

people in business have to do concerns not a conflict between ethics and profits but rather the conflict between two ethical systems. In general, it is an apt rule of thumb that one should follow the customs and ethics of the community. But suppose there is a conflict not only of mores but of morals, as in the apartheid policies of South Africa. Then the rule to obey (and support) one's own moral principles takes priority. What is even more difficult is what one should do when the moral issue is not clear and moral categories vary from culture to culture. A much debated example is the question of giving money to expedite a transaction in many third-world countries. It is "bribery" in our system, "supporting public servants" in theirs. Bribery is illegal and unethical here because it contradicts our notion of a free and open market. But does the same apply in the third world, where business (and social life) have very different presuppositions? . . .

Ethical thinking is ultimately no more than considering oneself and one's company as citizens of the business community and of the larger society, with some concern for the well-being of others and—the mirror image of this—respect for oneself and one's character. Nothing in ethics excludes financially sound thinking, and there is nothing about ethics that requires sacrificing the bottom line. In both the long and the short run, ethical thinking is essential to strategic planning. There is nothing unethical about making money, but money is not the currency of ethical thinking in business.

Review and Discussion Questions

1. Solomon contends that ethical errors damage people's careers. How and why does this happen?
2. Solomon describes the view that business and ethics don't mix as the "myth of amoral business." Why does he think it is a myth? Do you agree?
3. Solomon suggests several times that unethical conduct hurts business as whole. Why does he think this? Do you agree with him?
4. Do most businesspeople respect the "Three Cs"? In your experience, how much unethical behavior is there in business today? What happens to companies like Brake Breakers? Can they be successful?
5. Does the existence of "business scum" undermine Solomon's claim that businesspeople are professionals and that business is a practice with definite rules?
6. Of Solomon's eight rules for ethical thinking in business, which ones concern *compliance*, which ones concern *contributions*, and which concern *consequences*? Which rules do not fall into these three categories? In your view, which of the eight rules are the most important? Are there rules that could be dropped from, or rules that should be added, to Solomon's list?
7. Assess Solomon's claim that "there is nothing about ethics that requires sacrificing the bottom line" (p. 45). Is it compatible with his statement that "there is no guarantee that ethics is good for the bottom line" (p. 41)?

READING 1.2

Moral Responsibility in the Age of Bureaucracy

DAVID LUBAN, ALAN STRUDLER,
AND DAVID WASSERMAN

Large bureaucratic organizations frequently dilute an individual's sense of moral responsibility, and members of such organizations are

all too likely to acquiesce in organizational misconduct. One reason for this is that inside the organization knowledge can be so fragmented that an individual may be partially or wholly ignorant of what the organization is doing. David Luban, Alan Strudler, and David Wasserman examine this problem. Whereas most moral theories presuppose that the moral agent knows that a decision must be made and what choices are available, these authors

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explore the moral responsibilities of individuals in organizational situations in which they lack this knowledge.

BACKGROUND OF THE PROBLEM

The bureaucratic fragmentation of knowledge and dilution of responsibility are pervasive phenomena in modern society. To set the stage for our analysis, we first describe the scope of the problem and briefly review some of the research, commentary, and debate it has provoked. We conclude this background section by discussing the research most relevant to our own concerns, the Milgram studies of destructive obedience to authority.

The Collectivization of the Workplace

Most work in modern society is done by organizations: corporations, governments, hospitals, foundations, universities, accounting firms, armies. Even such supposedly independent professionals as physicians and lawyers practice in large organizations to an ever-increasing extent. The HMO has replaced the family physician, and the new graduates of today's law schools join firms, of which the largest now employ over a thousand lawyers, rather than hanging out a shingle. The problems of professional and business ethics have thus become the problems of supervisors and subordinates in organizational settings. Indeed, in a culture such as ours, where our first question to each other is often not "How do you do?" but "What do you do?" the ethics of the workplace has enormous impact on how we think of morality in general. To a great extent, ethics in the organizational setting has come to define ethics as a whole. We speak of team players and loose cannons, leaders and followers, as categories of moral judgment and not simply of social description.

The Organization Man and the Other-Directed Society

The transformation of the workplace appears to have wrought a transformation in values, replacing individual responsibility and internal norms with group identification and external norms.

