* Rosabeth Moss Kanter, *Men and Women of the Corporation*, 2nd ed. (New York: Basic Books, 1993, 330–331).

Harvard Law Review

Facial Discrimination

"He had but one eye, and the popular prejudice runs in favour of two."

—Charles Dickens, Nicholas Nickleby

THE PHENOMENON OF APPEARANCE DISCRIMINATION

To be human is to discriminate. Humans constantly evaluate people, places, and things and choose some over others. The premise of antidiscrimination law is that in some areas, such as employment and housing, certain criteria are not permissible bases of selection. Antidiscrimination law has yet to state a general model of discrimination that describes precisely which criteria are "illegitimate." Despite the difficulty of developing such criteria, some inner and outer bounds are clear. In the domain of employment, for example, members of racial and religious minority groups are legally protected from discrimination. Those who score poorly on employment aptitude tests found to bear a legitimate relation to the job generally are not.

One approach to antidiscrimination law would protect any member of a minority group who faces discrimination because of membership in that group. This approach is consistent with Louis Wirth's influential definition of a minority: "a group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment and who therefore regard themselves as objects of collective discrimination." Physically unattractive people do not fall precisely within Wirth's formulation. First, the physically unattractive do not constitute a cohesive group; a thin person with an unattractive face, for example, may feel little kinship with an obese person. In addition, physical attractiveness is a continuum, and neat determinations of who is "unattractive" are impossible. Nevertheless, the physically unattractive share many of the burdens of Wirth's minority groups. Although our society professes a commitment to judge people by their inner worth, physically unattractive people often face differential and unequal treatment in situations in which their appearance is unrelated to their qualifications or abilities. In the employment context, appearance often functions as an illegitimate basis on which to deny people jobs for which they are otherwise qualified.

Appearance Discrimination Generally

People in our society often have a visceral dislike for individuals whom they find unattractive. The bias is so strong that it is not deemed inappropriate to express this dislike; the physically unattractive are a frequent subject of derisive humor. People frequently believe, either consciously or unconsciously, that people with unattractive exteriors were either born with equally unattractive interiors or gradually developed them. By contrast, people tend to think, often with very little basis, that people they find physically attractive are generally worthy and appealing or that, as the title of one study has it, "What Is Beautiful Is Good."

Social science studies have shown that people attribute a wide range of positive characteristics to those whom they find physically attractive. These studies also indicate that when less attractive people are compared to more attractive people, the less attractive men and women are accorded worse treatment simply because of their appearance. This less-favored treatment apparently begins as early as the first few months of life. Throughout childhood, unattractive children face parents who have lower expectations for their success than for more attractive children, teachers who have lower expectations for their academic success, and contemporaries who prefer more attractive children as friends. This less generous treatment of unattractive people continues through adulthood. For example, studies of "helping behavior"—the willingness of subjects to do small favors for a stranger—show that such behavior varies directly with the stranger's attractiveness. Likewise, simulation studies of court proceedings have found that unattractive people receive higher sentences in criminal cases and lower damage awards in civil lawsuits.

Physical appearance can also warp the functioning of ordinarily "objective" evaluations of individuals' work. This distortion has been shown in studies in which subjects were asked to evaluate a written essay that was accompanied by a photograph of the purported author. When copies of the same essay were evaluated with a photograph of an attractive or an unattractive person attached, the essays with the more attractive purported author were judged to have better ideas, better style, and more creativity. Moreover, studies have shown that in general, attractive people are disproportionately likely to receive credit for good outcomes, whereas the good outcomes of unattractive people are more likely to be attributed to external factors, such as luck. Such biases might easily lead an employer to underrate the talents of an unattractive job applicant.

Empirical research on the real-world effects of appearance discrimination supports the results of these simulation exercises. Considerable empirical research has been done in the area of obesity. One study showed that obese high school students were significantly less likely than non-obese students to be admitted to selective colleges, when academic achievement, motivation, and economic class were held constant; another found that obese adults were discriminated against in the renting of apartments.

Appearance discrimination thus seems to occur in a wide variety of situations. Clearly, the law cannot intervene directly to prevent all such discrimination; no law, for example, can itself make a teacher have more faith in an unattractive child's academic success. The law can, however, address discrimination in discrete areas. One such area is employment selection, in which appearance discrimination is widespread.

Appearance Discrimination in Employee Selection

Physical appearance is a significant factor in employee selection, regardless of the nature of the job or the relevance of appearance to the task at hand. One of the primary methods of assessing applicants for all levels of jobs is the personal interview, in which the applicant's appearance is a central criterion. One survey found that appearance was the single most important factor in determining candidate acceptability for a wide variety of jobs, regardless of the level of training of the interviewers. Another study asked 2804 employment interviewers throughout the United States to give "favorability" scores to a variety of characteristics of applicants for various positions. Interviewers considered as important positive characteristics such factors as "Has a good complexion" and rated as important negative characteristics factors such as "Is markedly overweight," and, for men, "Physique appears feminine." Interview manuals written for employers make clear the importance of physical appearance in the selection process. One general employment handbook places "Appearance" first on its list of "hire appeal" factors.

Research in specific areas of physical difference reinforces the claim that appearance discrimination pervades the job market. The National Association to Aid Fat Americans found that fifty-one percent of its members who responded to a survey reported instances of employment discrimination. A report of the State of Maryland's Commission on Human Relations concluded that it may well be easier to place a thin black person on a job than a fat white person. Extremely short people also experience severe employment discrimination.

There have as yet been no direct challenges to appearance discrimination, although appearance issues have been raised in other lawsuits. Hiring practices based on explicit evaluations of applicants' physical appearance were challenged in the courts for the first time in the 1960s and early 1970s in lawsuits charging airlines with sex and race discrimination in the hiring of flight attendants. One Equal Employment Opportunity Commission hearing of a race discrimination claim revealed that an interview form contained the written comment that a black applicant had "unattractive, large lips. The Commission found that this negative evaluation of a race-related aspect of the applicant's appearance provided reasonable cause to believe that unlawful racial discrimination had taken place. More recently, a computer programmer successfully sued under New York State law a company that failed to hire her because she was obese. The challenge alleged, however, that obesity was a medical handicap, and did not raise the broader issue of appearance discrimination.

Restructuring Employment Selection To Reduce Appearance Discrimination

Even if employers agreed in principle that considerations of physical appearance should ideally be eliminated from the hiring process, this ideal would be difficult to achieve in practice. As long as hiring is based on face-to-face interviews, physical appearance will inevitably have an impact on impressions. This problem can be avoided, however, by restructuring the hiring process to eliminate or reduce information about applicants' appearance when applicants are evaluated and hiring decisions are made.

