be unsuccessful and costly. Even if it is successful, the cost of success is higher where there is a poison pill.

The less obvious losers are the target company shareholders. Since the evidence suggests that target company shareholders tend to benefit by a takeover, thwarting a takeover by use of a poison pill (or by any other means) prevents shareholders from earning a premium on their stock. A Securities and Exchange Commission study found that the announcement of a poison pill plan by a takeover target causes the stock price to drop by an average of 2.4%, whereas announcement of such a plan by a company that is not a target has no effect on stock price.<sup>8</sup> Ironically, it is management, which is supposed to protect shareholder interests, that makes the poison pill.

Another group that stands to lose by poison pills is consumers. Since the raider is prevented from making more efficient use of the assets than present management, the company is unable to upgrade quality and reduce cost, with the result that consumers will have to pay higher prices to purchase goods or services that are of lower quality.

An even less obvious class of losers consists of the thousands of other industries that would get extra business if the target company was taken over and made to run more efficiently. If the target company's sales were \$10 billion before the acquisition and the raider was able to cut costs to the point where the company could reduce prices by 10 percent, an extra \$1 billion of customer funds would become available to purchase other goods and services even if the number of units sold did not increase. However, if prices were reduced by

10 percent, it is likely that sales would increase, so sales would be more than \$900 million. Customers would decide to use the \$10,000 savings to purchase a new machine for its factory. Customers would use its \$15,000 savings to purchase a new corporate fleet. Customers would use its \$100,000 savings to invest in education or training.

Customers A, B and C are able to buy something that was not afforded in the absence of the takeover. Companies that sold the machine to Customer B and the machine to Customer C also benefit from the takeover, as do the Customers who receive the education and training.

There is no way to prevent a company's customers from receiving their savings, but the fact that they cannot be denied. Even if the savings sit in their bank accounts, the money is there (perhaps not available for the business) but it is available for the business. It is available for the business to use for money available for loan. The downward pressure on interest rates fits anyone who might be affected by economic law that "as the price decreases" applies to the market as to the supply of any commodity.

If all these groups stand to lose by the introduction of a poison pill, who stands to be benefited? Someone must gain. Otherwise, the poison pill would be reduced. An easy way to look at who introduces the pill is since it is usually the acquirer who introduces the pill. Management is clear about the introduction of poison pills. It does not stand to management stands to the introduction of a poison pill. The chances of a successful takeover are reduced, a high percentage of shareholders stand to lose their jobs.<sup>9</sup> The

<sup>9</sup>Up to 50 percent of top management stand to lose three years of a takeover, Michael C. Jensen, *The Consequences*, 2 J. ECON. P.

<sup>2</sup>Ibid., 452-53.

<sup>3</sup>Ibid., 453.

<sup>4</sup>Ibid., 458.

<sup>5</sup>Ibid., 442.

<sup>6</sup>Ibid., 607.

<sup>7</sup>Ibid., 441.

<sup>8</sup>Office of the Chief Economist, *The Economics of Poison Pills*, Securities and Exchange Commission, March 5, 1986.

10 percent, it is likely that the number of units sold would increase, so sales would be something more than \$900 million. Customer A might decide to use the \$10,000 it saves to buy an additional machine for its factory. Customer B might use its \$15,000 savings to buy another car for the corporate fleet. Customer C might use its \$100,000 savings to invest in employee education or training.

Customers A, B and C all benefit because they are able to buy something they could not have afforded in the absence of the takeover. The companies that sold the machine to Customer A, the car to Customer B and the education and training to Customer C also benefit because of the takeover, as do the Customer C employees who receive the education and training.

There is no way to predict what the target company's customers would do with their cost savings, but the fact that they would do something cannot be denied. Even if all they do is let the savings sit in their bank accounts, the fact that the money is there (perhaps earning interest) means that it is available for the bank to use to make loans to businesses or individuals. Since the quantity of money available for loans has increased, there is downward pressure on interest rates, which benefits anyone who might borrow money. The general economic law that "as supply increases, price decreases" applies to the supply of money as well as to the supply of any other commodity.

If all these groups stand to lose by the introduction of a poison pill, why are such pills introduced? Someone must gain by their introduction. Otherwise, the poison pills would never be introduced. An easy way to find who benefits is to look at who introduces them in the first place, since it is usually the advocate that tends to benefit. Management is clearly the foremost advocate of poison pills. It does not take long to see how management stands to benefit by the introduction of a poison pill. Poison pills decrease the chances of a successful takeover. If a takeover is successful, a high percentage of managers stand to lose their jobs.<sup>9</sup> Therefore, management takes

action to prevent job losses by introducing a poison pill.

Thus, it appears that management is working against the interest of its shareholders by introducing a poison pill. Yet some courts have upheld the right of management to introduce poison pills. In one case, the Delaware Supreme Court upheld the right of management to restrict the right of its shareholders to sell their stock,<sup>10</sup> an interesting result in light of the fact that management is supposed to be the agent of the stockholders.

### Greenmail

Greenmail is seen in the popular press as something that is evil, a bribe that is paid to a raider to prevent a takeover attempt from proceeding. It is defined as

payment of a premium to a raider trying to take over a company through a proxy contest or other means. Also known as bon voyage bonus, it is designed to thwart the takeover. By accepting the payment, the raider agrees not to buy any more shares or pursue the takeover any further for a specified number of years.<sup>11</sup>

The raider is seen as being unjustly enriched at the expense of the target company and shareholders. Greenmail is a payment top management decides to make to protect shareholders from a corporate raider. It is seen as an evil, but the lesser of two evils.

Greenmail payments do, indeed, stop takeover attempts dead in their tracks. But an economic analysis of greenmail payments raises questions as to their propriety. Since the evidence suggests that target company shareholders (as well as consumers and the economy in general) tend to benefit by takeovers, should management prevent a takeover by making greenmail payments? Rather than protecting shareholders, it appears that making greenmail payments harms shareholders, since it prevents them from obtaining the benefits that go with a takeover—primarily an increase in the price of their stock. Consumers are also harmed, since blocking a takeover prevents the new owners from

<sup>9</sup>Up to 50 percent of top management lose their jobs within three years of a takeover, according to one report. See Michael C. Jensen, *Takeovers: Their Causes and Consequences*, 2 J. ECON. PERSPECTIVES (Winter, 1988), 39.

<sup>10</sup>*Moran v. Household International, Inc.*, 490 A.2d 1059, *aff'd*, 500 A.2d 1346 (1985).