As the postwar American economy assumed its contemporary form, several leading social scientists and commentators explored the psychology of "The Organization Man," in the famous title of William H. Whyte's book. Whyte used this term to describe "the ones of our middle class who have left home, spiritually as well as physically, to take the vows of organization life."¹ He ascribed to them the "Social Ethic," which includes "a belief in the group as the source of creativity" as well as "a belief in 'belongingness' as the ultimate need of the individual."²

David Riesman described middle-class Americans as a "Lonely Crowd," and elaborated a famous typology of characters. In Riesman's scheme, people of premodern societies were *tradition-directed*, and the sanction for deviation was *shame*; in early modern societies people were *inner-directed*, guided by an internal moral compass, acquired in childhood, which induces *guilt* when one deviates. In contemporary society, however, we have become *other-directed*: our "contemporaries are the source of direction for the individual. . . . [T]he process of paying close attention to the signals from others . . . remain[s] unaltered throughout life."³ For other-directed individuals, the sanction for deviance has changed: "As against guilt-and-shame controls, though of course these survive, one prime psychological lever of the other-directed person is a diffuse *anxiety*."⁴ Sociologist Robert Jackall conducted interviews with 143 managers in several contemporary American corporations. In the anxiety-ridden world of middle management, "[m]anagers have a myriad of aphorisms that refer to how the power of CEOs, magnified through the zealous efforts of subordinates, affects them. . . . [One such maxim is] 'When he sneezes, we all catch colds'. . . ." Jackall comments:

As a result, independent morally evaluative judgments get subordinated to the social intricacies of the bureaucratic workplace. Notions of morality that one might hold and indeed practice outside the workplace . . . become irrelevant. . . . Under certain conditions, such notions may even become dangerous. For the most part, then, they remain unarticulated lest one risk damaging crucial relationships with significant individuals or groups.⁶

Historical Perspective

The collectivization of the workplace and the threat it poses to traditional moral values are hardly new phenomena; they have been recognized, and lamented, for the past 150 years. The erosion of individual responsibility and the evils of bureaucracy have engaged conservative writers since the advent of the industrial revolution. Over a century ago, Karl Marx likewise criticized what he called "the real mindlessness of the state." "The bureaucracy is a circle from which no one can escape," Marx contended. "The highest point entrusts the understanding of particulars to the lower echelons, whereas these, on the other hand, credit the highest with an understanding in regard to the universal; and thus they deceive one another."⁷ In 1932, Reinhold Niebuhr wrote his classic treatise *Moral Man and Immoral Society*, in which he argued that

[i]ndividual men may be moral. . . . They are endowed by nature with a measure of sympathy and consideration for their kind, the breadth of which may be extended by an astute social pedagogy. . . . But all these achievements are more difficult, if not impossible, for human societies and social groups. In every human group there is less reason to guide and to check impulse, less capacity for self-transcendence, less ability to comprehend the needs of others and therefore more unrestrained egoism than the individuals, who compose the group, reveal in their personal relationships.⁸

Niebuhr's argument recognizes that the increasing organization of society will be accompanied by a dilution of morality.

. . . [T]he problems Marx and Niebuhr discussed in a theoretical vein came to life in the most horrible way possible during World War II, where ostensibly civilized human beings tortured and slaughtered twelve million men, women, and children in extermination camps. The names of the camps—Auschwitz, Treblinka, Majdanek—have become synonymous with the incomprehensible willingness of ordinary human beings to do anything, no matter how atrocious, when ordered to do so by those in authority. Here, again, an explanation may be

offered in terms of the division of responsibility within groups. Consider a historian's description of the euthanasia program Hitler ordered to eliminate mentally retarded, handicapped, or genetically ill Germans (individuals Hitler called "useless eaters"):

The euthanasia program . . . demonstrated how, through fragmentation of authority and tasks, it was possible to fashion a murder machine. Hitler had enunciated an off-hand, extra-legal decree, and had not wanted to be bothered about it again. Brandt had ordered the "scientific" implementation of the program and, like Hitler, wished to hear no complaints. The directors and personnel of institutions rationalized that matters were out of their hands and that they were just filling out questionnaires . . . , though in reality each form was the equivalent of a death warrant. . . . The personnel at the end of the line excused themselves on the basis that they were under compulsion, had no power of decision, and were merely performing a function. Thousands of people were involved, but each considered himself nothing but a cog in the machine and reasoned that it was the machine, not he, that was responsible.⁹