The regulations promulgated by the HHS bar "preemployment inquiries" concerning a job applicant's handicapped status, unless the inquiries specifically concern the applicant's ability to do the job. To meet this requirement, employers could publicly announce a policy of not soliciting information about an applicant's appearance, other than grooming and neatness, and of not considering appearance as a factor in employee selection. The standard face-to-face interview, in which the applicant's appearance is highly salient, in many ways resembles just such a statutorily forbidden preemployment inquiry into appearance handicaps. To conform with the ban on preemployment inquiries, employers should reevaluate their commitment to the standard employment interview.

To be sure, interviews undoubtedly have some informational value beyond permitting illegitimate appearance evaluations. An employer may justifiably be concerned, for example, with an applicant's interpersonal skills. But this information can be obtained in ways that avoid the prejudicial process of face-to-face interviews. One possible method is the expanded use of telephone interviews. Another possibility, which could work well for many kinds of jobs, is the adoption of the practice used by virtually every American symphony orchestra to avoid discrimination and favoritism in hiring: auditions conducted behind screens. Such an interview process would provide employers with useful information about an applicant, revealing factors such as a "pleasant personality," without prejudicing the selection process by injecting appearance into the calculus.

Employers could also reduce or eliminate appearance discrimination through less dramatic modifications in the selection process. They could, for example, set a rigid dividing line between the person who meets and interviews job applicants and the person who makes the decision about whom to hire. The interviewer could pass along a form to the decision-maker that includes only job-related information and impressions. Although the applicant's appearance might still influence the interviewer's perceptions of other subjective qualities, it would nevertheless be a considerable reform.

Objections that employment decisions will be difficult or "random" under such a new regime are misplaced. Workable selection procedures and criteria can be maintained without permitting appearance discrimination. Employers could continue to use the battery of legitimate, work-related criteria: they could ask about education, prior work experience, and success in school and at previous jobs. And they could administer bona fide, work-related, nondiscriminatory tests. Indeed, to the extent that these reforms eliminate irrelevant criteria, they should lead to a greater weighting of job-relevant criteria and hence a fairer overall process.

Moving From "Efficiency" to Equality

Efforts to eliminate appearance discrimination would significantly restructure employment practices. Inevitably, such proposed reforms raise questions about the sort of criteria on which our society should permit employment decisions to be based. One objection to eliminating physical appearance as a criterion for hiring is an argument about economic efficiency. If an employer can show that an applicant's appearance makes him or her more profitable, why should this not be a valid criterion for employment? The response to this objection is that "efficiency" is not always an acceptable basis on which to make distinctions in the employment process.

In fact, many sorts of discrimination may be "economically efficient." For example, a restaurant owner in a racist neighborhood might enlarge his or her clientele—and thus increase profits—by refusing to hire black waiters and waitresses. Yet in all forms of antidiscrimination law we proclaim that our society has some principles of equality that it holds more dear than efficiency.

CONCLUSION

The implications of appearance discrimination go beyond the sizeable number of people who experience its effects firsthand. Physical attractiveness discrimination provides a window on the criteria that our society uses to distinguish among people. It represents one of the ways in which we use hazy and illegitimate criteria to separate good from bad, acceptable from unacceptable, and normal from deviant. Stereotypes of all kinds are linked. Together they form a larger "web of stereotypes" that leads people at times to treat racial minorities, women, the elderly, and the disabled as "other" and to exclude them. One strand of otherness that is woven deeply into this web is that of appearance.

Appearance discrimination is sometimes closely connected to related kinds of discrimination. One significant aspect of prejudice against blacks, old people, or people in wheelchairs is a negative reaction to the way they look. Conversely, people may well dislike certain appearance characteristics—such as broad noses or wrinkled skin—because they associate them with groups they disfavor. Decreasing appearance discrimination would help to unravel this entire web of stereotypes. As we expand our conception of what people in certain jobs can look like, we open these jobs up further to once excluded groups.

Ultimately, as with the eradication of all forms of discrimination, people's attitudes must change before appearance discrimination will cease. The first step in this process is recognizing the existence of the problem. As Sander Gilman has written:

> The need for stereotypes runs so deep that I do not think it will ever be thwarted; nor do I think that it will ever be converted to purely harmless expression. But I believe that education and study can expose the ideologies with which we structure our world, and perhaps help put us in the habit of self-reflection.

QUESTIONS

1. Is discrimination based on gender, race, ethnicity, and sexual orientation also facial discrimination?
2. In what cases is it ethical to hire people based on the way that they look?
3. Is an employer ever justified in not hiring someone who is qualified for a job because they are obese, ugly, disfigured, or with some other unattractive physical abnormality?

To: You
From: The Philosopher
Subject: "John Stuart Mill on the Greatest Good and Expediency"

A friend of mine just started working at a bank. On his first day of work, he had to take a drug test. He asked his manager why and she said, "The reason why new employees have to take drug tests is to help protect our clients and the bank from potential problems. After all, if we got in trouble, we'd have to let employees go. So, while it may be unpleasant for you, it's best everyone."

When I heard this argument, I thought, they certainly don't seem to believe in Kant's idea of treating people as ends in themselves. She sort of sounded like John' Stuart Mill.

> The multiplication of happiness is, according to utilitarian ethics, the object of Virtue: the occasions on which any person (except one in a thousand) has it in his power to do this on an extended scale, in other words to be a public benefactor, are but exceptional; and on these occasions alone, is he called on to consider public utility; in every other case, private utility, the interest or happiness of some few persons, is all the he has to attend to.*

But Mill also made a distinction between utility and expedience:

> [T]he expedient, in the sense in which it is opposed to the Right, generally means that which is expedient for the particular interest of the agent himself. . . . When it means anything better than this, it means that which is expedient for some immediate object, some temporary purpose, but which violates a rule whose observance is expedient in a much higher degree. The Expedient, in this sense instead of being the same thing as what is useful, is a branch of the hurtful."**

* John Stuart Mill, "What Is Utilitarianism?" in *Utilitarianism and other Essays*, ed. Alan Ryan (New York: Penguin Books, 1987), p. 282.

