Even though authority terminated, whether by action of the parties or operation of law, the principal may still be subject to liability. Apparent authority in many instances will still exist; this is called lingering authority. Restat 3d of Agency § 3.11. It is imperative for a principal on termination of authority to notify all those who may still be in a position to deal with the agent. The only exceptions to this requirement are when termination is effected by death, loss of the principal's capacity, or an event that would make it impossible to carry out the object of the agency.

Business Ethics

Most of those who write about ethics do not make a clear distinction between ethics and morality. The question of what is "right" or "morally correct" or "ethically correct" or "morally desirable" in any situation is variously phrased, but all of the words and phrases are after the same thing: what act is "better" in a moral or ethical sense than some other act? People sometimes speak of morality as something personal but view ethics as having wider social implications. Others see morality as the subject of a field of study, that field being ethics. Ethics would be morality as applied to any number of subjects, including journalistic ethics, business ethics, or the ethics of professionals such as doctors, attorneys, and accountants. For our purposes, *ethics* and *morality* will be used as equivalent terms.

People often speak about the ethics or morality of individuals and also about the morality or ethics of corporations and nations. There are clearly differences in the kind of moral responsibility that we can fairly ascribe to corporations and nations; we tend to see individuals as having a soul, or at least a conscience, but there is no general agreement that nations or corporations have either. Still, our ordinary use of language does point to something significant: if we say that some nations are "evil" and others are "corrupt," then we make moral judgments about the quality of actions undertaken by the governments or people of that nation. For example, if North Korea is characterized by the US president as part of an "axis of evil," or if we conclude that WorldCom or Enron acted "unethically" in certain respects, then we are making judgments that their collective actions are morally deficient.

In talking about morality, we often use the word *good*; but that word can be confusing. If we say that Microsoft is a "good company," we may be making a statement about the investment potential of Microsoft stock, or their preeminence in the market, or their ability to win lawsuits or appeals or to influence administrative agencies. Less likely, though possibly, we may be making a statement about the civic virtue and corporate social responsibility of Microsoft. In the first set of judgments, we use the word *good* but mean something other than ethical or moral; only in the second instance are we using the word *good* in its ethical or moral sense.

A word such as *good* can embrace ethical or moral values but also nonethical values. If I like Daniel and try to convince you what a "good guy" he is, you may ask all sorts of questions: Is he good-looking? Well-off? Fun to be with? Humorous? Athletic? Smart? I could answer all of those questions with a yes, yet you would still not know any of his moral qualities. But if I said that he was honest, caring, forthright, and diligent, volunteered in local soup kitchens, or donated to the church, many people would see Daniel as having certain ethical or moral qualities. If I said that he keeps the Golden Rule as well as anyone I know, you could conclude that he is an ethical person. But if I said that he is "always in control" or "always at the top of his game," you would probably not make inferences or assumptions about his character or ethics.

There are three key points here:

- Although morals and ethics are not precisely measurable, people generally have similar reactions about what actions or conduct can rightly be called ethical or moral.
- As humans, we need and value ethical people and want to be around them.
- Saying that someone or some organization is law-abiding does not mean the same as saying a person or company is ethical.

Here is a cautionary note: for individuals, it is far from easy to recognize an ethical problem, have a clear and usable decision-making process to deal with it, and then have the moral courage to do what's right. All of that is even more difficult within a business organization, where corporate employees vary in their motivations, loyalties, commitments, and character. There is no universally accepted way for developing an organization where employees feel valued, respected, and free to openly disagree; where the actions of top management are crystal clear; and where all the employees feel loyal and accountable to one another.
Before talking about how ethics relates to law, we can conclude that ethics is the study of morality—"right" and "wrong"—in the context of everyday life, organizational behaviors, and even how society operates and is governed.

How Do Law and Ethics Differ?

There is a difference between legal compliance and moral excellence. Few would choose a professional service, health care or otherwise, because the provider had a record of perfect legal compliance, or always following the letter of the law. There are many professional ethics codes, primarily because people realize that law prescribes only a minimum of morality and does not provide purpose or goals that can mean excellent service to customers, clients, or patients.

Business ethicists have talked for years about the intersection of law and ethics. Simply put, what is legal is not necessarily ethical. Conversely, what is ethical is not necessarily legal. There are lots of legal maneuvers that are not all that ethical; the well-used phrase "legal loophole" suggests as much.

Here are two propositions about business and ethics. Consider whether they strike you as true or whether you would need to know more in order to make a judgment.

Individuals and organizations have reputations. (For an individual, moral reputation is most often tied to others' perceptions of his or her character: is the individual honest, diligent, reliable, fair, and caring? The reputation of an organization is built on the goodwill that suppliers, customers, the community, and employees feel toward it. Although an organization is not a person in the usual sense, the goodwill that people feel about the organization is based on their perception of its better qualities by a variety of stakeholders: customers or clients, suppliers, investors, employees, government officials.

The goodwill of an organization is to a great extent based on the actions it takes and on whether the actions are favorably viewed. (This goodwill is usually specifically counted in the sale of a business as an asset that the buyer pays. While it is difficult to place a monetary value on goodwill, a firm's good reputation will generally call for a higher evaluation in the final accounting before the sale. Legal troubles or a reputation for having legal troubles will only lessen the price for a business and will even lessen the value of the company's stock as bad legal news comes to the public's attention.) Another reason to think about ethics in connection with law is that the laws themselves are meant to express some moral view. If there are legal prohibitions against cheating the Medicare program, it is because people (legislators or their agents) have collectively decided that cheating Medicare is wrong. If there are legal prohibitions against assisting someone to commit suicide, it is because there has been a group decision that doing so is immoral. Thus the law provides some important cues as to what society regards as right or wrong.

Finally, important policy issues that face society are often resolved through law, but it is important to understand the moral perspectives that underlie public debate—as, for example, in the continuing controversies over stem-cell research, medical use of marijuana, and abortion. Some ethical perspectives focus on rights, some on social utility, some on virtue or character, and some on social justice. People consciously (or, more often, unconsciously) adopt one or more of these perspectives, and even if they completely agree on the facts with an opponent, they will not change their views. Fundamentally, the difference comes down to incompatible moral perspectives, a clash of basic values. These are hot-button issues because society is divided, not so much over facts, but over basic values. Understanding the varied moral perspectives and values in public policy debates is a clarifying benefit in following or participating in these important discussions.

Why Should an Individual or a Business Entity Be Ethical?

The usual answer is that good ethics is good business. In the long run, businesses that pay attention to ethics as well as law do better; they are viewed more favorably by customers. But this is a difficult claim to measure scientifically, because "the long run" is an indistinct period of time and because there are as yet no generally accepted criteria by which ethical excellence can be measured. In addition, life is still lived in the short run, and there are many occasions when something short of perfect conduct is a lot more profitable.