The horrors of Nazism are without parallel, but the bureaucratic pattern of organization that fragments the knowledge required for moral decision making is common to large institutions throughout contemporary society. Jackall describes the typical corporate structure in terms not unlike those Marx used to characterize "the real mindlessness of the state":

Power is concentrated at the top in the person of the chief executive officer (CEO) and is simultaneously decentralized; that is, responsibility for decisions and profits is pushed as far down the organizational line as possible.

. . . [P]ushing details down protects the privilege of authority to declare that a mistake has been made. . . . Moreover, pushing down details relieves superiors of the burden of too much knowledge, particularly guilty knowledge.

. . . [Middle managers] become the "point men" of a given strategy and the potential "fall guys" when things go wrong.¹⁰

Hannah Arendt described the bureaucratic phenomenon as a novel form of governance appearing alongside the classical distinction among rule by one (monarchy), rule by "the best" (aristocracy), rule by the few (oligarchy), and rule by the many (democracy). She wrote of

the latest and perhaps most formidable form of . . . dominion: bureaucracy or the rule of an intricate system of bureaus in which no men, neither one nor the best, neither the few nor the many, can be held responsible, and which could be properly called rule by Nobody. (If, in accord with traditional political thought, we identify tyranny as government that is not held to give account of itself, rule by Nobody is clearly the most tyrannical of all, since there is no one left who could even be asked to answer for what is being done. It is . . . impossible to localize responsibility and to identify the enemy. . . .)¹¹

Such rumors of the demise of responsibility may be exaggerated; yet Arendt's description has the ring of familiarity. A graphic contemporary analogue appeared in litigation surrounding the Dalkon Shield. In his opinion, Federal Judge Frank Theis angrily noted:

The project manager for Dalkon Shield explains that a particular question should have gone to the medical department, the medical department representative explains that the question was really the bailiwick of the quality control department, and the quality control department representative explains that the project manager was the one with the authority to make a decision on that question. . . . [I]t is not at all unusual for the hard questions posed in Dalkon Shield cases to be unanswerable by anyone from Robins [the manufacturer].¹²

One must not be naive, of course: often the defense of fragmented knowledge will be entered falsely and cynically, as a form of liability screening. Executives in the hot seat should be treated with the same skepticism that greeted German officials who "didn't know." Despite this healthy skepticism, however, we remain convinced that fragmented knowledge

is a genuine phenomenon that we cannot simply dismiss as a lame excuse.

The Psychology of Destructive Obedience

Social scientists have labored to understand the Holocaust and to answer the all-important question whether it could occur in other settings. Stanley Milgram conducted perhaps the most significant—and certainly the most famous—experimental studies to address this issue. Milgram's experiments underscore our thesis because they illustrate the ways in which social and institutional pressures to obey reinforce, and are reinforced by, the fragmentation of knowledge in modern bureaucracies and other large organizations.

In Milgram's experiments, volunteers in a Yale University experiment were ordered by the experimenter to administer gradually increasing electric shocks to another "subject" (actually a confederate of the experimenter), ostensibly to study the effect of punishment on learning. As the "shocks" increased in intensity, the confederate displayed increasing discomfort, demanded that the experiment stop, screamed with pain, complained of a heart condition, and finally fell silent as if he were unconscious.¹³ In this original experiment, sixty-five percent of the subjects went all the way, administering the highest possible, potentially lethal, level of shock. Those subjects who administered the maximum shock expressed great discomfort at the cruel task they were assigned; many of them berated the experimenter, protested, or insisted that they would not proceed with the experiment—all the while continuing to flip the switches.

Milgram conducted a number of important variations on the original experiment, several of which suggest the role that incomplete and fragmented knowledge may play in facilitating destructive obedience and the abdication of individual responsibility. In one version, the experiment was removed from the anxiety-relieving auspices of Yale to a seedy-looking storefront operation in nearby Bridgeport. Less able to reassure themselves that the experimenters knew what they were doing, fifty-three percent of the subjects refused to go all the way. This suggests that compliant subordinates often believe that

their qualms are merely the result of incomplete understanding, and assume that those in charge have good reasons for what they are doing.