** Ibid., p. 283.

Robert C. Solomon and Fernando Flores

Building Trust

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In our experience, business people feel uncomfortable talking about trust, except, perhaps, in the most abstract terms of approbation. When the topic of trust comes up, they heartily nod their approval, but then they nervously turn to other topics. Executives are talking a great deal about trust these days, perhaps because they rightly suspect that trust in many corporations seems to be at an all-time low. One of our associates, who also consults for major corporations, recently gave a lecture on the importance of trusting your employees to several hundred executives of one of America's largest corporations. There was an appreciative but stunned silence, and then one of them—asking for all of them—queried, "but how do we control them?" It is a telling question that indicates that they did not understand the main point of the lecture, that trust is the very opposite of control. Or, perhaps, they understood well enough, but suffered a lack of nerve when it came time to think through its implications. Like the first-time skydiver who had eagerly read all of the promotional literature about the thrills of the sport and had listened carefully to instructions, he asked, incredulously, "but now you want us to *jump out of the plane!?*" We all know the importance of trust, the advantages of trust, and we all know how terrible life can be without it. But when it comes time to put that knowledge into practice, we are all like the novice skydiver. Creating trust is taking a risk. Trust entails lack of control, in that some power is transferred or given up to the person who is trusted. It is leaping from the dark, claustrophobic fuselage of our ordinary cynicism into what seems like the unsupported free-fall of dependency. And yet, unlike skydiving, nothing is more necessary.

Today, there is a danger that trust is being oversold. There is such a thing as too much trust, and then there is "blind trust," trust without warrant, foolish trust. Trust alone will not, as some of our pundits promise, solve the problems that our society now faces. Thus we think there is good reason to listen to doubters like Daryl Koehn, who rightly asks, "should we trust trust?"[1] But the urgency remains, we believe, on the side of encouraging and understanding trust. There is a lot of encouraging going on today. What is lacking, we want to suggest, is understanding. The problem is not just lack of an adequate analysis. The problem is an aggressive misunderstanding of trust that pervades most of our discussions. The problem, if we can summarize it in a metaphor or two, is that trust is treated as if it were a "medium" in which human transactions take place, alternatively, as "ground," as "atmosphere" or, even more vaguely, as "climate." Benjamin Barber, for instance, who is one of the early writers on trust and often appealed to by the current crop of commentators, says that trust is "the basic stuff or ingredient of social interaction." But as "stuff" or "ingredient," as a "resource" (Fukuyama[2]), as "medium," "ground," "atmosphere" or "climate,"

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trust all too easily tends to seem inert, simply "there" or "not there," rather than a dynamic aspect of human interaction and human relationships.

This is our thesis: Trust is a *dynamic aspect of human relationships*. It is an ongoing process that must be initiated, maintained, sometimes restored and continuously authenticated. Trust isn't a social substance or a mysterious entity; trust is a social practice, defined by choices. It is always relational: A trusts B (to do C, D, E). We can say that A is "trusting," but by that we mean that he or she has a disposition to readily trust people. Indeed, the very word "trust" is misleading, insofar as it seems to point to an entity, a thing, some social "stuff." Although we will continue to use the word, it might better be thought of as "trusting," an activity, a decision, a transitive verb, not a noun. Accordingly, the discussion of trust, in other words, is shot through with what French existentialist Jean-Paul Sartre called "bad faith," the distancing of our own actions and choices and the refusal to take responsibility for them. The not very subtle message of too much of the talk about trust today is, *"The problem isn't me/us, it's them,"* as if WE are perfectly willing to trust others—if they are trustworthy, that is, but, unfortunately, they are not or have not proven themselves so. Thus say the Bosnians and the Serbs, the Israelis and the Palestinians, many parents and their teenage kids, and all too many managers and their employees.

The misunderstanding of trust, accordingly, takes the form of a dangerous rationalization. Trust(ing) presupposes trustworthiness. Either one is trustworthy or one is not. So trusting takes the form of a kind of knowledge, the recognition (which may, of course, be fallible) that someone is trustworthy. So, if one trusts, so the rationalization goes, then nothing need be said, and it is much better that nothing be said. That is the core of our problem. Trust is rendered inarticulate, unpresentable. According to this view, to even raise the question, "Do you trust me?" or "Can I trust you?" is to already instigate, not only indicate, distrust. (Blaze Starr's mother warns her, "never trust a man who says, 'Trust me.'"[3]) If one does not trust, then nothing much is accomplished by saying so, except, perhaps, as an insult, a way of escalating an already existing conflict or, perhaps, as a confirming test ("If you tell me that I should trust you, then you are doubly a liar.") When a politician or a business leader says, "trust me," he takes a considerable risk. Those who support him may well wonder why he needs to say that, and become suspicious. For those who are already suspicious of him, such an intrusive imperative confirms their suspicions.[4] On the other hand, when someone says "I trust you," there is always the possibility of some sense of manipulation, even the unwanted imposition of a psychological burden, one of whose consequences may be guilt.

The reason for talking about trust is not just to "understand" the concept philosophically but to put the issue of trust "on the table" in order to be able to talk it through in concrete, practical situations. By talking through trust, trust can be created, distrust mitigated. Not talking about trust, on the other hand, can result in continuing distrust, and lack of trust is calamitous to one's flourishing as a business and as individuals.

Economic approaches to trust, while well-intended and pointing us in the right direction, are dangerously incomplete and misleading. Trust in business is not merely a tool for efficiency, although it does have important implications for dealing with complexity and therefore efficiency.[5] Moreover, it would hardly be honest to guarantee (as many authors do these days), that more trust will make business more efficient and improve the bottom line. Usually, of course, trust has this effect, but there is no necessary connection between trust and efficiency, and this is neither the aim nor the intention of trust. Indeed, trust as a mere efficiency-booster may be a paradigm of *inauthentic* or phony trust, trust that is merely a manipulative tool, a facade of trust that, over the long run, increases *dis*trust, and for good reason. Employees can usually tell when the "empowerment" they receive like a gift is actually a noose with which to hang themselves, a set-up for blame for situations which they cannot really control. Managers know what it is like when they are awarded more responsibility ("I trust you to take care of that") without the requisite authority. Like many virtues, trust is most virtuous when it is pursued for its own sake, even if there is benefit or advantage in view. (Generosity and courage both have their payoffs, but to act generously or courageously *merely* in order obtain the pay-offs is of dubious virtue.) To think of trust as a business tool, as a mere means, as a lubricant to make an operation more efficient, is to not understand trust at all. Trust is, first of all, a central concept of ethics. And because of that, it turns out to be a valuable tool in business as well.

TRUST AS AN EMOTIONAL SKILL: SIMPLE TRUST, BLIND TRUST, AUTHENTIC TRUST

Trust is an emotional phenomenon. This is not to say that its significance is first of all "felt," or that it is merely transient. Trust, like love and indignation, finds its significance in the bonds it creates (or, better, in the bonds we create through such emotions), and it is the very essence of trust, like love (but unlike indignation), that it is enduring. Nevertheless (as with love) it may be cut short, betrayed, interrupted, and, on occasion, it may be all too fleeting, usually because it has been foolish. But trust, like all emotions, is dynamic. It defines our relationships and our relationship—our "being tuned"—to the world.