<sup>11</sup>*Dictionary of Finance and Investment Terms*, 246.

using the acquired assets more efficiently, which would otherwise lead to offering higher quality products or services at lower prices. Preventing takeovers tends to protect management, many of whom would lose their jobs if the takeover attempt were successful. Thus, it appears that management, unwittingly or not, makes greenmail payments to protect themselves against job loss, to the detriment of shareholders and consumers.

Lew Rockwell sums up the economics of greenmail very succinctly:

Say you owned a small apartment building in a distant city, and you hired a professional manager to run it for you. This person likes the job, and when someone—an apartment “raider”—sought to offer you a good price for the building, the manager does everything possible to prevent you from being able to consider the offer. And he calls the local mayor for a city ordinance to keep the apartment “independent.” When all else fails, the manager takes some of your own money and pays the potential buyer greenmail to look elsewhere.

This is exactly what’s going on in the unfriendly takeovers we hear about. A takeover attempt is only unfriendly to present management, who risk losing cushy jobs. No offer can be unfriendly to the owners of the firm, the stockholders, who are free to accept or reject the price offered.<sup>12</sup>

Paying greenmail is actually a form of an anti-takeover action, a targeted repurchase. It could be construed as being unfair to a large group of shareholders, since it involves an offer to repurchase the shares of one or a small group of shareholders at a premium, an offer that is not extended to all shareholders. Ironically, it is the greenmailer who is offering the other shareholders the opportunity to sell their shares at a premium, an offer the company’s management is trying to prevent from being made or accepted.

### Golden Parachutes

The subject of “golden parachutes” has become a controversial one in recent years. A golden parachute is a

<sup>12</sup>Llewellyn H. Rockwell, Jr., *Green Stripes and Greenmail*, THE FREE MARKET 2 (June, 1985).

lucrative contract given to a top executive to provide lavish benefits in case the company is taken over by another firm, resulting in the loss of the job. A golden parachute might include generous severance pay, stock options, or a bonus.<sup>13</sup>

As takeovers become more sophisticated and “junk” bond financing makes it possible to take over even the largest companies, top management is no longer protected by working for a very large firm. That, plus the fact that about half the target company’s top management are no longer with the company three years after the takeover, creates a tremendous amount of anxiety and gives them a strong incentive to seek ways to protect themselves in the event of a takeover.

Briefly, a golden parachute is a severance contract to compensate high-level corporate officials when they lose their jobs if their company is taken over. Most commentators have seen such contracts as shareholder ripoffs because the high-level employee benefits and the shareholders don’t get anything for their money. But this analysis is simplistic. There is really much more involved than initially meets the eye. There are circumstances under which shareholders can benefit by having the corporation enter into golden parachute contracts with top management employees.

One beneficial effect of golden parachute contracts is that they can help reduce the conflict of interest that would otherwise exist between top management and shareholders. Management may resist a takeover attempt that would be in the shareholders’ interest because they stand to lose their jobs if the takeover is successful. Thus, they are working against the shareholders’ interests. Having a properly constructed golden parachute will eliminate or at least reduce this potential conflict of interest because management would be less likely to attempt to thwart a takeover attempt if their incomes were protected by golden parachutes.

The evidence suggests that merely having golden parachute contracts raises the company’s stock price by about 3 percent when the existence of the golden parachute contracts is announced.<sup>14</sup>

<sup>13</sup>*Dictionary of Finance and Investment Terms*, 241.  
<sup>14</sup>R. Lambert and D. Larcker, *Golden Parachutes, Executive Decision-Making, and Shareholder Wealth*, 7 J. ACCT. & ECON. 179–204 (April, 1985).

This price rise might investing public than likely than before, but market sees that the between management been reduced, thus investment. In all likelihood have somewhat of a company’s stock price.

Since the evidence is good for the stockholders as well as for the company, it seems logical that a policy should be to encourage negotiate takeovers in shareholders’ best interests. penalize companies golden parachute contracts. officials are advocating on golden parachute structured golden parachute management’s conflicts restricts or prohibits against the shareholders of the economy tend to be in the logical solution would restrict companies parachute contracts.

However, not a resolve the conflict. Depending on how may serve to make it than before, which shareholders’ interests will reduce this price, whereas a badly designed opposite.

One way to make benefit of the shareholders the members of top negotiating the take later restructuring. parachute contracts would not be invested.

<sup>15</sup>The Internal Revenue amount of golden parachute deducted as salary excise tax on the excess

This price rise might be due to a perception of the investing public that a takeover attempt is more likely than before, but it may also be because the market sees that the potential conflict of interest between management and the corporation has been reduced, thus making the stock a better investment. In all likelihood, both of these factors have somewhat of an effect on the increase in the company's stock price.

Since the evidence suggests that takeovers are good for the stockholders of the target company, as well as for the general consuming public, it seems logical that company and government policy should be to encourage top management to negotiate takeovers that seem to be in the shareholders' best interests. Yet some present policies penalize companies and managers who enter into golden parachute contracts and state and federal officials are advocating placing further restrictions on golden parachute contracts.<sup>15</sup> Since a properly structured golden parachute contract reduces top management's conflict of interest, legislation that restricts or prohibits such contracts actually works against the shareholders' interests, and the interests of the economy in general, since takeovers tend to be in the consumers' interest, too. The logical solution would be to repeal legislation that restricts companies from entering into golden parachute contracts with their top management.

However, not all golden parachute contracts resolve the conflict of interest problem. Depending on how the contract is structured, it may serve to make management more entrenched than before, which tends to work against the shareholders' interest. A well-designed contract will reduce this potential conflict of interest whereas a badly designed contract will do just the opposite.

One way to make such contracts work for the benefit of the shareholders is to extend them to the members of top management who would be negotiating the takeover and implementing the later restructuring. However, extending golden parachute contracts to lower level managers who would not be involved in takeover negotiations

would be more difficult to justify on shareholder interest grounds. Extending too many golden parachutes raises the cost of the acquisition, thus making it less attractive to potential raiders, while not gaining any corresponding benefits for the corporation. Beneficial Corp., for example, awarded golden parachute contracts to more than 200 of its executives, which had to make Beneficial stock less attractive to raiders.<sup>16</sup> It is difficult to justify such actions on ethical grounds if the premise is that top management should be looking out for the interests of shareholders.