Some years ago, Royal Dutch/Shell (one of the world's largest companies) found that it was in deep trouble with the public for its apparent carelessness with the environment and human rights. Consumers were boycotting and investors were getting frightened, so the company took a long, hard look at its ethic of short-term profit maximization. Since then, changes have been made. The CEO told one group of business ethicists that the uproar had taken them by surprise; they thought they had done everything right, but it seemed there was a "ghost in the machine." That ghost was consumers, non-governmental organizations (NGOs), and the media, all of whom objected to the company's seeming lack of moral sensitivity.

The market does respond to unethical behavior. For example, the Arthur Andersen story illustrates this point quite dramatically. A major accounting firm, Andersen worked closely with Enron in hiding its various losses through creative accounting measures. Suspiciously, Andersen's Houston office also did some shredding around the clock, appearing to cover up what it was doing for Enron. A criminal case based on this shredding resulted in a conviction, later overturned by the Supreme Court. But it was too late. Even before the conviction, many clients had found other accounting firms that were not under suspicion, and the Supreme Court's reversal came too late to save the company. Even without the conviction, Andersen would have lost significant market share.

The irony of Andersen as a poster child for overly aggressive accounting practices is that the man who founded the firm built it on integrity and straightforward practices. "Think straight, talk straight" was the company's motto. Andersen established the company's reputation for integrity over a hundred years ago by refusing to play numbers games for a potentially lucrative client.

Maximizing profits while being legally compliant is not a very inspiring goal for a business. People in an organization need some quality or excellence to strive for. By focusing on pushing the edge of what is legal, by looking for loopholes in the law that would help create short-term financial gain, companies have often learned that in the long term they are not actually satisfying the market, the shareholders, the suppliers, or the community generally.

What Is Business Ethics?

What does it mean to say a business practice doesn't "pass the smell test"? And what would happen if someone read the article and said, "Well, to me it smells all right"? If no substance fills out the idea, if there's no elaboration, then there probably wouldn't be much more to say. The two would agree to disagree and move on. Normally, that's OK; no one has time to debate everything. But if you want to get involved—if you're like Wagoner, who sounds angry about what's going on and maybe wants to change it—you'll need to do more than make comments about how things hit the nose.

Doing *business ethics* means providing reasons for how things ought to be in the economic world. This requires the following:

- ***Arranging values to guide decisions.*** There needs to be a clearly defined and well-justified set of priorities about what's worth seeking and protecting and what other things we're willing to compromise or give up. For example, what's more important and valuable: consumers (in this case students paying for an education) getting their books cheaply or protecting the right of the university to run the business side of its operation as it sees fit?
- ***Understanding the facts.*** To effectively apply a set of values to any situation, the situation itself must be carefully defined. Who, for example, is involved in the textbook conflict? Students, clearly, as well as university administrators. What about parents who frequently subsidize their college children? Are they participants or just spectators? What about those childless men and women in Alabama whose taxes go to the university? Are *they* involved? And how much money are we talking about? Where does it go? Why? How and when did all this get started?
- ***Constructing arguments.*** This shows how, given the facts, one action serves our values better than other actions. While the complexities of real life frequently disallow absolute proofs, there remains an absolute requirement of comprehensible reasoning. Arguments need to make sense to outside observers. In simple, practical terms, the test of an ethical argument resembles the test of a recipe for a cook: others need to be able to follow it and come to the same result. There may remain disagreements about facts and values at the end of an argument in ethics, but others need to understand the reasoning marking each step taken on the way to your conclusion.

Finally, the last word in ethics is a determination about right and wrong. This actual result, however, is secondary to the process: the verdict is only the remainder of forming and debating arguments. That's why doing ethics isn't brainwashing. Conclusions are only taken seriously if composed from clear values, recognized facts, and solid arguments.

Bringing Ethics to Kickback Textbooks

The *Wall Street Journal* article on textbooks and kickbacks to the university is a mix of facts, values, and arguments. They can be sorted out; an opportunity to do the sorting is provided by one of the article's more direct assertions: Royalty arrangements involving specially made books may violate colleges' conflict-of-interest rules because they appear to benefit universities more than students.

A conflict of interest occurs when a university pledges to serve the interest of students but finds that *its own* interest is served by not doing that. It doesn't sound like this is a good thing (in the language of the article, it smells bad). But to reach that conclusion in ethical terms, the specific values, facts, and arguments surrounding this conflict need to be defined.

Start with the values. The priorities and convictions underneath the conflict-of-interest accusation are clear. When a university takes tuition money from a student and promises to do the best job possible in providing an

Hechinger, John. "As Textbooks Go 'Custom,' Students Pay: Colleges Receive Royalties for School-Specific Editions; Barrier to Secondhand Sales." Wall Street Journal, 10 July 2008. Proquest Newsstream.

A. Ends v. Means

In business ethics, do the means justify the ends, or do the ends justify the means? Is it better to have a set of rules telling you what you ought to do in any particular situation and then let the chips fall where they may, or should you worry more about how things are going to end up and do whatever's necessary to reach that goal?

Eddy Lepp ran an organic medicine business in Northern California. His herbal product soothed nausea and remedied vomiting, especially as suffered by chemo patients. He had a problem, though. While his business had been OK'd by California regulators, federal agencies hadn't approved: on the national level, selling his drug was breaking the law. On the other hand, *not* selling his remedy had a significant downside: it was consigning his clients to debilitating suffering. So when federal agents came knocking on his door, he had to make a decision.

If the means justify the ends—if you should follow the rules no matter the consequences—then when the agents ask Lepp point blank whether he's selling the medicine, the ethical action is to admit it. He should tell the truth even though that will mean the end of his business. On the other hand, if the ends justify the means—if your ethical interest focuses on the consequences of an act instead of what you actually do— then the ethics change. If there's a law forcing people to suffer unnecessarily, it should be broken. And when the agents ask him whether he's selling, he's going to have an ethical reason to lie.

Across the entire field of traditional ethics, this is a foundational distinction. Is it what you do that matters, or the consequences? It's hard to get oriented in ethics without making a preliminary decision between these two. No one can make the decision for you, but before anyone can make it, an understanding of how each works should be reached.

B. Rights Theories

An ethics based on rights is similar to an ethics based on duties, which we will cover later. In both cases specific principles provide ethical guidance for your acts, and those principles are to be obeyed regardless of the consequences further down the line. Unlike duties, however, rights-based ethics concentrate their force in delineating your possibilities. The question isn't so much *What are you morally required to do*; it's more about defining exactly where and when you're free to do whatever you want and then deciding where you need to stop and make room for other people to be free too. Stated slightly differently, ***duties tend to be ethics as what you can't do, and rights tend to be about what you can do***.