The rate of compliance also declined when the subject could see the victim, and declined even further when the subject was actually required to hold the victim's hand on the contact-plate. In this latter version of the experiment, seventy percent of the subjects stopped before administering the maximum level of shock. . . .

Another form of ignorance that appears to have played a significant role in Milgram's experiments was the absence of a clear-cut moment of decision. Few subjects would have hesitated to give a mild, tingling shock; most probably would have refused to give an initial shock of maximum voltage. The gradual escalation of voltage was insidious because it deprived subjects of an obvious stopping point, encouraging them to defer resistance until they saw themselves as committed, or as compromised. This kind of slippery slope may characterize many of the decisions made in contemporary organizations.

Another variant of the Milgram experiments, however, provides some encouragement that resistance and reform may be possible in organizational settings. In this study, the subject was assigned to a team administering the shocks, while the other team members were really confederates of the experimenter. Milgram discovered that compliance was extraordinarily sensitive to peer pressure. When the other team members refused to proceed with the experiment, only ten percent of the subjects remained obedient to the experimenter and "went all the way." Conversely, when a teammate rather than the subject took charge of physically administering the shock, 92.5% of the subjects went along with the experiment up to the maximum shock. . . .

The Milgram studies, then, suggest the role of imperfect and fragmented knowledge in organizational misconduct. The less individuals appreciate the consequences of their acts, the need to decide, and the available alternatives, the easier it will be for them to engage in destructive obedience. Milgram's experiments suggest that the fragmentation of knowledge

promotes organizational wrongdoing by blunting the edge of moral conflict.

Although Milgram's research focused on subordinates, parallel problems arise for supervisors. As we have seen, bureaucratic structures serve to deny supervisors knowledge of operational details, blunt their awareness of harsh consequences, and help them rationalize what they cannot ignore. The result is the deep paradox of the "rule by Nobody": when neither superiors nor subordinates may be held responsible, we face an uncanny situation in which responsibility has seemingly been conjured out of existence.

The Inadequacy of Ethical Tradition and Philosophical Theory

. . . We believe that the specter of fragmented knowledge, divided responsibility, ambiguous orders, and unknown consequences is inadequately addressed in the moral discourse of Western societies. Virtually every approach to normative ethics, from the Ten Commandments to the latest wrinkles in philosophy journals, focuses primary attention on moral problems in which four *knowledge conditions* are satisfied—knowledge conditions that are frequently absent in individual decision making and almost never found in organizational settings.

First, the decision maker recognizes that he or she has come to a fork in the road: The decision maker knows *that* a decision must be made. Do I or don't I cheat on the examination? Do I or don't I protest when I hear an acquaintance tell an anti-Semitic joke? Situations such as these are readily identifiable as moral decisions. Typically, when we face one of these questions, we know that we face it.

Second, the decision maker recognizes that he or she must make the choice in a fairly short, distinct period of time: The decision maker knows *when* a decision must be made, or at least *by* when it must be made. The examination is tomorrow; I must confront the acquaintance about his anti-Semitic joke now or never.

Third, the decision maker confronts a small number of well-defined options: The decision maker knows *what choices* are available. For example, a lawyer, learning that her client is

using her services to perpetrate a fraud, can quickly catalogue her options: do what the client asks, try to talk the client out of the plan, blow the whistle on the client, or resign.

Fourth, the decisionmaker has the information needed to make the decision: The decisionmaker knows *what is needed* to make the choice. Even in situations of radically incomplete information, theories of rational decisionmaking under uncertainty allow us to assign probability-estimates to these various outcomes in order to generate a recommendation, though that recommendation may be merely to flip a coin.

These, then, are the four knowledge conditions of moral decisionmaking: we know *that* a decision must be made, *when* a decision must be made, *what choices* are available, and *what is needed* to make the choice. From the Biblical "Thou shalt not steal" and the Golden Rule, to Kant's categorical imperative and the utilitarian injunction to achieve the greatest good for the greatest number, the core precepts of the major systems of ethical thought are directed to agents who satisfy the knowledge conditions. If the conditions are not satisfied, ethical systems generally respond with mitigation or even immunity: forgiving those who "know not what they do" is basic to Western understandings of moral responsibility.