Another beneficial effect of golden parachute contracts is that they make it easier to attract top management. Golden parachute contracts are a form of compensation, a salary substitute, an insurance policy against job loss, and potentially a supplemental retirement plan. Absence of a golden parachute provision makes a job offer less attractive to a potential top-level manager, and since golden parachutes are a form of compensation, companies that do not have them would probably have to offer higher salaries to entice potential top managers to join the company.

But not all golden parachute contracts are in the best interests of shareholders. While a properly constructed contract reduces the manager's conflict of interest, an improperly structured contract will do just the opposite. If the golden parachute is too "golden," top management might be too willing to sell the company, so they may tend to take the first offer that comes along rather than negotiate a higher price for their shareholders. Managers and board members who hold a great deal of stock in the company will have less incentive to take the first offer than those who own little or no stock, so the company might provide incentives that encourage top management and board members to own stock in the company. Yet present insider trading laws provide a disincentive, and some top managers and board members are selling their stock so that they will not be accused of insider trading. Offering stock options and restricted stock appreciation rights that are exercisable only if control changes is one possible solution.

<sup>15</sup>The Internal Revenue Code (Title 26 USC) limits the amount of golden parachute compensation that may be deducted as salary expense and places a nondeductible excise tax on the excess. See IRC Sections 280G and 4999.

<sup>16</sup>Ann Morrison, *Those Executive Bailout Deals*, FORTUNE 82-87 (December 13, 1982).

### Concluding Comments

The evidence that acquisitions and mergers are good for shareholders, the economy, society, business and consumers is overwhelming. The only group that stands to lose from a successful takeover attempt is top management, which stands a very good chance of becoming unemployed. A number of ethical issues arise because of the inherent conflict of interest that exists with top management in the event of a takeover attempt. On the one hand, management is hired to act in the best interest of shareholders. But if management *does* act in the shareholder interest, it stands to become unemployed.

Because of this built-in conflict of interest, a number of ploys have been used by management to protect itself at the expense of the shareholders, whose interests they are hired to protect. One such ploy is the poison pill, which can take many forms, but which is always used to thwart a takeover attempt—often in the guise of protecting the shareholders. Greenmail, a form of bribery using shareholder money, is sometimes used as

well. Top management often uses the force of government to protect itself at the expense of shareholders by hiding behind laws that actually harm shareholder interests. Golden parachutes can reduce this conflict of interest if used judiciously but may exacerbate the problem if too many managers have them.

Several other, infrequently addressed issues also need to be considered. Aside from the question of who wins and who loses—the economic issues—some philosophical issues need to be considered. Is it ever ethically justified to interfere with an individual's right to buy or sell property, such as shares of stock, especially if no one is aggressed against? If consenting adults want to enter into a contract to exchange shares of stock, is it anyone else's business? America was founded on the principle that individuals should be able to do what they want with their property and their lives without interference from any individual or institution. Government, rather than being the institution that interferes, should be the institution that protects these basic rights.

### Discussion Questions

1. According to McGee, management will be motivated to thwart takeover attempts. Why is this so? What are a couple of ways they may go about doing this?
2. McGee at times seems to think that managers are primarily obligated to enhance the welfare of stockholders (through maximizing their returns), but at times he seems to think the positive impact on other stakeholder groups (such as customers and employees) is also important. How committed do you think he is to Freeman's stakeholder theory of the corporation? Is his view consistent with Schlossberger's account of the moral duties of organizations?
3. What ethical room, if any, does McGee allow managers to account for their own interests in the context of mergers and acquisitions? Do you agree with his view?
4. To what extent do you agree with the comparison (in the citation to Rockwell) between greenmail and the hiring of a manager to run the apartment building?

## Environmental Responsibility

PHILIP CAFARO

### I. Introduction Issues

Environmental issues, at all levels of life, at all levels of development, affect everything from where to live and work to the way we live. Environmental issues are central to our deliberations about how to live and work, or designate a park; environmental laws, and Endangered Species Act; and treaties to enhance environmental protection, such as the Montreal Protocol to reduce the production of ozone-depleting substances; business decisions, such as pollution control technologies; trees, also have important implications. Key environmental issues include water pollution; pesticides; air pollution; land use; population growth; and transportation systems; and more.

Our environmental success, a function of economic expansion, has led to a nearly 4-fold increase in total world population from 1.6 billion to 6.0 billion. A 4-fold increase in total world population has led to a 10-fold increase in total world production of autos, the number of autos produced increased from 0 to 1.7 trillion. Fertilizer use jumped from 140 million tons per year to 140 million tons per year. Wealth and production increased in energy use. Fossil fuel use jumped from 1 billion tons of oil (equivalent

Philip Cafaro is Assistant Professor of Environmental Studies at the University of California, Santa Barbara. Printed with kind permission of the publisher.

## Environmental Ethics and the Business Professional: Responsibilities and Opportunities

PHILIP CAFARO

### *I. Introduction: Environmental Issues*

Environmental issues loom large in contemporary life, at all levels of decision-making. They encompass everything from personal decisions about where to live and what car to buy; to a city council's deliberations about whether to widen a road or designate a park; to enactment of key national environmental laws, such as the U.S. Clean Air and Endangered Species Acts; to international treaties to enhance environmental protection, such as the Montreal Protocol to phase out production of ozone-depleting chemicals. Many business decisions, such as whether to install new pollution control technology or how to harvest trees, also have important environmental ramifications. Key environmental issues include air and water pollution; preservation of wildlife and wild lands; population increase (locally, nationally, internationally); global climate change; transportation systems; agricultural practices; and more.

Our environmental problems are the fruits of success, a function of a century of tremendous economic expansion. The twentieth century saw a nearly 4-fold increase in world population, from 1.6 billion to 6.0 billion, and an astonishing 35-fold increase in total industrial output and 25-fold increase in world GDP. The world auto fleet increased from a few thousand to 650 million autos, the number of personal air miles flown grew from 0 to 1.7 trillion miles per year, and world fertilizer use jumped from one or two million tons to 140 million tons per year. Along with increased wealth and productivity came a tremendous increase in energy use. In just the past 50 years, fossil fuel use jumped from 1600 to 8500 million tons of oil (equivalent).

Increased economic activity and energy use, in turn, has led to greatly increased discharges of pollutants into the air and water. From 1950 to 2000, airborne carbon emissions jumped from 1800 to 7000 million tons annually, sulfur emissions climbed from 30 to 70 million tons, and nitrogen emissions jumped from 7 to 30 million tons. These emissions have been conclusively linked to a variety of human health problems (one study suggests that sulfur and particulate pollution causes 4 to 5 million new cases of bronchitis and half a million premature deaths each year). Over the same period, atmospheric CO<sub>2</sub> concentrations increased from 315 to 370 parts per billion and the average temperature at the earth's surface increased one degree centigrade, from 13.8 degrees in 1950 to 14.6 degrees in 2000.