The importance of understanding emotion as a dynamic is essential to our view of emotion in general and trust in particular.[6] The contrast is the usual passivity picture of emotions as physiological interruptions of our lives that *happen to* us. Trust, in particular, is not something that simply happens, or is found or intuited. It is rather created through interaction and in the making of relationships. This is not to deny that there is an innate predisposition to trust, as evidenced so obviously in most babies, and it is compatible with the fact that trust may (tentatively) be established very quickly, within the first few minutes, of a relationship. But what this means is that we will have to be very careful how we talk about trust, careful that we do not collapse and confuse several very different phenomena.

Trust comes in various forms and degrees of sophistication and articulation. We can and ought to distinguish, just to begin with: *simple trust*, naive trust, trust as yet unchallenged, unquestioned (the faith of a well brought up child), *blind trust*, which is not actually naive but stubborn, obstinate, possibly even self-deluding, *basic trust*, which consists in the sense of physical and emotional security which most of us happily take for granted, which is most blatantly violated in war and in acts of random violence, and *authentic trust*, which is trust reflected upon, its risks and vulnerabilities understood, with *distrust* held in balance. (Distrust admits of similar distinctions and levels of sophistication.) Authentic trust, as opposed to simple trust, does not exclude or deny distrust but rather accepts it, even embraces it, but transcends it, absorbs it, overcomes it. With simple trust, one can always be surprised. The reasons for distrust are not even considered, much less taken seriously. Authentic trust can be betrayed, of course, but it is a betrayal that was foreseen as a possibility. There is no denial or self-deception, as in blind trust. There is no naivete, as in simple trust. Authentic trust need not be opposed to basic trust, but when basic trust is violated authentic trust sees clearly what trust remains. Once trust is spelled out, all sorts of new possibilities arise. It can be examined. It can be specified. It can be turned into explicit agreements and contracts. The mistake is to think that such agreements and contracts *precede* or *establish* trust. There can, of course, be agreements and contracts in the absence of trust, typically with elaborate enforcement mechanisms. But it is just as much of a mistake to conflate all trust with articulated trust as it is to conflate all trust with simple or basic (inarticulate) trust. The emotional life of trusting relationships is much more intricate and humanly complex than either contracts and cognitive interactive strategies or "non-cognitive security about motives" would alone allow.

Trust is created (and damaged) through dialogue, in conversation, by way of promises, commitments, offers, demands, expectations, explicit and tacit understandings. It is through such dialogue and conversation, including the rather one-way conversation of advertising, that producers make the nature and quality of their products known, that professionals and companies make their services and the abilities known, that expectations get initiated and intensified. This is not to say that trust is entirely linguistic, the product of promises and expectations verbally created. There is a good deal of trust embodied in our mere physical presence to one another, in our gestures, looks, smiles, handshakes and touches. Animals (especially "social" animals) have enormously complex trust relationships, often highly competitive at the same time, as any casual observation of two or more dogs (or wolves) together will confirm. Nor is the emphasis on dialogue and conversation suggested to imply—as so many social analyses too quickly conclude—that trust is an "agreement" or a "contract" (formal or informal). Contracts, too, are too static (although the negotiation of them, and negotiation out of them, may be dynamic indeed). Nor should trust be understood *primarily* in terms of limited or momentary interactions or transaction—or any number of them. Analyses of trust too often take as their paradigm either the most intimate of relationships—mother and child, husband and wife or lovers—or the most casual of them—notably, the one-shot business deal (for example, buying gas on the Interstate), or, the repeated one-shot business deal (buying gas at the same station on the way back down the Interstate). An interaction—even repeated interaction—is not yet a relationship, although, obviously, such repeated exchanges—and, occasionally, even a single one, can easily turn into one. A relationship is by its very nature on-going and dynamic, in which one of the central concerns of the relationship is the relationship itself, its status and identity and, consequently, the status and identity of each and all of its members. Trust is an essential and "existential" dimension of that dynamic relationship.

With this in mind, we can understand why lying betrays trust and is so damaging. Even just one lie—or a serious exaggeration or attempt to "spin" the truth—can undermine the accumulated trust and good will with which most of us approach new relationships and come to take for granted in established ones. Betrayal from a friend or neighbor may, with great difficulty, be overcome and eventually forgiven (though rarely forgotten), if only because these people are not easily eliminated from our lives. But betrayals in business, where associations are voluntary and there are always other possibilities, are typically fatal. Why work with or work a deal with someone you can no longer trust when there are so many others available?

NOTES

1. Daryl Koehn, "Should We Trust Trust?" *American Business Law Journal*, vol. 34(2), 1996: 184–203.
2. Francis Fukuyarna, *Trust: The Social Virtues and the Creation of Prosperity* (New York: Free Press, 1996).
3. Blaze Starr was the long-time mistress of Louisana governor Earl Long. The line occurs in the movie, starring Paul Newman and Lolita Davidovich, *Blaze* (1989).
4. E.g., Dick Morris on Bill Clinton's campaign strategy, *Behind the Oval Office* (New York: Knopf, 1997).
5. Nicholas Luhmann, "Trust: A Mechanism for the Reduction of Social Complexity," in his *Trust and Power* (New York: Wiley, 1980) pp. 4–103.
6. Martin Heidegger, *Being and Time (Sein und Zeit)*, trans. Joan Stambaugh (S.U.N.Y., 1996), esp. pp. 134–9.

QUESTIONS

1. Is there such a thing as too much trust? Explain.
2. What is "authentic trust"? What are the other forms of trust identified here?
3. What are some other ways for establishing trust that are not discussed in this article?

Robert E. Frederick
and W. Michael Hoffman

The Individual Investor in Securities Markets: An Ethical Analysis

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Securities markets are full of pitfalls for individual investors. Examples of fraud and regulatory violations in the markets are common. For instance, a recent *Business Week* cover story reports that investors are being duped out of hundreds of millions a year in penny stock scams in spite of SEC regulations.[1] A report in the *Wall Street Journal* on the Chicago futures trading fraud highlights the "danger of being ripped off in futures markets" by unscrupulous floor brokers filling customers' "market orders"—a type of order that "individual investors should avoid using."[2]

But securities markets present risks to individual investors that go beyond clear violations of regulations and fraud. The above *Wall Street Journal* story, for example, also issued a more general warning to investors:

> Futures are fast moving, risky investment vehicles that are unsuitable for anyone who can't afford to lose and who doesn't have time to pay close attention to trading positions.[3]

Furthermore, it is not only the high risk futures and commodities markets that are perilous for investors. . . . Even the bond markets, which in the past at least gave the outside appearance of stability, are in increasing turmoil. . . .