Ignorance can, of course, be culpable; but most philosophers and legal theorists who acknowledge the phenomenon of culpable ignorance have implicitly confined it to a small range of exceptional cases: conspirators who attempt to preserve their deniability, or drunks who have willfully stupefied themselves. The possibility that the modern workplace may place millions of ordinary individuals in a state of culpable ignorance throughout their careers has never, to our knowledge, been explicitly addressed in moral theory.

In an organizational setting, one or more of the four knowledge conditions typically fails at a critical juncture. As the Milgram experiments illustrated, individuals in bureaucratic settings may not fully appreciate that a decision must be made, understand when it should be made, realize what choices are open to them, and comprehend what the consequences of different choices will be. A law firm associate asked to research a

small point of law or a junior architect asked to design a detail may have no idea that the project as a whole raises deep questions of professional ethics. Even if they have their suspicions, it is often impossible to pinpoint a moment of truth when the decision must be made. No clear list of options, or even clear understanding of whom to speak with, may exist, and the subordinate may never believe she has sufficient information to fashion a solution.

The failure of these knowledge conditions is created or maintained by organizational structure. Typically, supervisors parcel out subtasks to a number of subordinate employees. None of the subordinates may have more than the most general idea of what the entire project is about, while the supervisor may know nothing about the details of each subordinate's subtasks. No member of the organization might recognize a moral problem, because the problem arises not from what any *one* member of the team is doing, but rather from all their actions put together. The fact that each is merely a member of a team lulls them into a sense of security, so that they feel no pressing need to find out more about what is going on. . . .

This, then, is the central philosophical question that the problem of fragmented knowledge raises: *Is it possible to formulate satisfactory principles of individual responsibility when any or all of the four knowledge conditions presupposed by standard moral theories fail?*

RESPONSIBILITY WITHOUT KNOWLEDGE

. . . At bottom, four approaches exist to the problem of "deeds without doers." First, we can simply accept as a tragic fact of modern existence that organizational wrongs may be committed for which no one—neither individuals nor the organization—can rightly be held responsible. More optimistically, we can either hold the organization itself morally responsible for the wrongdoing or hold all the individuals affiliated with the organization strictly liable. Finally, we can extend standard principles of culpable ignorance to explain why individuals in organizations may be held responsible for their actions even though the knowledge conditions fail. This is the approach we will defend. . . .

Extending Individual Responsibility

The simplest way of extending the concept of culpable ignorance to situations in which the knowledge conditions fail is to invoke an analogy to drunk driving. By the time a driver has had six drinks, he may no longer have the reflexes or judgment to avoid an accident, and thus in one sense he is not responsible for what he does behind the wheel. Obviously, though, we *do* hold him responsible. Why? The answer seems simple enough: although we agree that once he became drunk he lost effective control of his actions, we blame him for becoming drunk in the first place. Though he was not fully responsible at the time of the accident, it was his own fault that he was not responsible. . . .

Analogously, we may agree that individuals in organizational settings often do not know enough to be held responsible for organizational wrongdoings and yet we insist that they should have known. They were willfully blind. Thus, for example, if an SS officer claimed that he did not know about the SS's murderous activities, we may wish to insist that his ignorance is blameworthy. He should have known what he was joining.

The drunk driving analogy suggests that we can hold people responsible for getting into the very predicament that at first glance seems to relieve them of responsibility. If we focus on the act of drinking, this suggests that an employee is responsible for the predicament he gets into by joining an organization that fragments relevant knowledge. Except in the case of outlaw groups like the SS, however, we do not want to treat the act of joining an organization, like the act of heavy drinking, as suspect or presumptively wrong.

We would do better to focus on the driving aspect of the drunk driving analogy. Driving is a valuable activity, and our licensing procedures are designed to make it widely available. Because of the lethal potential of the automobile, however, the privilege of driving hinges on an exercise of alertness, caution, and self-restraint that we do not require of pedestrians or passengers. We allow pedestrians and passengers to impair their reflexes and judgment with alcohol, but we treat it as a legal and

moral offense for a driver or prospective driver to do so.