The twentieth century also saw the birth of many new substances for industry and war. In the late 1890s, Henri Becquerel and the Curies discovered radioactivity; mid-century witnessed the dropping of two atomic bombs on Japan, and the first civilian nuclear power plants in the U.S. and Soviet Union; the century ended with world governments struggling to decide how to safeguard thousands of tons of highly radioactive waste, some of which will remain dangerous for millions of years. While nineteenth-century chemistry largely worked with naturally occurring substances, tens of thousand of new chemicals were synthesized and brought into commercial production in the twentieth century, many of them highly toxic. 350 million tons of hazardous industrial waste is generated annually, much of it released directly into the environment. Agricultural pesticide use has increased 10 to 15 times over the past 50 years, making agricultural lands killing fields for birds or mammals unlucky enough to live on or near them, and poisoning groundwater supplies throughout the world.

While it has been a great century for novelty, many old favorites have disappeared. The twentieth century saw the extinction of numerous biological species, with estimates ranging from hundreds of thousands into the millions. According to one estimate, tropical forests alone could account for 27,000 extinctions per year, given current rates of forest loss due to logging, mining and conversion to agriculture. Worldwide, forests once covered 40% of the earth's land surface. That has declined by 1/3 in recent centuries, with most of the loss occurring in the past 50 years. Only 1/5 of the world's forests remain in large, relatively natural ecosystems. Conservation biologists expect these trends to accelerate as expanding human populations appropriate ever more land for human uses. At current rates, 1/4 to 1/3 of all species could go extinct in the next 50 years.<sup>1</sup>

On the one hand, then, expanding human populations and industries have greatly stressed the environmental support systems that are needed by human and non-human life in order to survive and thrive. On the other hand, large sectors of these expanding populations have the wealth and leisure to look beyond their immediate needs, and see a clean environment, uncrowded cities and towns, and accessible parks and wild lands as important to their health and happiness. This article explores the question: How should business professionals respond to environmental issues and decisions? To do so, we must put business life in its proper context.

## II. Professional Goals

Most readers of this essay have entered a profession or a particular business career, or are consid-

<sup>1</sup>The preceding three paragraphs rely on the following sources: Lester Brown, et al., *Vital Signs: The Environmental Trends That Are Shaping Our Future* (New York: W.W. Norton, 1992–2000). The World Bank, *Entering the 21st Century: World Development Report 1999/2000* (Washington, D.C.: World Bank, 2000). The World Bank, *World Bank Development Indicators* (Washington, D.C.: World Bank, 1999). Center for Biodiversity and Conservation at the American Museum of Natural History, "Humans and Other Catastrophes: Perspectives on Extinctions" (<http://research.amnh.org/biodiversity/acrobat/extpubl.pdf>, September 2000). Joni Seager, *The New State of the Earth Atlas* (New York: Simon and Schuster, 1994). The Economist, *Pocket World in Figures* (London: Penguin, 2000).

ering doing so. Why? What do you hope to accomplish?

Perhaps you are excited about getting involved in the business world or a particular profession. Perhaps you hope to earn a decent living, or more (maybe much more!). Perhaps you believe a certain career or profession will help you develop your particular talents. Perhaps you see this as one way to contribute to society. Maybe several aspects, or all of these, have played some role in your decision.

No matter how you answer these questions, going through the process of answering them helps you think about your long-term goals and put your career goals within the proper, larger contexts. Those larger contexts are living a good life—however you define it—and contributing to the communities to which you belong—again, however you define those contributions. Some of you will emphasize personal goals, some, your contributions to larger communities. But we all pay attention to both kinds of goals, to some extent. Your particular definitions of these goals, how you balance them, and how, specifically, you try to achieve them, all define your ethical philosophy. This, in turn, defines how you judge your own actions: good or bad, right or wrong, pointless or useful.

Another way into the same question is to ask: how do you define "success"? You are embarked, or about to embark, on a business career. You want to succeed in that career. What would you consider a successful list of accomplishments at the end of ten years? At your retirement? Your answer might focus on professional honors and the esteem of business colleagues; how much money you made; building a large or lucrative business; your own personal development (for example, a lawyer's ability to analyze and successfully argue cases, or a manager's ability to get the best work out of a diverse group of employees). Your answer might focus on achievements within your profession or on what it allowed you to achieve outside of it (support a family, or play a leading role in your community).

It makes sense to put professional success in the context of living a successful life. In addition to professional success, a successful life might include raising a happy family, personal friendships and contributions to your community, being able to

travel and see the world. Success can help you achieve these things.

Making money is a central part of economic life, whether or not you are trying to increase a business. Money is a measure of business success for all sorts of purposes. It is used to grow, while unsuccessful businessmen's personal lives are often unsuccessful. Success is measured in terms of money or profit, and you must choose yourself whether you want to follow your career plans and jump over a pile of money to get a 5% higher salary. If you have followed your current path, you would be willing to eat up your money on tending newborn infants, or on other things wholly in terms of money. If you are seriously mistaken, we should not be so harsh on them in order to punish them (when a single-minded person misses out on the good things of life).

Often, perhaps usually, success helps us improve our lives. It can help us but sometimes that price is too high. Other values. Most important, ethics arise out of such conflicts. Attempts to harmonize ethics and success are living good lives. These are the two general heads of the matter. Under two general heads, we should live because it harms others. We should specify ways to increase reasonable profits, while respecting the lives of others. (This is usually left out of business ethics, I believe. Ethics are not just about ties, as well as restrictions on success. We take up these two sorts of things in our social reference to environmental ethics. We discuss the first sort of things in our notion of rights.)

## III. Rights of Others

A right is a justified claim to respect our important interests. It is from treating us in certain ways that we are harmed.

travel and see the world, and much more. Business success can help you achieve these goals.

Making money is an important part of economic life, whether one is earning a salary or trying to increase a business' profits. Money is useful for all sorts of purposes, and beyond that, it is a measure of business success. Successful businesses grow, while unsuccessful ones fold; successful businessmen's personal wealth increases, while unsuccessful businessmen file for bankruptcy. But presumably, success cannot be *wholly* defined in terms of money or profits. If you doubt this, ask yourself whether you would be willing to give up your career plans and spend the rest of your life jumping over a pile of leaves, if you were guaranteed a 5% higher salary than you would have if you followed your current plans. Or, whether you would be willing to earn a handsome living torturing newborn infants. People who define success wholly in terms of money are mistaken. If they are seriously mistaken, we call them immoral (when they harm others in order to pursue profit) or foolish (when a single-minded pursuit of profit makes them miss out on the good things in life).