In light of these and many other examples that could be given, suppose the SEC announced that individual investors, for their own protection, no longer have access to securities markets. They are no longer permitted to buy stocks, bonds, or commodities or futures options. If this were to happen there surely would be a public outcry of protest, even moral outrage. The reasons for such outrage probably would revolve around the belief that some fundamental right had been violated, perhaps the presumed right that markets should be free and open so that everyone has an opportunity to better his or her position and enjoy the goods and services of society.

A quick look, however, reveals that not all markets have unrestricted access. Nor is there a generally accepted belief that any rights are being unjustifiably violated in such cases. In consumer markets, for example, individuals under a certain age are prohibited from voting, buying alcoholic beverages, and seeing certain movies. Regardless of age, not just anyone can buy a fully automatic rifle or order a few dozen hand grenades. In fact, not just anyone can drive a car; one must pass a test and be licensed to do that. Furthermore, even after being allowed to drive, this privilege can be revoked if it is abused. And, of course, none of our citizens is legally permitted to participate in certain drug markets, such as cocaine.

But it will be argued that there is good reason for these and other such restrictions. We are attempting to prevent people, the argument goes, from harming themselves or causing harm to others. This is what makes it morally permissible, or even obligatory, to restrict access to certain kinds of consumer products. The ethical principle here is that, when possible, persons ought to be protected from undue harm. Hence, the restrictions in question are justified.

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Yet might not this be exactly the rationale behind a possible SEC ban against individual investors entering securities markets? Just as unrestricted access to some drugs is thought to present unacceptable risks to consumers, trading in today's securities markets may present unacceptable risks to many investors, resulting in great financial rather than physical harm. And since we feel justified in prohibiting consumers from buying what we take to be highly dangerous drugs or other consumer products, shouldn't we, by analogy, be justified in prohibiting certain investors from buying highly risky financial instruments? . . .

EXACTLY WHAT KIND OF INVESTOR ARE WE TALKING ABOUT?

The type of investor we will be concerned with, and the type we take to be the most likely candidate for the SEC prohibition mentioned earlier, is one that (a) is at relatively *high risk*, where risk is a function of the probability of a certain market event occurring and the degree of harm the investor would suffer were the event to occur, and (b) an investor who is relatively *unsophisticated* about the functioning of the market and hence unappreciative of the degree of risk he or she faces. For example, suppose Jones invests his life savings in high yield bonds . . . and suppose a few months later the company that issued the bonds suddenly announces that it is going into Chapter 11 bankruptcy. The value of the bonds drops precipitously and, for all practical purposes, in a matter of hours Jones' savings are wiped out. If Jones did not realize that the high return he was initially receiving was a reflection of the risky nature of the bonds, then he would fall within the category of investors with which we are concerned even assuming he had several million dollars invested. . . .

WHAT SORT OF JUSTIFICATION MIGHT BE OFFERED FOR RESTRICTING THE INVESTMENTS OF AT-RISK INVESTORS?

One kind of justification that might be proposed is paternalistic. By paternalism we roughly mean interfering with a person's actions or preferences by restricting their freedom of action or the range of choices normally available to them for the reason that such a restriction promotes or preserves their good, welfare, happiness, or interests. A paternalistic justification for restricting at risk investors would be that exposure to risk for many investors is too great to permit them to continue without some sort of protection that reduces the risk to an acceptable degree. For certain investors an acceptable degree may be no risk at all. For others some risk may be permissible. In either case, the argument goes, as long as the intent of intervention is to protect or promote the good of at-risk investors, and as long as it does not wrong other persons, then intervention is at least permissible and may be obligatory. It is only in this way that harm to many investors can be prevented.

The standard objection to paternalistic justifications is something like this: If people choose to run the risk to gain what they believe will be the rewards, who are we to interfere? From where do we derive a special dispensation to overrule their choices and interfere with their lives?

Although there is a kernel of truth in this objection, it is much too facile. Some paternalistic acts are clearly justified. Paternalistic reasoning is commonly used to justify restricting the choices of children and people judged incompetent or otherwise unable rationally to consider the consequences of their acts. Moreover, paternalistic justifications are not obviously unreasonable even in cases where the competence of the person is not in question. It is at least initially credible that some consumer products, such as prescription drugs, are not in unrestricted circulation precisely because of paternalistic reasons.

Let us confine our discussion to those persons ordinarily taken to be competent and rational. We still do not believe that paternalism per se justifies restricting at-risk investors that fall within this category. One reason is that it may be impossible to find out just what the good or welfare of an individual investor is. Not only is there the thorny problem of trying to reach a common and precise understanding of the vague idea of the "good" of a person, there are immense practical difficulties in discovering whether a certain individual's good is served by restricting his or her access to the market. There may be situations where an individual's good is not served, and intervention in those cases would be a wrongful violation of his or her rights.

But suppose regulators do know the good of some individuals. Would paternalism then justify intervening to preserve or promote their good? We believe not in cases where regulators and the person in question have differing conceptions of that person's good. Even if regulators happen to know a person's "true" good better than he or she does themselves, imposing on that person a conception of his or her good they do not accept is not justified. Regulators may attempt to persuade at-risk investors to take a different course or provide them with information that they need to make an informed decision, but it is not permissible to deny them the right to direct their lives. . . .

Although paternalism as characterized thus far does not justify interference with the choices of at-risk investors, there are circumstances in which intervention is justified. This can best be explained by using an example not related to investing. Suppose Jones mistakenly believes the food he is about to eat is wholesome but we have good reason to think it is contaminated with botulism. As he raises the fork to his mouth, we only have time to strike it away. At first he is angry, but after we explain the reason for our action he is grateful. The act of striking the fork away is an example of paternalistic intervention since it is done for Jones' good but against his wishes. It seems obvious, however, that we acted properly. Intervention in this case is justified since if Jones were fully aware of the circumstances he would act differently or would agree to have us intervene on his behalf. He would consent to our action. Hence, intervention here respects his right to freedom since it is compatible with his goals and does not force upon him some version of his good he would not accept.

Note that it is not merely our superior knowledge of the situation that justifies interference, but also our judgment that Jones would agree that our actions preserve or promote his good. The case would be different were Jones attempting suicide instead of trying to have a decent meal. Paternalistic intervention may not be justified when a person voluntarily undertakes an action harmful to him- or herself, provided that person has a reasonably complete understanding of his or her circumstances and the consequences of the action. But it is at least prima facie justified, we suggest, when an action is based on incomplete information and thus is, in one sense, less than fully voluntary.