My Property, My Religion, My Nonprofit Organization, My Health Care, My Grass

Let's look at Eddy Lepp again. Charles Edward "Eddy" Lepp is in jail now, in a prison not too far away from the site of the business that got him in trouble: Eddy's Medicinal Gardens and Ministry. What was Eddy Lepp, the gardener and minister, up to on his twenty-acre property near a lake in California, about a hundred miles north from San Francisco? Here are the highlights:

- **Ministry.** Lepp claims—and there doesn't seem to be anyone who disputes him—that he's an authentic Rastafarian reverend.
- **Rastafarianism.** Developed over the last century in Africa and the Caribbean, the religion works within the basic structure of Christianity but contains important innovations. Haile Selassie I was the emperor of Ethiopia from 1930 to 1974 and, according to the faith, was also the reincarnation of Jesus Christ. Further, marijuana—called *ganja* by believers—accompanies religious meetings and ceremonies; it brings adherents closer to God.
- **Lepp's Medicinal Gardens.** In fact, this wasn't a garden so much as a collective farm. Lepp oversaw the work of volunteers—their numbers totaling about two hundred—and did some harvesting and planting himself. Many of the farm's marijuana leaves were smoked by the 2,500 members of his zonked-out church as part of Rastafarian celebrations and meetings, and the rest was, according to Lepp, distributed to individuals with serious health problems.
- **Marijuana and health care.** Studies indicate that in some patients marijuana may alleviate nausea and vomiting, especially as connected with chemotherapy. There's also a list of further symptoms and maladies the drug could relieve, according to some evidence. It should be noted here that many suspect the persons conducting these studies (not to mention the patients receiving the testing) are favorably predisposed toward marijuana in the first place, and the prejudice may contaminate conclusions. What's certain is that from a strictly medical perspective, the question about marijuana's utility remains controversial. Among those who are convinced, however, smoking is a good remedy. That's why in California patients have been granted a legal right to possess and use marijuana medicinally, as long as they've got a doctor's approval. Unfortunately for Lepp, California law can't bar federal prosecutions, and it was the US Drug Enforcement Administration from all the way out in Washington, DC, that eventually came after him. (Egelko and Larson)

Nearing 70 and out of prison since 2016, Eddy Lepp is one of those guys who never really left Woodstock. Before being incarcerated, he slumped around in tie-dyes and jeans. He liked wearing a hat emblazoned with the marijuana leaf. Out on his semirural farm, he passed the days smoking joints and listening to Bob Marley music. Everyone seems to like Eddy. A longtime activist for the legalization of marijuana, he's even something of a folk hero in Northern California. At his sentencing, the crowd (chanting "free Eddy!") spilled out into the courthouse hallways. The judge didn't seem to mind the spectacle, and she went out of her way to say she didn't want to hit him with ten years of jail time, but federal guidelines gave her no choice.

What's a Right?

One definition of a **right** in ethics is *a justified claim against others*. I have the right to launch a gardening business or a church enterprise or both on my property, and you're not allowed to simply storm in and ruin things. You do have the right, however, to produce *your own* garden company and church on your property. On my side, I have the right to free speech, to say whatever I want no matter how outrageous and you can't stop me. You can, however, say whatever you want, too; you can respond to my words with whatever comes into your head or just ignore me completely. A right, in sum, is something you may do if you wish, and others are morally obligated to permit your action.

Duties tend to be *protective* in nature; they're about assuring that people aren't mistreated. Rights are the flip side; they're *liberating* in nature, they're about assuring that you're as free as possible. Because rights theory maximizes choices in the name of ethics, it's not surprising that Lepp built his court defense on that ground. Lepp fought the law by maintaining that his medical gardens business and church operations involved *his* land and *his* religion. It wasn't that he had a right to grow pot or pray to a specific God; that had nothing to do with it. The point is he had a right *to do whatever* he wanted on that land, and *believe in whatever* he wanted in his mind. That's what rights are about. As opposed to duties that fix on specific acts, rights ethics declares that there are places (like my land) where the acts don't matter. As long as no one else's rights are being infringed on, I'm free.

Finally, duties tend to be community oriented: they're about how we get along with others. Rights tend to center on the individual and what he or she can do regardless of whether anyone else is around or not.

What Are the Characteristics of Rights?

English philosopher John Locke (1632–1704) maintained that rights are

- **Universal.** The fundamental rights don't transform as you move from place to place or change with the years.
- **Equal.** They're the same for all, men and women, young and old.
- **Inalienable.** They can't be taken, they can't be sold, and they can't be given away. We can't *not* have them. This leads to a curious paradox at the heart of rights theory. Freedom is a bedrock right, but we're *not* free to sell ourselves into slavery. We can't because freedom is the *way* we are; since freedom is part of my essence, it can't go away without me disappearing too.

What Rights Do I Have?

The right to life is just what it sounds like: Lepp, you, and I should be able to go through our days without worrying about someone terminating our existence. This right is so deeply embedded in our culture that it almost seems unnecessary to state, but we don't need to stretch too far away from our time and place to find scenes of the right's trampling. Between the world wars, Ukraine struggled for independence from Joseph Stalin's neighboring Russia. Stalin sealed the borders and sent troops to destroy all food in the country. Millions died from starvation. Less dramatically but more contemporaneously, the right to life is cited as an argument against capital punishment.

The right to freedom guarantees individuals that they may do as they please, assuming their actions don't encroach on the freedom of others. In a business environment, this assures entrepreneurs like Lepp may mount whatever business operation they choose. Lepp's garden and ministry were surely unorthodox, but that can't be a reason for its prohibition. Similarly, *within* a company, the right to freedom protects individuals against abuse. No boss can demand more from an employee than what that employee freely agreed—frequently through a signed contract—to provide.

From the right to freedom, other rights seem to derive naturally. The right to free speech is tremendously important in the commercial world. Lepp's messages to his Rasta flock may have provoked skepticism in some listeners, but no one doubts that he had a right to voice his ideas. The right to religious expression also follows from basic freedom. It guaranteed Lepp the space he needed to pioneer his particular brand of gardening Rastafarianism in Northern California. His is, obviously, a weird case, but the right works in more traditional workplaces, too. Emily Bazar (2008) reported a case where Muslim workers were fired from their jobs in several meatpacking plants in the Midwest because they left the production line in the middle of the day without authorization to go outside and pray. The workers' response? They filed a lawsuit claiming their right to religious expression had been violated.

No doubt it had been. But the company's response is also weighty. According to the article, "The problem with the Muslim prayer request is that it's not one day or annual, it's every day and multiple times. Further, those times shift over the course of the year based on the sun's position." (Bazar)

The result, according to the company, is that scheduling becomes very difficult, and those who aren't Muslim find it nearly impossible to keep working when they're getting abandoned so frequently during the day. Here we're confronted with a very basic conflict of rights. While no one doubts that freedom exists to practice a religion, isn't it also true that the company—or the company owners if we want to cast this in personal terms—have a right to set up a business in whatever manner they choose, with breaks scheduled for certain times and worker responsibilities strictly defined? In the end, the question about Muslim workers leaving the work floor to pray isn't about one *kind* of religion or another; it's not Christians against Muslims or something similar. The question is about which right takes precedence: the owners' right to set up and run a company as they wish or the employees' right to express their beliefs how and when they choose.