Often, perhaps usually, the pursuit of profit helps us improve our lives and the lives of others, but sometimes that pursuit conflicts with our other values. Most important issues in business ethics arise out of such conflicts and out of our attempts to harmonize the pursuit of profit with living good lives. These issues divide fairly neatly under two general headings: (1) Cases where, arguably, we should limit our pursuit of profit, because it harms others. (2) Cases where we may specify ways to increase profits, or at least secure reasonable profits, while improving our own lives and the lives of others. (This second sort of case is usually left out of business ethics discussions; mistakenly, I believe. Ethics should discuss opportunities, as well as restrictions.) The next two sections take up these two sorts of cases in turn, with special reference to environmental issues. In order to discuss the first sort of case, we must clarify the notion of rights.

### III. *Rights of Others*

A right is a justified claim on other people to respect our important interests, and treat or refrain from treating us in certain ways. When we speak of

a right to liberty, for example, we mean that other people may not interfere in our personal decisions, absent some compelling reason (usually, that such interference is necessary to prevent harm to others). We specify a right here because we have an important interest in making our own life choices and living as we wish to live; preserving this right allows us all to live better lives.

We may speak of both legal and moral rights. Legal rights are formally granted by a government, and apply (primarily) to a state's own citizens. Legal rights are thus conventional, and can be qualified or revoked by the governing body that granted them. Most people believe there are also *moral* rights, which all people have simply by virtue of being human. We should uphold such universal moral rights, they believe, regardless of the current state of the law. An action may be legal, yet wrong. For example, members of a despised minority may not have a legal right to freedom from assault, yet those who assault them still act immorally.

The concept of rights applies fairly directly to environmental issues in which a person's or company's actions affect another person's health, happiness, or property. Consider an issue that has recently become important throughout the rural U.S.: the siting of new hog production facilities. Raising hogs is a dirty, smelly business and as the size of these facilities has increased, so have the possibilities for air and water pollution, and a variety of other undesirable effects on their neighbors. New facilities can be profitable, however. When and where is it permissible to site a new facility?

Laws vary from state to state, and even from county to county. But let us assume that there are no legal restrictions and instead ask: what is the morally right thing to do? The answer is: respect your neighbors, and refrain from interfering with their rights to health, happiness, and use of their property. The odors from these facilities can be so bad that they undermine human health, an extreme case of irresponsibility. But beyond this, your neighbors should be able to enjoy dinner outside on a Saturday afternoon, without having to flee indoors. Practically, this means that a person has to leave enough room between his facilities and his neighbors, after taking into account prevailing winds. He might have to limit the size of the facility. He might have to cover his manure

lagoons, or take other costly measures to reduce odor. Such restrictions are the price of being a good neighbor, which decent people willingly pay.

Water pollution can also be a problem with these facilities. Typically, hog wastes from larger operations are dumped into lagoons and allowed to decompose, then spread on surrounding fields as fertilizer. This system can work, *if* the lagoons are carefully built, sited and maintained; *if* the manure is spread over a large enough area of land and not applied too often; and *if* buffers are left around all streams. If these stipulations are not followed, local streams can become polluted. In many cases, careless operators have killed tens of thousands of fish, creating "dead zones" miles downstream from their facilities. Such actions clearly harm the interests of other people, polluting streams that run across their land or ruining wells that they depend on for their drinking water. Such selfish actions can ramify far beyond immediate neighbors to undermine important public goods: a local river or lake can be an important resource for the fishermen, hunters, bird watchers, and schoolchildren from a wide area. It is wrong to degrade this resource for personal profit.

At this point, a skeptic might point out that virtually all our actions have some environmental effects, and that agricultural and industrial activities would grind to a halt if perfect purity were demanded. This is a valid point, and no one can expect to live in a perfectly pure world. So we must set thresholds, some of which will be fairly obvious. Someone who wants to be a good neighbor will find a way to do this: making an honest calculation about whether he owns enough land to buffer his activities from interfering with their lives; not pushing beyond the number of pigs he can raise without also raising a stink. If you want to be a good neighbor, consider the consequences your actions have for others, widen your sense of responsibility to include all the consequences that impact other people's important interests—and pay attention to how *they* define "important." When in doubt, ask yourself: if the roles were reversed, what would I consider fair treatment?

We all understand how to act responsibly in such personal, "neighborly" examples, but what about when business becomes big business? The past decade has seen a shift in the U.S., from small-scale to industrialized hog farming. Instead

of individual farmers raising a few dozen pigs at a time and spreading the manure on their own fields, we now have corporate-owned facilities, whose huge buildings house hundreds and sometimes thousands of pigs. The owners of such facilities site them where it is most convenient, and it is never most convenient near their own homes. The new methods generate immense profits for a few individuals, and vastly greater opportunities for air and water pollution for their neighbors. A recent spill in North Carolina released 22 million gallons of hog waste into the New River, resulting in massive fish kills and environmental damage that will take decades to undo.

Any company that does business in a locality is a member of that community. If it simply uses the community's resources without regard for community well-being, using up or degrading those resources in the process, it acts no better than any immoral individual. Such a company must be rigidly disciplined by environmental (and other) laws, enacted by those who are looking out for the interests of the community. If a company persists in violating the law, its corporate charter should be revoked. Fortunately, not all individuals working within corporations take such a predatory view of business life. Individuals holding responsible positions within large corporations have tremendous opportunities to do good, helping provide valuable products, services and jobs to communities, while preserving and enhancing community health and well-being (see the next section).

The ethical issue of *individuals'* responsibilities within large companies is a complex one. Who, for example, is responsible when discharges of toxic chemicals from a factory regularly exceed legally permissible levels? Workers may claim that it is up to the bosses to solve such problems, while higher-ups may insist that they do not know the details of how each factory is managed. Mid-level managers, in turn, may feel strong pressure to produce profits and thus to cut corners on environmental protection. We must look at who makes specific decisions and who carries them out: these are loci of responsibility. More broadly, we also assert that if someone benefits from the opportunities provided by a firm, he or she bears some share in its environmental and other responsibilities. In other words, all members are responsible. In corporations that promote such

attitudes, hierarchical organization can work as an environmental fail-safe, rather than a method for avoiding responsibility.