Now suppose there are compelling grounds to believe that some otherwise competent investors are unappreciative of the high degree of risk they face, and that if they were presented with information about those risks they would act either to reduce or eliminate them, or would consent to having restrictions placed on the kinds of investments they could make. Since they would consent to intervention or act differently were they fully aware of the circumstances, intervention on their behalf is justified just as it was justified for Jones. Their rights are not violated since nothing is imposed on them that they would not consent to were they fully aware of the dangers they faced.

A major difference between the Jones case and at-risk investors is that we dealt with Jones as an individual, but a regulatory or legislative body would have to deal with at-risk investors as a group. There simply is no way to reach them all individually. Furthermore, although such bodies may be able to make reasonable assumptions about the kinds of risks acceptable to most at-risk investors, and about the kinds of restrictions to which most of them would agree, it seems inevitable that there will be some investors who would not consent to restrictions because, for example, they have an unusual conception of their good or welfare, or because they find the restrictions highly offensive. For these people restrictions on investing will impose a foreign conception of their good on them and thus is not compatible with their right to direct their lives. . . .

If the *reason* given for intervening is promoting the good of at-risk investors as a group, then, as we have tried to argue, it is not justified. Suppose, however, the reason is not only that the good of some investors is promoted, but that there is a duty to intervene to protect certain *rights*, in particular, the right of investors not to be harmed. The argument would go something like this: There is good reason to believe that some at-risk investors would consent to having restrictions placed on them to protect their financial position and prevent them from suffering financial harm. Since it is a basic function of government to protect its citizens from harm, there is a duty to protect these investors. Hence, placing restrictions on their investment activities is justified even though such restrictions may violate the right of other investors to direct their lives as they see fit.

If this argument is plausible, then there is a conflict of rights between two groups of at-risk investors. This is a genuine moral dilemma that can only be resolved by deciding whose rights are to prevail. We believe it should be the right not to be harmed. An analogy with prescription drugs may be helpful here. One reason there are restrictions on access to drugs is to prevent harm to persons who do not know how to use them correctly. These restrictions are justified, in our view, even supposing there are some individuals willing to take the risk. The right to freedom of this latter group should be and should remain a serious consideration in devising restrictions on drugs, but it does not override the right of others not to be exposed to excessive risk and possible serious harm.

The same holds true of at-risk investors. The right of some of them not to be exposed to excessive risk and possible serious financial harm overrides the right of others to invest without restrictions. We emphasize, however, that the right to freedom cannot be lightly dismissed, and must be given due consideration when formulating policies and regulations governing the markets. . . .

IF SOME INVESTORS ARE RESTRICTED, HOW SHOULD IT BE DONE?

Since we are not experts in the regulation of securities markets, the best we can do here is make a few suggestions that seem to us worthy of additional investigation. It is a basic premise, essential for any just system of regulation and law, that relevantly different classes of persons be treated in relevantly different ways. Hence, it clearly would be unjust to restrict the activities of all investors to protect some of them. It also follows from this basic premise that distinctions must be drawn within the class of at-risk investors. It may turn out in the end that there is no workable method of protecting some at-risk investors while preserving the rights of all of them, but it would be a mistake to begin with this assumption.

In light of this it might be suggested that the only plausible course of action is to make sure that at-risk investors have all the information they need to make investment decisions. This has at least three advantages. The first is that providing information does not seriously infringe any rights. And establishing stringent policies to ensure that the information is received also may be reasonable. For example, suppose that to demonstrate a minimum level of competence persons must pass an examination before investing, just as they have to pass a driving exam before driving. Different kinds of exams could be given for different kinds of investments. Would such a procedure violate any rights? It certainly would be costly and inconvenient, but we doubt that it is an inordinate restriction on the right to freedom.

A second advantage is that providing information is already one function of the Securities and Exchange Commission. According to the Commission's pamphlet "Consumers' Financial Guide" the three main responsibilities of the Commission are:

1. To require that companies that offer their securities for sale in "interstate commerce" register with the Commission and make available to investors complete and accurate information.
2. To protect investors against misrepresentation and fraud in the issuance and sale of securities.
3. To oversee the securities markets to ensure they operate in a fair and orderly manner.

Although the pamphlet goes on to advise investors that "whatever the choice of investment, make sure that you have complete and accurate information before investing to ensure that you use your funds wisely," it also emphasizes that the SEC does not see itself as the guarantor of investments:

> Registration. . .does not insure investors against loss of their investments, but serves rather to provide information upon which investors may base an informed and realistic evaluation of the worth of a security.

Thus, providing information to at-risk investors is consistent with the mission of the SEC and would not require massive restructuring of the Commission.

The third advantage is that providing information would be the most direct way to discover whether investors would consent to restrictions. Earlier we argued that restrictions on some at-risk investors are justified because they would consent to intervention if they were fully aware of the risk they faced. But instead of imposing regulations based on what investors *would* do were they to have all the relevant information, it is preferable to give them the information whenever possible and see what they *actually* do. This would avoid the danger of imposing on them a conception of their good that they do not accept.

We agree that providing information to at-risk investors is a good idea, and propose that methods be initiated that ensure that investors receive the information, rather than just having it available for those that seek it out. However, this may not be enough to eliminate unacceptable risks for at-risk investors. Consider the prescription drug market again, and assume that the FDA made strenuous efforts to provide consumers with complete information about drugs. Supposing for a moment that it is legally permissible for consumers to buy drugs, as it is in some countries, this might be enough to eliminate unacceptable risk of harm from drugs for the few that had the time, energy, and expertise to use the information. But for most people it would be an overwhelming blizzard of paper that would be of no real use.

The same reasoning applies in the securities markets. So much information is available and it is so complex that for many investors beyond a certain point it would be too costly to make the investment in time required to assimilate it all. Having "complete and accurate information," as the SEC suggests, is not enough. Leaving aside the issue of how one determines whether it is complete and accurate (note that not even the SEC does that), there remains the problem of understanding it well enough to make a wise investment decision. Perhaps it could be done, but would it be done by most at-risk investors? We are inclined to think not. So we suggest that, just as with prescription drugs, at-risk investors be required by law to engage the services of an expert. This would go a long way toward eliminating unacceptable risks for them, and given the significant possibility of harm many investors face, we do not feel it would be an excessive restriction on their freedom. Exceptions would have to be made for those investors willing to become expert in the markets (since they would no longer meet the definition of an at-risk investor), and some system of qualifications would need to be established to identify investment counselors capable of advising the other investors. . . .