From an ethical perspective—which doesn't necessarily correlate with a legal one—the resolution to this dilemma and any clash about conflicting rights runs through the question of whether there's a way to protect the basic rights of *both* groups. It runs that way because rights are fundamentally about that, about maximizing freedom. In this case, it seems that firing the workers *does* achieve that goal. The owners' initiative inside their company is protected, and the workers are now able to pray when they desire.

To be sure, other ethical approaches will yield different outcomes, but in the midst of rights theory where individual liberty is the guiding rule and the maximization of freedom is the overriding goal, it's difficult for other concerns to get traction. So it may be that the *community as a whole* is better served by looking for a solution that allows Muslims to maintain their prayer schedule *while also* allowing the plant to continue functioning in a normal way. Even if that's true, however, it's not going to affect a rights-theory resolution very much because this kind of ethics privileges what *you* and *I* can do over what *we* can do together. It's an ethics of individualism.

The right to pursue happiness sits beside the right to life and the right to freedom at the foundation of rights ethics. The pursuit gives final direction and meaning to the broad theory. Here's how: it doesn't do much good to be alive if you're not free, so freedom orients the right to life. It also doesn't do much good to be free if you can't pursue happiness, so the right to pursue happiness orients freedom. That's the organizing reasoning of ethical rights; it's how the theory holds together. This reasoning leaves behind, however, the difficult question as to exactly where the pursuit of happiness leads.

Rights in Conflict

The deepest internal problems with rights ethics arise when rights conflict. Abortion is a quick, hot-button example. On one side (pro-life), support comes from the initial principle: a human being, born or not, has a right to life, which may not be breached. On the other side (pro-choice), every person's original freedom over themselves and their bodies ends all discussion. Now, one of the reasons this debate is so intractable is that both sides find equally strong support *within the same basic ethical framework*. There's no way to decide without infringing on one right or the other.

A complementary case arose around Lepp's Rasta religious gatherings. Though many of his neighbors didn't care, there were a few who objected to having what were essentially mini-Woodstocks on the land next door. It was impossible, of course, for Lepp to entirely contain the noise, the smoke from fires, the traffic congestion, and the rest entirely on his property. The question is, when does my right to do what I want on my land need to be curtailed so that your right to dominion over yours isn't soiled?

Broadening further, there's the question about Lepp growing marijuana for medicinal purposes. On one side, a rights theory supports his inclination to grow what he wants on his land and sell the fruits of his labors to other adults for their consenting use. His is a farming business like any other. But on the other side, a theory of rights can extend into the realm of positive requirements. The right to the pursuit of happiness implies a right to health, and this may require government oversight of medical products so that society as a whole may be protected from fraudulent claims or harmful substances. The question of marijuana shoots up right here. What happens when socially sanctioned entities like the US Food and Drug Administration decide that marijuana is harmful and should therefore be prohibited? Which rights trump the others, the negative right to freedom or the positive right to oversee medical substances?

Examples multiply easily. I have the right to free speech, but if I falsely yell "fire!" in a crowded theater and set off a life-threatening stampede, what's happening to everyone else's negative right to life and positive right to health?

What Justifies a Right?

One justification for an ethics of rights is comparable with the earlier-noted idea about duties being part of the logic of the universe. Both duties and rights exist because that's the way things *are* in the moral world. Just like the laws of physics tell us how far a ball will fly when thrown at a certain speed, so too the rules of rights tell us what ought to happen and not happen in ethical reality. The English philosopher John Locke subscribed to this view when he called our rights "natural." He meant that they're part of who we are and what we do and just by living we incarnate them.

Another justification for an ethics of rights is to derive them from the idea of duties. Kant reappears here, especially his imperative to treat others as ends and not as means to ends. If we *are* ends in ourselves, if we possess basic dignity, then that dignity must be reflected somehow: it must have some content, some meaning, and the case can be made that the content is our possession of certain autonomous rights.

Advantages and Drawbacks of an Ethics Based on Rights

Because of its emphasis on individual liberties, rights theory is very attractive to open-roaders and individualists. One of the central advantages of a rights ethics is that it clears a broad space for you and me and everyone else to be ourselves or make ourselves in any way we choose. On the other side of that strength, however, there's a disadvantage: centering ethics on the individual leaves little space of agreement about how we can live together. An ethics of rights doesn't do a lot to help us resolve our differences, it does little to promote tolerance, and it offers few guarantees that if I do something beneficial for you now, you'll do something beneficial for me later on.

Another strong advantage associated with an ethics of rights is simplicity in the sense that basic rights are fairly easy to understand and apply. The problem, however, with these blunt and comprehensible rights comes when two or more of them conflict. In those circumstances it's hard to know which rights trump the others. In the case of Lepp's business—the Medicinal Gardens—it's hard to be sure when his use of his land infringed on the rights of neighbors to enjoy their land, and it's difficult to know when the health product he offered—marijuana—should be prohibited in the name of the larger right to health for all individuals in a society. Most generally, it's difficult to adjudicate between claims of freedom: where does mine stop and yours begin?

C. Duty-Based Ethics

"Should I steal that?" "No, stealing's wrong." Basic ethics.

There are things that are right and others that are wrong, and the discussion ends. This level of clarity and solidity is the main strength of an ethics based on duties. We all have a duty not to steal, so we shouldn't do it. More broadly, when we're making moral decisions, the key to deciding well is understanding what our duties are and obeying them. An ethics based on duties is one where certain rules tell us what we ought to do, and it's our responsibility to know and follow those rules.

The Madoff Family

If we're supposed to obey our duties, then what exactly *are* they? That's a question Andrew Madoff faced in December 2008 when he learned that some—maybe most, maybe all—of the money he and his family had been donating to the charitable Lymphoma Research Foundation and similar medical investigation enterprises was, in fact, stolen.

It was big money—in the millions—channeled to dedicated researchers hot on the trail of a remedy for lymphoma, a deadly cancer. Andrew, it should be noted, wasn't only a cancer altruist; he was also a victim, and the charitable money started flowing to the researchers soon after he was diagnosed. It's unclear whether Andrew knew the money was stolen, but there's no doubt that his dad did. Dad— Bernard "Bernie" Madoff—was the one who took it. This was the largest Ponzi scheme in history. A Ponzi scheme—named after the famous perpetrator Charles Ponzi—makes suckers of investors by briefly delivering artificially high returns on their money. The idea is simple: You take $100 from client A, promising to invest the money cleverly and get a massive profit. You spend $50 on yourself, and at the end of the year, you send the other $50 back to the client along with a note saying that the original $100 investment is getting *excellent* results and another $50 should come in next year and every year from then on. Happy client A recommends friends, who become clients B, C, and D. They bring in a total of $300, so it's easy to make good on the original promise to send a $50 return the next year to client A. And you've now got $250 remaining from these three new clients, $150 of which you will soon return to them ($50 for each of the three new clients), leaving you with $100 to spend on yourself. The process repeats, and it's not long before people are lining up to hand over their money. Everyone makes off like bandits.

Bandit is the right term for Madoff, who ran his Ponzi empire for around fifteen years. So many people handed over so much cash, and the paper trail of fake stock-purchase receipts and the rest grew so complicated that it's impossible to determine exact numbers of victims and losses. Federal authorities have estimated the victims were around five thousand and the losses around $65 billion, which works out to about $13 million squeezed from each client.