These considerations apply to a broad range of environmental business issues. The technical issues and pollutants involved in raising hogs are different from those related to coal-fired power plants or plastics factories. Yet the same basic principles apply: know the consequences of your actions, and respect the rights of those whom your actions will affect.

Those consequences extend beyond human beings, of course. The shift from family farms to large-scale industrial hog production has led to real hardships for the animals involved. Pigs are naturally sociable, curious, and highly intelligent. Previously, they lived most of their lives in small family groupings, and could root and explore outside for at least part of the year. In factory farming, hogs are confined in solitary pens, often so tightly that they cannot turn around. Many grow depressed and listless, and engage in so-called "stereotypic" behavior: senseless, repetitive motions such as bar biting. The increased efficiency and rationalization of pork production has led to lower prices for consumers and higher profits for large-scale industrial farms, but also to a greatly decreased quality of life for the animals themselves. Legally, the hogs are just property. Their owners can and do treat them as they please. But is this permissible *morally*? Are we a better society for having made this change?

#### IV. Personal Flourishing

So far, we have considered environmental restrictions on business: the rights of others limit what the businessman may do. But ethics is not just about what we cannot do; it is about aspirations as well as limitations. The greening of the economy is opening up wonderful new opportunities for businessmen, and businessmen with green inclinations are in a position to do a lot for the environment.

Consider Sally Fox, who breeds naturally colored organic cotton. Conventionally grown white cotton uses large amounts of pesticides—more than any other major crop—and dying white cotton involves many toxic chemicals. Naturally colored cotton can eliminate the need to dye cloth.

By breeding long-fiber varieties that are suitable for modern garment making, Fox has made possible its widespread use. She has also opened up exciting business opportunities, for herself and others; her Natural Cotton Colours, Inc. recently made \$5 million a year in sales. By growing her cotton organically, she plows some of her profits back into sustainable agricultural practices.

Or consider Molten Metal Technology, Inc. of Fall River, Massachusetts, the creation of Christopher Nagel and William Haney III. These thirty-something entrepreneurs raised \$105 million on MMT's initial offering on the NASDAQ exchange; currently, the company employs 300 people. MMT is using, and constantly refining, a new technology called "catalytic extraction processing" (CEP), which could revolutionize hazardous waste processing and disposal. CEP utilizes careful monitoring of the waste stream, extremely high temperatures, and a molten metal base, to recover useful materials from hazardous wastes. If successful, CEP could replace conventional incineration, which releases dangerous chemicals into the air and creates residual waste that still must be landfilled. CEP represents an important step towards true recycling, and helps the environment twice: once when toxins aren't released in the incineration process, and again when the materials generated are resold and reused within industry.<sup>2</sup>

Such examples can be multiplied through all sectors of the economy. They include housing developers who cluster houses and preserve open land, or who site and build their houses to minimize energy use; and also real estate agents who help clients set up conservation easements. They include foresters who are moving away from environmentally-damaging clear-cutting and returning to selective tree thinning; and ranchers who are experimenting with new methods to reduce the effects of grazing, such as fencing stream courses and moving herds more often.

In all these cases, we see business-people making money, while also changing environmental practices for the better. In some cases they may give up some profit—maybe a few more houses

<sup>2</sup>Fox's and MMT's stories, and those of many other environmental entrepreneurs, may be found in Steven Lerner, *Eco-Pioneers: Practical Visionaries Solving Today's Environmental Problems* (Cambridge, MA: MIT Press, 1998).

could be squeezed into a development, for example. But many professionals are committed to protecting the environment. They find a special satisfaction in knowing that their business is helping to make their communities more environmentally sound. Sometimes the opportunities are modest and basic: for example, when a contractor follows the law and puts suitable insulation, glazed windows, and low-flow toilets in a new building. Sometimes the opportunities are greater, as when whole new green products and industries are created.

Leaders within even the most environmentally backward industries are beginning to recognize these opportunities. At the same time that it has been lobbying against government initiatives to combat global warming, General Motors has spent hundreds of millions of dollars to develop electric and hybrid electric/gasoline vehicles. Several years ago, the CEO of British Petroleum broke with other leaders in the oil industry and asserted that global warming was a real problem that his industry had a moral responsibility to address. B-P has recently committed \$1 billion to develop solar power and wind energy. Not only is this the right thing to do, but it could turn out to be more profitable than defending the status quo.

But suppose it does not? Suppose that over Mr. X's tenure, British-Petroleum averages profits of \$10 a share per year and helps the world meet the challenge of global warming, while during Mr. Y's tenure, Arco averages profits of \$15 a share per year and does so in part by retarding an effective response to global warming. Who will have succeeded here: Mr. X or Mr. Y? Or ask the same question at the local level. Who will have succeeded, the developer who builds the most beautiful houses, the most environmentally-friendly houses, the housing developments which sustain the greatest sense of community among their inhabitants—or the developer who gains the most profit from his houses?

Our answers will depend on how we define success. If we define success in terms of positive contributions to society, we will get a very different answer than if we focus primarily on money. Since business decisions do, in fact, affect society in important ways, it seems sensible to widen our view of business success to encompass our effects on others.

## V. Community

Respecting the rights of others, and paying attention to our own well-being, lead naturally to an account which puts it all together: the personal and the political; the "thou shalt nots" and the "go for its." It leads naturally to the notion of business activity that promotes community flourishing in a healthy environment.

What would an environmentally-conscious, business-friendly economic system look like? Certainly it would include strong environmental laws designed to protect human health and biological diversity, for current and future generations. Beyond that, it would be a system where most people, including most business leaders, held an environmental ethic which led them to actively promote environmental values. Key values would include sustainability, land health, and ecological integrity.

*Sustainability* is the ability of a particular human activity to continue indefinitely without depleting resources or damaging the environment. Sustainability can also refer to the lifestyles of particular groups or whole societies. The focus is on preserving resources which future generations will need. For example, mainstream farming practices in the U.S. are largely unsustainable: they erode soils faster than they can be replenished, often depend on water inputs which deplete aquifers faster than they can be recharged, and apply fertilizers and pesticides so heavily that the runoff pollutes streams and rivers. Alternative farming methods seek to limit soil erosion, avoid some harmful chemicals altogether and limit applications of others, and reduce the pollution associated with agricultural production. They thus work to keep the land producing food *and* healthy populations of non-farm animals, in perpetuity.