Analogously, because of the great potential for harm arising from the division of labor and fragmentation of knowledge in a corporate or bureaucratic organization, employees may acquire duties far more demanding than doing no evil. They must look and listen for evil and attempt to thwart it if they discover it. These duties, however, are not as limited and well-defined as those imposed on the driver. We expect prospective drivers to "just say no," but we cannot expect organizational employees to know everything about the operation in which they are involved. While drinking is a gratuitous impediment to driving, fragmented knowledge inheres in the structure of the organization itself. We are left with a question that does not arise in the context of drunk driving: What and how much precaution do we require of the individual employee?

We cannot answer this question definitively, but we can begin by suggesting several obligations that arise from the specific risk of organizational enterprise: the risk that an individual will do or contribute to great harm without knowing it.

1. *Obligations of investigation.* The first, most obvious, possibility is to hold individuals in organizational settings morally responsible for discerning the nature of their own projects and for discovering what other employees are doing with their work products. The idea is obvious because it remedies the absence of knowledge in the most straightforward way: by demanding that individuals do their best to acquire the knowledge they lack.

2. *Obligations of communication.* A second possibility is to hold individuals who possess troublesome knowledge morally responsible for communicating it to others in the organization. Obviously, communication may be a risky course of action: supervisors treasure their "deniability," and shooting the messenger is often their knee-jerk response. Yet riskiness does not distinguish this from other moral responsibilities: we often believe that people have moral obligations to act against their self-interest.

3. *Obligations of protection.* The previous suggestions imply that supervisors may have moral obligations to protect their subordinates from adverse consequences of investigation and communication. For example, they may be morally responsible for protecting whistleblowers from retaliation.

4. *Obligations of prevention.* Those in management positions may have moral obligations to forestall wrongdoing by setting up structures that avoid the problems we have been examining. Such preventive mechanisms might include ombudsmen, incentive structures that reward moral action, channels for anonymous information about problems, and so on. . . .

5. *Obligations of precaution.* In some cases, we may be able to analogize the act of joining an organization to the act of heavy drinking: the individual knows or should know that once she becomes involved, her discretion and knowledge will be so constricted that she cannot be held responsible for wrongdoing that, in broad outline, she can reasonably anticipate. The fatal misstep is involving herself in the first place. More often than not, would-be employees of organizations have some prior sense of the organization's values and culture. We may therefore hold individuals responsible for joining the organization in the first place, as we might hold an individual German responsible for joining the SS.

That individuals in an organization have obligations like these, and that their breach provides a basis for assigning the individuals responsibility for wrongs done in ignorance, seems plausible. But this approach to extending individual responsibility for organizational wrongdoing raises two critical questions. First, how demanding are these obligations? . . . Second, how much vigilance is enough? . . .

As we have described them, the moral obligations of the individual employee seem to fall somewhere between *perfect* duties like not killing, with fairly precise boundaries, and *imperfect* duties like charity or self-improvement, that require only some indeterminate effort. If we attempt to make these duties perfect, through more precise formulation, we risk defining them

too narrowly; if we attempt to make them imperfect, by demanding a "reasonable" effort, we risk making them too vague. . . .

What is an individual responsible for in failing to fulfill these *preemptive duties*, as we shall call the obligations of investigation, communication, protection, prevention, and precaution? Should we blame her only for the breach of the preemptive duty, or should we blame her for the resulting offense as if she had known all the relevant facts (and thus hold her immune from censure if no harm results)? Is the employee responsible just for failing to investigate (at the time she fails to do so), or does she lose her excuse of ignorance with respect to any facts the investigation would have yielded?

Neither approach seems fully satisfactory. In limiting responsibility to the breach of preemptive duties, we impose the same blame or punishment regardless of what wrongs result; in withholding the excuse of ignorance for the offense, we treat a negligent employee as if she were responsible for intentional wrongdoing. And if we assign responsibility *only* when a wrong is actually done, we fail to censure those lucky enough to ignore their special obligations without adverse effect. . . .