Madoff had, obviously, rich clients. He met them at his home in New York City; at his mansion in hyperwealthy Palm Beach, Florida; or on his fifty-five-foot yacht cleverly named *Bull*. He impressed them with a calm demeanor and serious knowledge. While it's true that he was mostly taking clients' money and sticking it in his wallet, the investments he *claimed* to engineer were actually quite sophisticated; they had to do with buying stock in tandem with options to buy and sell that same stock on the futures market. He threw in technical words like "put" and "call" and left everyone thinking he was either crazy or a genius. Since he was apparently making money, "genius" seemed the more likely reality. People also found him trustworthy. He sat on the boards of several Wall Street professional organizations and was known on the charity circuit as a generous benefactor. Health research was a favorite, especially after Andrew's cancer was diagnosed.

Exactly how much money Madoff channeled to Andrew and other family members isn't clear. By late 2008, however, Andrew knew that his father's investment company had hit a rough patch. The stock market was crashing, investors wanted their money back, and Madoff was having trouble rounding up the cash, which explains why Andrew was surprised when his father called him in and said he'd decided to distribute about $200 million in bonuses to family members and employees.

It didn't make sense. How could there be a cash-flow crisis but still enough cash to pay out giant bonuses? The blunt question—according to the Madoff family—broke Madoff down. He spilled the truth: there was little money left; it was all a giant lie. The next day, Andrew reported the situation to the authorities.

Madoff pled guilty in 2009 to multiple counts of money laundering, securities fraud, and other felonies. He was sentenced to 150 years in jail. He died in prison on April 14, 2021 after serving just 12 years. Madoff claimed his scheme was his project alone and his children had no knowledge or participation in it, despite the fact that they were high-level executives in his fraudulent company. Stubbornly, he refused to cooperate with prosecutors interested in determining the extent to which the children may have been involved. His estate was seized. His wife, though, was left with a small sum—$2.5 million—to meet her day-to-day living expenses. Bilked investors got nearly nothing.

What Do I Owe Myself? Historically Accumulated Duties to the Self

Over centuries of thought and investigation by philosophers, clergy, politicians, entrepreneurs, parents, students—by just about everyone who cares about how we live together in a shared world—a limited number of duties have recurred persistently. Called perennial duties, these are basic obligations we have as human beings; they're the fundamental rules telling us how we should act. If we embrace them, we can be confident that in difficult situations we'll make morally respectable decisions.

Broadly, this group of perennial duties falls into two sorts:

- Duties to ourselves
- Duties to others

Duties to the self begin with our responsibility to develop our abilities and talents. The abilities we find within us, the idea is, aren't just gifts; it's not only a strike of luck that some of us are born with a knack for math, or an ear for music, or the ability to shepherd conflicts between people into agreements. All these skills are also responsibilities. When we receive them, *they come with the duty to develop them*, to not let them go to waste in front of the TV or on a pointless job.

Most of us have a feeling for this. It's one thing if a vaguely clumsy girl in a ballet class decides to not sign up the next semester and instead use the time trying to boost her GPA, but if someone who's really good— who's strong, and elegant, and a natural—decides to just walk away, of course the coach and friends are going to encourage her to think about it again. She has something that so few have, it's a shame to waste it; it's a kind of betrayal of her own uniqueness. This is the spot where the ethics come in: the idea is that she really *should* continue her development; it's a responsibility she has to herself because she really can develop.

What about Andrew Madoff, the cancer sufferer? He not only donated money to cancer research charities but also dedicated his time, serving as chairman of the Lymphoma Research Foundation (until his dad was arrested). This dedication *does* seem like a duty because of his unique situation: as a sufferer, he perfectly understood the misery caused by the disease, and as a wealthy person, he could muster a serious force against the suffering. When he did, he fulfilled the duty to exploit his particular abilities.

The other significant duty to oneself is nearly a corollary of the first: the duty to do ourselves no harm. At root, this means we have a responsibility to maintain ourselves healthily in the world. It doesn't do any good to dedicate hours training the body to dance beautifully if the *rest* of the hours are dedicated to alcoholism and Xanax. Similarly, Andrew should not only fight cancer publicly by advocating for medical research but also fight privately by adhering to his treatment regime.

What Do I Owe Others? Historically Accumulated Duties to Others

The duties we have to ourselves are the most immediate, but the most commonly referenced duties are those we have to others. Avoid wronging others is the guiding duty to those around us. It's difficult, however, to know exactly what it means to wrong another in every particular case. It does seem clear that Madoff wronged his clients when he pocketed their money. The case of his wife is blurrier, though. She was allowed to keep more than $2 million after her husband's sentencing. She claims she has a right to it because she never knew what her husband was doing, and anyway, at least that much money came to her from other perfectly legal investment initiatives her husband undertook. So she can make a case that the money is hers to keep and she's not wronging anyone by holding onto it. Still, it's hard not to wonder about investors here who lost everything, including their homes.

Honesty is the duty to tell the truth and not leave anything important out. On this front, obviously, Madoff wronged his investors by misleading them about what was happening with their money.

Respect others is the duty to treat others as equals in human terms. This doesn't mean treating everyone the same way. When a four-year-old asks where babies come from, the stork is a fine answer. When adult investors asked Madoff where the profits came from, what they got was more or less a fairy tale. Now, the first case is an example of respect: it demonstrates an understanding of another's capacity to comprehend the world and an attempt to provide an explanation matching that ability. The second is a lie; but more than that, it's a sting of disrespect. When Madoff invented stories about where the money came from, he disdained his investors as beneath him, treating them as unworthy of the truth.

Beneficence is the duty to promote the welfare of others; it's the Good Samaritan side of ethical duties. With respect to his own family members, Madoff certainly fulfilled this obligation: every one of them received constant and lavish amounts of cash. There's also beneficence in Andrew's work for charitable causes, even if there's a self-serving element, too. By contrast, Madoff displayed little beneficence for his clients.

Gratitude is the duty to thank and remember those who help us. One of the curious parts of Madoff's last chapter is that in the end, at the sentencing hearing, a parade of witnesses stood up to berate him. But even though Madoff had donated millions of dollars to charities over the years, not a single person or representative of a charitable organization stood up to say something on his behalf. That's ingratitude, no doubt.

But there's more here than ingratitude; there's also an important point about all ethics guided by basic duties: *the duties don't exist alone*. They're all part of a single fabric, and sometimes they pull against each other. In this case, the duty Madoff's beneficiaries probably felt to a man who'd given them so much was overwhelmed by the demand of another duty: the duty to respect others, specifically those who lost everything to Madoff. It's difficult to imagine a way to treat people more disdainfully than to thank the criminal who stole their money for being so generous, albeit with stolen money. Those who received charitable contributions from Madoff were tugged in one direction by gratitude to him and in another by respect for his many victims. All the receivers opted, finally, to respect the victims.