The example shows that sustainability involves numerous factors, and is a matter of degree. Current world energy policies are obviously unsustainable, relying primarily on a one-time draw down of fossil fuel reserves while generating massive amounts of air and water pollution. "Scrubbers" on industrial smokestacks, more mass transit, more efficient automobiles, and more stringent regulations on mining and oil extraction can all lessen the environmental effects of energy use. But to be truly sustainable, we must move

towards new  
and truly re  
and perhaps  
communitie  
walk, bike  
shopping a  
move towa  
nesses, gove  
work togeth

Sustaina  
term econo  
sive focus  
insufficient  
Just as a he  
and able to  
well, a heal  
water pollu  
exotic orga  
alter the sy  
tosynthesis  
and comp  
species and

Healthy  
iversity and  
valued by  
in the piec  
may suppo  
hundred s  
insects—w  
for fuel an  
hiking, sw  
do this su  
not under  
preserve b  
pollutants  
(overharve  
example).

If simp  
may stay  
remain st  
surroundi  
silt or fer  
form valu  
relatively  
can be d  
apply con  
tems. At  
across a  
species an  
ties. Whe

towards new technologies that are less polluting and truly renewable: such as wind and sun power, and perhaps hydrogen cells. We must also design communities that use less energy: where we can walk, bike or take mass transit to work, school, shopping and recreational areas. Obviously, to move towards truly sustainable energy use, businesses, governments and consumers will all have to work together.

Sustainability is necessary to preserve the long-term economic productivity of the land. An exclusive focus on economic productivity, however, is insufficient. We also want to preserve *land health*. Just as a healthy human being is free from disease and able to perform his characteristic functions well, a healthy forest or stream is free from air or water pollution, excessive siltation, or invasion by exotic organisms. Such stresses impede or radically alter the systems' natural functions (such as photosynthesis or production of new plant growth) and composition (often eliminating sensitive species and simplifying biological communities).

Healthy ecosystems provide both natural biodiversity and a wide array of products and services valued by humans. A healthy thousand-acre forest in the piedmont region of Georgia, for example, may support dozens of species of trees, several hundred species of birds, thousands of species of insects—while also providing humans with wood for fuel and building materials, and recreational hiking, swimming, fishing and hunting. And it can do this sustainably, forever, as long as humans do not undermine its healthy functioning. In order to preserve healthy ecosystems, we must limit our pollutants and avoid taking too much at once (overharvesting trees or overhunting deer, for example).

If simplified ecosystems are managed well, they may stay healthy for humans and a reduced biota, remain stable and resilient to stress, not pollute surrounding ecosystems (e.g., not dump excessive silt or fertilizer in streams), and continue to perform valuable ecosystem services. Because some relatively intensive land use is necessary and this can be done better or worse, it makes sense to apply concepts of land health to simplified ecosystems. At the same time, excessive simplification across a large landscape leads to extinction of species and loss of characteristic natural communities. When humans appropriate natural resources

too exclusively, this is arguably unjust towards all the other species of animals and plants with whom we share the earth. It also harms *us*, since we no longer can explore and enjoy wild areas, or reap the scientific and aesthetic benefits that wild nature provides.

Land health thus should be supplemented with the ideal of *ecosystem integrity*—the preservation of wild, natural landscapes with their full complement of native species. In a recent "State of the Parks" report, Parks Canada defined ecological integrity as "the condition of an ecosystem where the structure and function are unimpaired by human-caused stresses, and the biological diversity and supporting processes are likely to persist" without excessive human interference. Ecosystem integrity thus includes the notion of land health, but implies a greater measure of wholeness and freedom from human manipulation.<sup>3</sup>

Integrity is a key environmental ideal because it encompasses the full preservation of biological diversity, including individual organisms, species, natural communities, and the ecosystem processes which have created and sustain them. It includes the radical notion that some places should be left alone, to be what God or nature makes of them. Some of our fiercest environmental battles are being waged around the issue of whether to exploit or preserve wild lands. For example, energy companies want to drill for oil on the coastal plain of the Arctic National Wildlife Refuge, in northern Alaska. This area is a remote, largely untouched wilderness, supporting huge herds of caribou and musk oxen. Should one of our last, best, wilderness areas be developed to provide oil for the world industrial economy, jobs for oil workers, and profits for Exxon and Mobil?

A business community that values ecological integrity will be willing to forego resource extraction and development in some wild areas. For example, the DuPont chemical corporation recently dropped plans for a molybdenum mine on the outskirts of Georgia's Okefenokee swamp, which might have degraded water quality at one of the nation's premier wildlife refuges. In an act of

<sup>3</sup>Panel on the Ecological Integrity of Canada's National Parks, *Unimpaired for Future Generations? Conserving Ecological Integrity with Canada's National Parks* (<http://parks.canada.pch.gc.ca/parks>, September 2000).

corporate statesmanship, DuPont agreed to sell its land at cost, making the permanent protection of Okefenokee possible.

Just which lands to protect and which to develop, and how much of the overall landscape to preserve, are difficult questions which defy precise answers. Many environmentalists argue that the amount of land devoted to human use is already too high, and that both "biotic justice" and a fuller account of human interests demand that more land be dedicated to wild nature. We could, for example, prohibit timber harvesting and other extractive uses of our national forests, and work to reestablish populations of all native animals within them. We could purchase and set aside as park land extensive samples of native tall grass prairie, southern long-leaf pine savannas, and other natural ecosystems that are not currently represented in state or national park systems. As with sustainability and land health, we will make more progress towards preserving ecological integrity if business, government, and individual citizens all recognize this as a valid goal and work to secure it.

### Conclusion

Over fifty years ago, Aldo Leopold wrote of the need for a "land ethic" to guide human beings towards a more just and sustainable life on earth:

All ethics so far evolved rest upon a single premise: that the individual is a member of a community of interdependent parts. . . . The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively: the land.

Can you imagine living your life, making business and personal decisions, as if you were a member of such a larger community? As if the continued existence and flourishing of all nature's creatures was your responsibility? Of course, this would limit your freedom of action, in some

important ways. But Leopold was convinced that it would also improve our lives. For preserving wild nature also preserves many human opportunities to know and appreciate the natural world: aesthetic, scientific, recreational, and spiritual experiences, which are part of what makes us human. Once we get beyond looking at other people as simply "resources" for our own use and enjoyment, we can get more out of being with them. Something similar might hold for our relationships to wild nature.