NOTES

1. "The Penny Stock Scandal," *Business Week*, 23 (January 1989), pp. 74–82.
2. "Investors Can Take a Bite Out of Fraud," *Wall Street Journal*, (January 24, 1989), p. C1.
3. *Wall Street Journal*, (January 24, 1989), p. C1.

QUESTIONS

1. What is an individual investor, and why are individual investors a special category of investor?
2. How should some investors be restricted from risk in securities markets? Why should they be?

Joanne B. Ciulla

Exploitation of Need

The fact that a person can choose his or her work does not necessarily justify ill-treatment by an employer. Part of the question is how many options a person really does have. A common myth is that all people really have a wide range of choices when it comes to making a living. The most important part of the American dream was that anyone could become anything. This was a land not only of opportunity but of options. But what about the destitute person whose only options are degrading ones?

The practice of self-enslavement had been around for a long time. It was common among the Germanic and Anglo-Saxon peoples in the Middle Ages. A person in need of support and/or protection would sell himself to another. This choice, though more or less freely made, was grounded in the same fears of starvation and violence found in other forms of slavery. Self-enslavement raises some interesting questions. Does a frightened and starving person *freely* choose to enter into a contract with someone who can provide him or her with food and safety? This is a question that lies beneath the way Americans think about employment. Is any kind of work or any set of working conditions okay as long as a person freely chooses it? We may be quicker to defend people's right to do any job they want to do, but what about the right of employers to hire people for physically dangerous or personally demeaning work?

The philosopher John Locke offers some insight into these questions. The desire to be free from the yoke of one's master or employer is at the heart of some of our most treasured political ideals. In the first of his two treatises on government, Locke asks, "And how is it that property in land gives a man power over another?" Here Locke is disputing the natural right of kings over property and their subjects. Locke argues that people own the work of their hands and the labor of their bodies. He also notes that we have a moral obligation to help those in need and not take advantage of them: "Charity gives every man a title to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise; and a man can no more justly make use of another's necessity, to force him to become his vassal, by withholding that relief."

Locke then goes on to raise one of the biggest tensions of the employer–employee relationship. He writes that "the subjugation of the needy does not begin with the consent of the Lord, but with the consent of the poor man, who preferred being his [another person's] subject to starving." So, it's wrong to force a needy person to be your slave, but it's not wrong for the needy person to choose to be your slave or indentured servant. Are the two really that different? This is like the employer who says to a single mother of four, "If you don't like working here you are free to leave" or "If you didn't like the working conditions here, then you shouldn't have taken the job in the first place." A single mother who lives in a small town and has four children to support has the freedom to choose where to work, but little to choose from. When it comes to work, everyone has freedom of choice, but not everyone has viable options.

The actual difference between the indentured servant and the slave rests on his or her consent, even if a person really has only one viable choice. The indentured servant's bondage may be short-term and tempered by the voluntary contractual arrangements between the two people. The slave's bondage is involuntary and long-term, and there is no restriction on the master's power over the slave. In theory at least, it is not wrong to take away a person's freedom as long as he or she consents to the arrangement. This begs the larger question of exploitation. How much freedom and human dignity can an employer morally justify buying because someone is willing to sell it? The fourteen-year-old runaway on Sunset Boulevard in Los Angeles is willing to sell his body to buy the drugs he desperately needs. To what extent does he "freely" enter into the transaction? The answer to a question like this has always been hotly contested. Some would argue that the boy could

To: You
From: The Philosopher
Subject: "Marx on Alienated Labor"

There are a lot of people who feel alienated from their jobs and don't want to be identified with their work. The guy who serves you fries at McDonald's probably does not want his work to identify who he is. His job is to make food exactly the way he is told and wait on you fast. This isn't rocket science. Some people are much bigger than their jobs. Karl Marx understood this. He might have been misguided in his economics, but he was a keen observer of what happens to people when they are alienated from their work:

> . . .he does not confirm himself in his work, he denies himself, feels miserable instead of happy, deploys no free physical and intellectual energy, but mortifies his body and ruins his mind. Thus the worker only feels a stranger. He is at home when he is not working and when he works he is not at home.
>
> The result we arrive at then is that man (the worker) only feels himself freely active in his animal functions of eating, drinking, and procreating, at most also in his dwelling and dress, and feels himself in his animal functions. Eating, drinking, procreating, etc. are indeed truly human functions. But in the abstraction that separates them from the other round of human activity and makes them into final and exclusive ends they become animal.*

* From Karl Marx, *Capital*, Penguin Classics, 1992.

choose otherwise, others that given his physical and psychological condition, he is not free.

MONKEY LABOR

It is easy to slip into a logic of exploitation that says that those in need who are exploited are better off than they would be if they weren't exploited. *The Economist* ran a tongue-in-cheek report on working monkeys that illustrates this logic. In southern Thailand several thousand monkeys are "employed" every year to pick the 1.5 million-ton crop of coconuts. Village families train the monkeys and rent them out to plantation owners. The monkeys "earn" about twelve dollars per month in "monkey wages" of eggs, rice, and fruit from the plantation owner. Working monkeys are given names; they are groomed, bathed, and fed three times a day. Sometimes their owners even give them a ride to work, on the back of their motor scooters. When a monkey is ill, it gets the day off. When it is too old to work, it "retires," either back into the wild or as a family pet. The downside of the monkeys' work is that they are kept on chains and not allowed to breed at will. However, the article points out, this practice of "employment" keeps some species such as the crab-eating macaque from becoming extinct because their habitat is being destroyed by humans.

There is a striking parallel between this case and the way that colonists—and some people today—have justified their treatment of indigenous or tribal people in Africa, the Americas, and Australia. They would argue that although the farmers take away the monkeys' freedom, the monkeys are "better off" than they would be on their own in the wild, especially since their habitat has been largely taken over by the farmers. We don't know what the monkeys think. Would they prefer to give up their monkey wages, their names, their daily baths and motor scooter rides to take their chances in the wild? The justification for this arrangement is simple. It's okay for farmers to take away the monkey's freedom because they supply the monkey with what *they* think the monkey needs, even if it is not what the monkey wants.

This extreme (and, to some, frivolous) case illustrates how the logic of exploitation justifies taking advantage of those in need by arguing that one is taking care of people's needs. Exploitation is also about using one's power over others to determine what people need and what they *should* be willing to trade to have their needs filled. Similarly, the farmer decides that the monkey *needs* three meals a day and assumes that the monkey is willing to give up its freedom for them. As we'll see later, sometimes employers fill "needs" that employees do not have or want.