Fidelity is the duty to keep our promises and hold up our end of agreements. The Madoff case is littered with abuses on this front. On the professional side, there's the financier who didn't invest his clients' money as he'd promised; on the personal side, there's Madoff who, during this period, had a 20 year long affair with an investor, Sheryl Weinstein (who was also married at the time) breaking wedding vows. From one end to the other in terms of fidelity, this is an ugly case.

Reparation is the duty to compensate others when we harm them. Madoff's wife, Ruth, obviously didn't feel much of this. She walked away with $2.5 million. The judge overseeing the case, on the other hand, filled in some of what Ruth lacked. To pay back bilked investors, the court seized her jewelry, her art, and her mink and sable coats. Those things, along with the couple's three multimillion-dollar homes, the limousines, and the yacht, were all sold at public auction.

The Concept of Fairness

The final duty to be considered—fairness—requires more development than those already listed because of its complexity. According to Aristotle, fairness is treating equals equally and unequals unequally. The *treat equals equally* part means, for a professional investor like Madoff, that all his clients get the same deal: those who invest equal amounts of money at about the same time should get an equal return. So even though Madoff was sleeping with one of his investors, this shouldn't allow him to treat her account distinctly from the ones belonging to the rest. Impartiality must govern the operation.

The other side of fairness is the requirement to *treat unequals unequally*. Where there's a meaningful difference between investors—which means a difference pertaining to the investment and not something extraneous like a romantic involvement—there should correspond a proportional difference in what investors receive. Under this clause, Madoff could find justification for allowing two distinct rates of return for his clients. Those that put up money at the beginning when everything seemed riskier could justifiably receive a higher payout than the one yielded to more recent participants. Similarly, in any company, if layoffs are necessary, it might make sense to say that those who've been working in the organization longest should be the last ones to lose their jobs. In either case, the important point is that *fairness doesn't mean everyone gets the same treatment; it means that rules for treating people must be applied equally*. If a corporate executive decides on layoffs according to a last-in-first-out process, that's fine, but it would be unfair to make exceptions.

One of the unique aspects of the idea of fairness as a duty is its hybrid status between duties to the self and duties to others. While it would seem strange to say that we have a duty of gratitude or fidelity to ourselves, it clearly makes sense to assert that we should be fair to ourselves. Impartiality—the rule of no exceptions—means no exceptions. So a stock investor who puts his own money into a general fund he runs should receive the same return as everyone else. A poor investment that loses 10 percent should cost him no more than 10 percent (he has to be fair to himself), and one that gains 10 percent shouldn't net him any more than what the others receive (he has to be fair to others).

Balancing the Duties

Duties include those to:

- develop abilities and talents,
- do ourselves no harm,
- avoid wronging others,
- honesty,
- respect others,
- beneficence,
- gratitude,
- fidelity,
- reparation, and
- fairness.

Taken on their own, each of these plugs into normal experience without significant problems. Real troubles come, though, when more than one duty seems applicable and they're pulling in different directions.

Take Andrew Madoff, for example. Lying in bed at night and taking his ethical duties seriously, what should he do in the wake of the revelation that his family business was in essence a giant theft? On one side, there's an argument that he should just keep on keeping on by maintaining his life as a New York financier. The route to *justifying* that decision starts with a duty to himself:

- **Develop abilities and talents.** As an expert in finance, someone with both knowledge of and experience in the field, Andrew should continue cultivating and perfecting his talents, at least those he had acquired on the legitimate side of the family's dealings. Beyond the duty to himself, Andrew can further buttress his decision to keep his current life going by referencing a duty to others:
- **Beneficence.** This may demand that Andrew continue along the lines he'd already established because they enabled his involvement with cancer research. He's got money to donate to the cause and his very personal experience with the disease allows rare insight into what can be done to help sufferers. To the extent that's true, beneficence supports Andrew's decision to go on living as he had been. On the other side, what's the duty-based argument in favor of Andrew taking a different path by breaking away from his old lifestyle and dedicating all his energy and time to doing what he can for the jilted investors the family business left behind?
- **Respect.** The duty to treat others as equals demands that Andrew take seriously the abilities and lives of all those who lost everything. Why should *they* be reduced to powerlessness and poverty while he continues maximizing his potential as a stock buyer and nonprofit leader? Respecting others and their losses may mean leaving his profession and helping them get back on their feet.
- **Reparation.** This duty advances as the proposal for Andrew to liquidate his assets and divide the money as fairly as possible among the ruined investors. It may be that Andrew didn't orchestrate the family Ponzi scheme, but wittingly or not, he participated and benefitted from it, and that opens the way to the duty to repayment.

So which path should Andrew follow? There's no certain answer. What duties *do* allow Andrew—or anyone considering his situation—to achieve is a solid footing for making a reasonable and defendable decision. From there, the ethical task is to weigh the various duties and choose which ones pull harder and make the stronger demand.

What Are the Advantages and Drawbacks of an Ethics Based on Duties?

One of the principal advantages of working with an ethics of duties is simplicity: duties are fairly easy to understand and work with. We all use them every day. For many of us these duties are the first thing coming to mind when we hear the word ethics. Straightforward rules about honesty, gratitude, and keeping up our ends of agreements—these are the components of a common education in ethics, and most of us are well experienced in their use. The problem, though, comes when the duties pull against each other: when one says yes and the other says no. Unfortunately, there's no hard-and-fast rule for deciding which duties should take precedence over the others.

D. Duty-Based Ethics - Categorical Imperative

German philosopher Immanuel Kant (1724–1804) accepted the basic proposition that a theory of duties— a set of rules telling us what we're obligated to do in any particular situation—was the right approach to ethical problems. What he set out to add, though, was a stricter mechanism for the use of duties in our everyday experience. He wanted a way to get all these duties we've been talking about to work together, to produce a unified recommendation, instead of leaving us confused between loyalty to one principle and another. At least on some basic issues, Kant set out to produce ethical certainty.

Lying is about as primary as issues get in ethics, and the Madoff case is shot through with it: Bernie Madoff always claimed that the Ponzi scheme wasn't the original idea. He sought money from investors planning to score big with complicated financial maneuvers. He took a few losses early on, though, and faced the possibility of everyone just taking their cash and going home. That's when he started channeling money from new investors to older ones, claiming the funds were the fruit of his excellent stock dealing. He always intended, Madoff says, to get the money back, score some huge successes, and they'd let him get on the straight and narrow again. It never happened. But that doesn't change the fact that Madoff thought it would. He was lying temporarily, and for the good of everyone in the long run.

As previously discussed, Weinstein, who had a 20-year affair with Madoff, also invested her family's life savings with him. When the Ponzi scheme came undone, she lost everything. To get some money back, she considered writing a tell-all, and that led to a heart-wrenching decision between money and her personal life. Her twenty-year dalliance was not widely known, and things could have remained that way: her husband and son could've gone on without the whole world knowing that the husband was a cuckold and the son the product of a poisoned family. But they needed money because they'd lost everything, including their home, in Madoff's scam. So does she keep up the false story or does she turn the truth into a profit opportunity?