The critical inquiry is whether, in acting in a way that creates an excuse, the individual is at fault for the offense excused. . . . Applied to organizational wrongdoing, [this] approach . . . would ground the employee's responsibility for the harm in her preemptive duties to investigate, prevent, and so forth. By breaching these duties, the employee has played a role in causing or contributing to the commission of the offense. The key question would not be whether the employee deliberately, recklessly, or negligently breached her duty but whether, by failing to perform it, she intentionally, recklessly, or negligently facilitated the wrongdoing.¹⁴

Thus, if an employee should have known that by investigating a new project before it commenced, she could ascertain whether it involved exporting toxic substances, and there was some reason to suspect that it might, she would be responsible for negligently exporting those substances, even if, by the time she

exported them, the most diligent inquiry would not have revealed their toxic character. Had she actually known that an investigation could have revealed that information, but failed to investigate, she would be responsible for recklessly exporting toxic substances, even if, by the time she exported them, she was no longer able to ascertain their toxic character.

In some cases, this approach may lead us to hold employees who act in ignorance responsible for intentional wrongdoing. If the employee deliberately insulated herself from knowledge about the exports, intending to export toxic substances without being told that specific exports were toxic, she would be responsible for their intentional export despite her ignorance at the time she exported them. But if she deliberately insulated herself from such knowledge only because she hated confrontations, she would be responsible for no more than reckless export, since she did not know the character of the substances or intend or hope that they might be toxic. This approach, then, avoids the harshness of denying an employee an excuse for organizational wrongdoing if she has any fault for creating the excuse. It treats her as responsible for wrongdoing only to the extent that she is at fault for excusing or justifying its commission. . . .

CONCLUSION

The preemptive obligations we are proposing have in recent years become widely accepted in both public and private bureaucracies. Governmental agencies typically have ombudsmen, and state and federal governments have enacted protections for whistleblowers. In the wake of several incidents, the Exxon Corporation has enacted regulations requiring employees who notice possible misconduct or dangerous situations to notify their superiors in writing; the superiors, in turn, are required to respond in writing, and if no written response is forthcoming, the employee must jump the chain of command and inform higher-level executives.

Regarded as public policy proposals, our preemptive obligations are already found in corporate manuals and memoranda. We are not offering a proposal for regulations whose time

has come, however, but an account of individual moral responsibility. That is, we argue not only that bureaucratic organizations should institute policies along the lines we have suggested, but also that individual executives within the organizations are morally blameworthy for failing to implement such policies and that individual employees and executives are morally blameworthy for violating preemptive obligations *even in the absence of policies implementing them*.

Notes

1. William H. Whyte, Jr., *The Organization Man* 3 (1956).
2. *Id.* at 7.
3. David Riesman, *The Lonely Crowd* 22 (1950) (emphasis omitted).
4. *Id.* at 26.
5. Robert Jackall, *Moral Mazes: The World of Corporate Managers* 22 (1988).
6. *Id.* at 105.
7. Karl Marx, *Critique of Hegel's "Philosophy of Right"* 46–47 (Joseph O'Malley, ed., 1970).
8. Reinhold Niebuhr, *Moral Man and Immoral Society* xi–xii (rev. ed. 1960).
9. Robert E. Conot, *Justice at Nuremberg* 210–211 (1983).
10. Jackall, *supra* note 5, at 17, 20–21.
11. Hannah Arendt, *On Violence* 38–39 (1970).
12. *In re A. H. Robins Co. "Dalkon Shield" IUD Prods. Liab.*, 575 F. Supp. 718, 724 (D. Kan. 1983).
13. See Stanley Milgram, *Obedience to Authority: An Experimental View* 3–4 (1974).
14. Similarly, if a person negligently provoked another to use deadly force, he would not lose his right to kill in self-defense. If he exercised that right, however, he would be guilty of negligent homicide for creating the need for self-defense. If he provoked another in order to give himself a legal justification for killing that person, he would be guilty of intentional homicide.

To bear any responsibility for the ultimate offense, the agent must be at fault for creating the specific excusing or justifying condition he relies on. If he negligently provoked someone without reason to expect that she would resort to deadly force, he would not be guilty of homicide in creating the need for self-defense. He would be responsible at most for negligent provocation and the use of nondeadly defensive force.