WAGES FOR TIME AND FREEDOM

We own our labor and we own our freedom. Freedom, like labor, is something that we can barter. Most paid employment involves some loss of freedom for the employee. All of us must sell, in varying degrees, our work and our time to earn a living. Both John Locke and Adam Smith realized that employees are not really paid for what they produce. Smith said workers receive compensation for their loss of freedom at work, not for the product they make. Here loss of freedom means a restriction of their liberty to do and say or not to do and say certain things during the time that they are working. Usually when we take a job we implicitly or explicitly agree to do it when, where, and how our employer wants it done. For instance, think about a receptionist's job. She has to sit at the front desk all day, greet people, and answer the phone. She is not totally free to come and go when she pleases. Someone has to cover for her when she goes to the rest room, or takes a break for coffee or lunch. *Being there* is a fundamental part of her job. She is paid for her time as well as for what she does. She can't say what she wants when she answers the phone, she has to be polite and say the name of the company. Today managers would argue that she is paid for the value she adds to the organization—her "value added."

The idea that wages are compensation for loss of freedom also leads to some absurd possibilities. Would this mean that the less freedom a person has on the job the more he or she should get paid? Quite the contrary: jobs with more surface freedom tend to signal higher status and pay more money. In his book *Class*, Paul Fussell argues that the amount of freedom one has on the job is a better indicator of class than salary. The idea of selling freedom often goes hand-in-hand with selling labor, especially when a person is in desperate need of a job and has little choice.

QUESTIONS

1. Tom desperately needs a job. Tom will work for $1 an hour because he cannot find a job that pays more. Although some of my workers (who perform comparable work) are paid $7 an hour or more, I offer Tom the job at $1 an hour. I do not force Tom to take the job. He happily accepts the job. Have I done something wrong in offering Tom a job he was grateful to accept? Why or why not, according to Ciulla?

2. What does Ciulla mean by "self-enslavement"? Can you give examples from your own experience of self-enslavement?

of animals acknowledged to be all of the same species derive from nature a much more remarkable distinction of genius than what, antecedent to custom and education, appears to take place among men. By nature a philosopher is not in genius and disposition half so different from a street porter as a mastiff is from a greyhound, or a greyhound from a spaniel, or this last from a shepherd's dog. Those different tribes of animals, however, though all of the same species, are of scarce any use to one another. The strength of the mastiff is not in chase whatever part of the produce of other men's talents he has occasion for.

QUESTIONS

1. Why does Smith believe that "self-love" is a good thing?
2. Why does Smith discuss the differences in people's talents? Why is it important that the difference in talents is not so large as we often suppose?

Latin Trade

A Latin Viewpoint: The Bentonville Menace

Latin Trade is a South American business magazine.

If you wonder why more Latin American countries aren't jumping on the free-trade bandwagon, look no further than the cutthroat business practices of the world's largest private company, US$245 billion-in-revenues Wal-Mart Stores.

From *Latin Trade*, May 2004.

Taking screw-the-workers capitalism to new depths, this modern-day robber baron has pushed its Latin American suppliers to cut costs to the bone or lose their contracts to China. They are even trying to force down labor costs in emerging Asia. It seems even $0.40 cents an hour—the estimated wage in China—is too high for the heartless executives at the front offices in Bentonville, Arkansas.

In some 40 lawsuits reportedly filed in the United States, the corporate behemoth—its annual sales is greater than the gross domestic product (GDP) of all but two Latin American economies—has been accused of using third-party contractors who hire illegal immigrants to work below minimum wage; of forcing employees to work overtime without pay; of busting up attempts to unionize; and of skimping on worker and retirement compensation. The company's official line is anti-union.

An internal audit at Wal-Mart three years ago—as reported in the *New York Times*—showed extensive violations of child labor laws. Meanwhile, a federal judge in San Francisco is considering a sexual discrimination suit that could encompass as many as 1.6 million women, making it the largest civil rights class-action case in U.S. history.

If Wal-Mart stands accused of engaging in such shenanigans in the United States, imagine its corporate behavior in far-less-litigious Latin America.

"Many Latin Americans concerned about economic development see little benefit from the Wal-Mart model of maximizing profits by paying poverty wages," says Kent Wong, director of the Center for Labor Research and Education at the University of California at Los Angeles.

It was a *Los Angeles Times* exposé published in November that noted how Wal-Mart's global network of 10,000 suppliers is under constant pressure to reduce costs. The article described the unhappy life of a Honduran woman named Isabel Reyes, who works for a textile company in San Pedro Sula that makes shirts and shorts for Wal-Mart. With quotas constantly rising, she now works 10 hours a day, sewing sleeves onto 1,200 shirts a day for about $35 a week. The 37-year-old seamstress can't hold her infant daughter without gulping anti-inflammatory pills.

To be sure, nobody is forcing Reyes to work there. "It's easy to compare a $35 a week salary with a U.S. salary," Wal-Mart spokesman Bill Wertz told me. "But I don't know what the alternatives are in that country."

He's right—to an extent. What choice does Reyes have in a nation where 53% of the population lives below the poverty line, and 28% of the work force is unemployed?

Latin American governments are grappling with weak economies and need all the jobs they can get. Wal-Mart offers lots of them. The retail chain is now Mexico's largest private employer, with 663 stores and 100,000 employees. The chain generates $11 billion a year there—more than the country's entire tourism sector, or about 2% of Mexico's GDP. Puerto Rico has 53 Wal-Mart stores with 11,600 workers. Brazil has 25 stores and 6,600 employees; Argentina 11 stores and 4,200 employees.

And customers all over the world love bargain prices. In 1995, I covered the opening of Wal-Mart's first store in São Paulo. I remember Brazilians rhapsodizing over the store's mantra of "everyday low prices." So many people lined up to get inside during the first week of business that the manager had to lock out some customers.

Still, it's time to hold this mega-corporation accountable. Latin American leaders must not be forced to cower to foreign investors who threaten to move elsewhere if they don't play by the rules of take-no-prisoners U.S. capitalism.

Free trade was supposed to create decent paying jobs that ultimately offer Latin American families a middle-class life style and turn them into consumers. Unfortunately, fairness has never been part of the free trade blueprint. Nor, in my view, is fairness uppermost in the mind of Wal-Mart's corporate masters.

Consumers should think twice about patronizing any business that perpetuates economic injustice. Everyday social justice is more important than low prices at any cost.

QUESTIONS

1. What is the problem with Wal-Mart in Latin America?

2. Is economic justice more important than low prices? Should we be shopping at Wal-Mart?