What does Kant say about all this? The answer is his categorical imperative. An imperative is something you need to do. A **hypothetical** imperative is something you need to do, but only in certain circumstances; for example, I have to eat, but only in those circumstances where I'm hungry. A **categorical** imperative, by contrast, is something you need to do all the time: there are ethical rules that don't depend on the circumstances, and it's the job of the categorical imperative to tell us what they are. Here, we will consider two distinct expressions of Kant's categorical imperative, two ways that guidance is provided.

First Version of the Categorical Imperative

The first version or expression of the categorical imperative: Act in a way that the rule for your action could be universalized. When you're thinking about doing something, this means you should imagine that everyone did it all the time. Now, can this make sense? Can it happen? Is there a world you can imagine where everyone does this thing that you're considering at every opportunity? Take the case of Madoff asking himself, "Should I lie to keep investor money flowing in?" What we need to do is imagine this act as universalized: everyone lies all the time. Just imagine that. You ask someone whether it's sunny outside. It is sunny, but they say, "No, it's raining." The next day you ask someone else. Again, it's sunny, but they say, "No, it's snowing." This goes on day after day. Pretty soon, wouldn't you just give up listening to what people say? Here's the larger point: if everyone lies all the time, pretty soon people are going to stop listening to anyone. And if no one's listening, is it possible to lie to them?

What Kant's categorical imperative shows is that lying cannot be universalized. The act of lying can't survive in a world where everyone's just making stuff up all the time. Since no one will be taking anyone else seriously, you may try to sell a false story but no one will be buying.

Bringing this back to Madoff, as Kant sees it he has to make a basic decision: should I lie to investors to keep my operation afloat? The answer is no. According to the categorical imperative, it must be no, not because lying is directly immoral, but because lying cannot be universalized and therefore it's immoral. The same goes for Sheryl Weinstein as she wonders whether she should keep the lid on her family-wrecking affair. The answer is no because the answer is always no when the question is whether I should lie. You might want to respond by insisting, "She's already done the deed, and Bernie's in jail (now deceased) so it's not going to happen again. The best thing at this point would be for her to just keep her mouth shut and hold her family together as best she can." That's a fair argument. But for Kant it's also a loser because the categorical imperative gives the last word. There's no appeal. There's no lying, no matter what.

The first expression of the categorical imperative—act in such a way that the rule for your action could be universalized—is a consistency principle. Like the golden rule (treat others as you'd like to be treated), it forces you to ask how things would work if everyone else did what you're considering doing.

Objections to the First Version of the Categorical Imperative

One of the objections to this ethical guidance is that a reality without lying can be awfully uncomfortable. If your boss shows up for work on a Friday wearing one of those designer dresses that looks great on a supermodel and ridiculous everywhere else, and she asks what you think, what are you going to say? "Hideous"? Telling the truth no matter what, whether we're at work or anywhere else, is one of those things that sounds good in the abstract but is almost impossible to actually live by.

Then the problem gets worse. A deranged addict storms into your office announcing that he's just received a message from the heavens. While chewing manically on dirty fingernails, he relates that he's supposed to attack someone named Jones—anyone named Jones. "What," he suddenly demands, "is your name?" Unfortunately, you happen to be named Sam Jones. Now what?

Second Version of the Categorical Imperative

The second expression of the categorical imperative is: Treat people as an end, and never as a means to an end. To treat people as ends, not means is to never use anyone to get something else. People can't be tools or instruments, they can't be things you employ to get to what you really want. A simple example of using another as a means would be striking up a friendship with Chris because you really want to meet his wife who happens to be a manager at the advertising company you desperately want to work for.

It'd be hard to imagine a clearer case of this principle being broken than that of Madoff's Ponzi scheme. He used the money from each new investor to pay off the last one. That means every investor was nothing but a means to an end: everyone was nothing more than a way to keep the old investors happy and attract new ones.

Madoff's case of direct theft is clear cut, but others aren't quite so easy. If Weinstein goes ahead and writes her tell-all about life in bed with Madoff, is she using him as a means to her end (which is making money)? Is she using book buyers? What about her husband and the suffering he would endure? It can be difficult to be sure in every case exactly what it means to "use" another person.

Another example comes from Madoff's son, Andrew, who donated time and money to the cause of treating cancer. On one hand, this seems like a generous and beneficial treatment of others. It looks like he's valuing them as worthwhile and good people who deserve to be saved from a disease. On the other hand, though, when you keep in mind that Andrew too had cancer, you wonder whether he's just using other peoples' suffering to promote research so that he can be saved.

Summarizing, where the first of the categorical imperative's expressions was a consistency principle (treat others the way you want to be treated), this is a dignity principle: treat others with respect and as holding value in themselves. You will act ethically, according to Kant, as long as you never accept the temptation to treat others as a way to get something else.

Objections to the Second Version of the Categorical Imperative

The principal objection to this aspect of Kant's theory is that, like the previous, it sounds good in the abstract, but when you think about how it would actually work, things become difficult.

Almost all businesses require treating people as means and not as ends. In the grocery store, the cashier isn't waiting there to receive your respectful attention. She's there to run your items through the scanner and that's it. The same goes for the guy in the produce section setting up the banana display. Really, just paying someone to do a job—no matter what the job might be—is treating them as a means to an end, as little more than a way to get the work done.

If that's right, then you're not going too far by wondering whether the entire modern world of jobs and money would unravel if we all suddenly became Kantians. Paying a janitor to clean up after hours, a paralegal to proofread a lawyer's briefs, a day-care worker to keep peace among children at recess, all these treatments of others seem to fail Kant's test.

Defenders of Kant understand all this perfectly and can respond. One argument is that providing someone with a job is not treating them as a means to your ends; instead, by allowing them the opportunity to earn a living, you're actually supporting their projects and happiness. Seen this way, hiring people is not denigrating them, it's enabling. And far from being immoral in the Kantian sense, it's ethically recommendable.

E. Outcome-Based Ethics

Utilitarianism is a prominent perspective on ethics, one that is well aligned with economics and the free- market outlook that has come to dominate much current thinking about business, management, and economics. Jeremy Bentham is often considered the founder of utilitarianism, though John Stuart Mill (who wrote *On Liberty* and *Utilitarianism*) and others promoted it as a guide to what is good. Utilitarianism emphasizes not rules but results. An action (or set of actions) is generally deemed good or right if it maximizes happiness or pleasure throughout society. Originally intended as a guide for legislators charged with seeking the greatest good for society, the utilitarian outlook may also be practiced individually and by corporations.

Bentham believed that the most promising way to obtain agreement on the best policies for a society would be to look at the various policies a legislature could pass and compare the good and bad consequences of each. The right course of action from an ethical point of view would be to choose the policy that would produce the greatest amount of utility, or usefulness. In brief, the utilitarian principle holds that an action is right if and only if the sum of utilities produced by that action is greater than the sum of utilities from any other possible act.