Regardless of whether or not we extend our notion of community to include non-humans, our membership in *human* communities means we will have to consider environmental issues in terms of a larger, common good. It would be foolish to minimize the difficulties and complexities of meshing business life with environmental concern. In particular, there is an inherent contradiction between businesses' desires to expand and consumers' desires to increase consumption, and the need to limit our use and transformation of the natural world, in the name of sustainability, land health, and ecological integrity. Some industries can stimulate demand and increase profits with little or no ecological damage: if people spend more on compact discs, books or telescopes, no great harm is done to the environment. Other industries cannot expand without doing environmental harm: the large oil and automobile corporations will have to completely transform themselves, before their increased profits do not also register as decreased environmental quality. This means that society must accept slow-growth, no-growth and even negative-growth economic sectors, and individuals must redefine their "pursuit of happiness" in important ways, in order to protect the environment. Clearly we will need to do so sooner or later, if we are to preserve a world fit for human habitation, and reap the benefits of a century of economic progress.

### Discussion Questions

1. According to Cafaro, why should businesspersons be concerned with the environment? In light of his reasoning, do you think all professionals should be concerned with the environment?
2. Describe why Cafaro believes that business success must be assessed not just in terms of money or profit but in a larger context, including considerations of ethics. Do you agree with him?

3. Along the same lines, Cafaro argues that the goals of a professional, even one concerned with business, do not exclude caring for the environment. What is his reasoning? Do you agree?
4. How might one use virtue ethics to construct a moral justification for the claim that we, as members of a community that includes animals, plants, and wild lands, ought to respect these other members of the community and not exploit them? How might one use feminist ethics to do the same? Overall, how well do these justifications support the claim?

## Cases

### Case 5-1

In 1985, several steel companies in the Pennsylvania towns of Beaver Falls, Beaver, and Aliquippa shut down (literally) overnight. No warning was given to the thousands of workers. The communities in these towns were devastated. While some families were able to move and find work elsewhere, many lost their homes and were reduced to living below the poverty level. Later that year, after other similar shutdowns, President Reagan signed into law the requirement that companies must give at least a 30-day notice to employees before a permanent shut down.

1. According to Freeman's stakeholder view, what principle of morality did the steel companies violate? Why is this principle important, according to Freeman, and why would it be acceptable behind a contractarian "veil of ignorance"?
2. While Freeman's view requires an adjustment in the CEO's attitude toward stakeholders, does this attitude always require companies to continue operating?
3. Suppose a CEO attempts to morally justify what he did in northeast Pennsylvania. How would he argue and what moral theories could he use to back up his view? What would be your response?
4. In your opinion, is a 30-day notice enough warning? Many companies argue that it is too much because the workers will quit and profits will go down. What is your opinion?

### Case 5-2

The Marijuana Policy Project (MPP) markets itself as an organization that works to minimize the harm associated with the consumption of marijuana and the laws that are intended to prohibit marijuana use. It has public health goals, economic goals, and societal goals (to mention some). Of its goals for public health, the MPP advocates both DWI laws as well as medicinal uses of marijuana. Its economic goals include raising revenue for the economy by taxing marijuana businesses and permitting the domestic cultivation of industrial and environmental hemp. Finally, its goals for society in general include holding individuals accountable for any antisocial activities they commit while under the influence of marijuana and reducing the amount of organized crime associated with the selling of marijuana.

1. According to Schlossberger, is the MPP an organization? Why or why not?
2. Is the perceived good of the MPP truly a good, as discussed by Schlossberger, or can it be faulted for pursuing an illegitimate good?
3. In your opinion, is the MPP's understanding of the good-in-general correct?

*Case 5-3*

Jim sells stereo equipment, and he is good at it. He prides himself in his technical knowledge of stereos but also in his good reputation. Selling the right equipment to meet the needs of his customers is important to him. Sometimes Jim feels guilty when he sells a product he knows has certain flaws or problems or is just inferior. Nevertheless, he bites his lip and lets the customer decide, refraining from sharing his knowledge about the problems. He is required by his supervisor to do this. Initially, he brought this point up at a sales meeting. His supervisor responded by pointing out that it is permissible to withhold this kind of information because anyone can find out which product has problems by reading *Consumer Reports*. Jim understands this point, but it leaves a bitter taste in his mouth.

1. Elaborate the conflict between Jim and his supervisor. Is this conflict over important moral principles or is it just a conflict of feelings?
2. While Jim seems to understand his supervisor's point, can you help Jim think of a principled way to tell where paternalism ends and consumer autonomy begins?
3. Do you think Jim has a moral obligation to inform his customers about potential flaws with the equipment? What moral theory (or theories) support your view?
4. Jim's disagreement with his supervisor seems to reflect the concerns brought up by Freeman. Explain why this is so. Might it also reflect concerns raised by Schlossberger?

*Case 5-4*

Competing in the computer market is like walking in a minefield. Peter Wells knows this all too well. As CEO of Computer Logistics, he has managed to avoid most of the problems that other companies cannot avoid. Unfortunately, Peter is faced with a very difficult problem: the conglomeration, Computers-R-Us, Inc., is attempting to take over Computer Logistics. Peter is worried that they will succeed. He knows what will happen to him if they succeed: he will be fired. Unfortunately, Peter does not have a pension parachute, so he stands to lose his livelihood. In a last attempt to thwart the takeover, Jim hires an attorney who is an expert in these matters. She describes a financial scheme to make Computer Logistics less attractive. Peter is to create a poison pill by issuing a new preferred stock that gives shareholders the right to redeem it at a premium price after the takeover (if it is successful). While the attorney is confident that this will work, Peter is skeptical. Aware of his skepticism his attorney assures him, "Just take your pill and everything will be all right."

1. If the takeover is successful, why will Peter (probably) lose his job? What sort of preventative measures could he have taken before he accepted his current position?
2. If Peter follows the attorney's instructions, will he be acting in the best interest of the stockholders? In the light of your answer, will he be doing anything unethical? What would McGee say? What would Freeman say? What would Schlossberger say?
3. Are there other options, described by McGee, that Peter might have available to him? If so, would they be ethically acceptable?

*Case 5-5*

Many residents of Homewood, USA, oppose the development of a hog processing plant. The plant, if created, will process 5 to 6 million hogs a year. The developer cites the economic benefits of the plant including much-needed jobs for Homewood resi-

dents and tax problems. For also be created things, taking that often crea the water acqui rivers and strea

1. Homewood the hog pla the compet
2. According may do. W have any ri
3. How migh plant?
4. Would the lying to) th he were me
5. Recalling th their duty t from and a leaks into t give?