This statement describes "act utilitarianism"—which action among various options will deliver the greatest good to society? "Rule utilitarianism" is a slightly different version; it asks, what rule or principle, if followed regularly, will create the greatest good?

Notice that the emphasis is on finding the best possible results and that the assumption is that we can measure the utilities involved. (This turns out to be more difficult that you might think.) Notice also that “the sum total of utilities” clearly implies that in doing utilitarian analysis, we cannot be satisfied if an act or set of acts provides the greatest utility to us as individuals or to a particular corporation; the test is, instead, whether it provides the greatest utility to society as a whole. Notice that the theory does not tell us what kinds of utilities may be better than others or how much better a good today is compared with a good a year from today.

Whatever its difficulties, utilitarian thinking is alive and well in US law and business. It is found in such diverse places as cost-benefit analysis in administrative and regulatory rules and calculations, environmental impact studies, the majority vote, product comparisons for consumer information, marketing studies, tax laws, and strategic planning. In management, people will often employ a form of utility reasoning by projecting costs and benefits for plan X versus plan Y. But the issue in most of these cost-benefit analyses is usually (1) put exclusively in terms of money and (2) directed to the benefit of the person or organization doing the analysis and not to the benefit of society as a whole.

An individual or a company that consistently uses the test “What’s the greatest good for me or the company?” is not following the utilitarian test of the greatest good overall. Another common failing is to see only one or two options that seem reasonable. The following are some frequent mistakes that people make in applying what they think are utilitarian principles in justifying their chosen course of action:

1. **Mistake:** Failing to come up with lots of options that seem reasonable and then choosing the one that has the greatest benefit for the greatest number. Often, a decision maker seizes on one or two alternatives without thinking carefully about other courses of action. If the alternative does more good than harm, the decision maker assumes it’s ethically okay.
2. **Mistake:** Assuming that the greatest good for you or your company is in fact the greatest good for all—that is, looking at situations subjectively or with your own interests primarily in mind.
3. **Mistake:** Underestimating the costs of a certain decision to you or your company. The now-classic Ford Pinto case demonstrates how Ford Motor Company executives drastically underestimated the legal costs of not correcting a feature on their Pinto models that they knew could cause death or injury. General Motors was often taken to task by juries that came to understand that the company would not recall or repair known and dangerous defects because it seemed more profitable not to. In 2010, Toyota learned the same lesson.
4. **Mistake:** Underestimating the cost or harm of a certain decision to someone else or some other group of people.
5. **Mistake:** Favoring short-term benefits, even though the long-term costs are greater.
6. **Mistake:** Assuming that all values can be reduced to money in comparing the risks to human health or safety against, say, the risks of job or profit losses, cost-benefit analyses will often try to compare apples to oranges and put arbitrary numerical values on human health and safety.

F. Corporate Social Responsibility

Acting in an ethical manner is one of the four components of the pyramid of corporate social responsibility (CSR), which is the concern of businesses for the welfare of society as a whole. It consists of obligations beyond those required by law or union contract. This definition makes two important points. First, CSR is voluntary. Beneficial action required by law, such as cleaning up factories that are polluting air and water, is not voluntary. Second, the obligations of CSR are broad. They extend beyond investors in the company to include workers, suppliers, consumers, communities, and society at large.

History of CSR

Figure 22 "Pollution!" by aguscr License CC BY 2.0

American President Calvin Coolidge said in the 1920s that "the chief business of the American people is business." It was a popular observation in a time of economic prosperity, when issues such as energy security and climate change were practically nonexistent. A century later, things are very different. Now, more than ever, private enterprise is being called upon to exercise social responsibility, especially when it comes to the environment. This trend reflects the view that companies ought to do more than simply meet the letter of the law and the bare minimum of ethical business behavior.

President Coolidge, like many American presidents before and since, kept government out of the affairs of business as much as possible. But starting in the 1960s and 1970s, the environmental impact of an ever-expanding economy was generating more and more protest from citizens. The result was a wave of legislation designed to reduce the pollution produced by business activity. Those laws had positive effects and are now vital parts of the American regulatory framework. But despite these regulations, controlling pollution continues to be a challenge. And now there are even larger problems on the horizon.

Even though businesses today are more efficient and use fewer resources to make goods—thanks to technological advances— many ecosystems continue to suffer. This is because the scale of economic activity grows every year, despite environmental improvements by individual enterprises. Starting a few years ago, many citizens in the U.S. and around the world began calls for more action from private enterprise on these social issues—beyond compliance with regulations and traditional charity-related work. The result was a new movement known as corporate social responsibility, or CSR.

CSR Defined

CSR can be simply and broadly defined as the ethical role of the corporation in society. The aim of CSR is to increase long-term profits and shareholder trust through positive public relations and high ethical standards to reduce business and legal risk by taking responsibility for corporate actions. It isn't enough for companies to generate a profit and merely meet the letter of the law in their business operations. Today, many U.S. citizens expect them to generate a profit *and* conduct themselves in an ethical and socially responsible manner. CSR strategies encourage the company to make a positive impact on the environment and stakeholders—that is, all of the parties who have a stake in the performance and output of the corporation. Stakeholders include the company's employees, unions, investors, suppliers, consumers, local and national governments, and communities that may be affected by corporate activities such as construction, manufacturing, and pollution. For some companies, CSR means manufacturing their products in a way that doesn't harm the environment and protects the consumer from potentially hazardous materials.

Demands for Corporate Social Responsibility

There are several drivers pushing businesses toward corporate social responsibility include the following:

- Increased Pressure from Consumers
- Pressure from Shareholders and Investors
- Supply-Chain Pressure

Increased Pressure from Consumers

Consumers are demanding more from the businesses that get their hard-earned money. Businesses that are perceived as valuing more than the "bottom line" are gaining favor with the buying public. Consumers—especially those in North America—are likely to vote with their wallets against companies whose social and environmental performance is poor. Fifty-five percent of North American consumers reported that they would pay more for companies who behaved more responsibly. (Hayzlet)

Pressure from Shareholders and Investors

Although not a new concept, Socially Responsible Investing (SRI) has seen increased attention over the last several decades. In fact, investors have become more active in their demands of corporations in which they have holdings. Investor activities to move these organizations to a more responsible position have had fairly good results.

In a 2017 study, Barko, Cremers, and Renneboog measure the effect of investor activism on corporate performance. A global dataset of 660 companies were profiled in the study by market share, analyst coverage, stock returns, and liquidity. Not surprisingly, over the ten-year study the Environmental, Social, and Governance (ESG) rating of the companies targeted by activist investors showed improvement in those ratings after the engagement with those investors, versus non-targeted "matched firms."

Supply-Chain Pressure

As consumers pay closer attention to the social responsibility of retailers and service providers, visibility into their supply chains has also become a priority. For example, Apple has come under scrutiny and criticism for the poor working conditions and environmental hazards taking place at assembly facilities in China. Even though these facilities are outside of the U.S. and are separate corporate entities, Apple has spent considerable corporate resources defending its reliance on such suppliers. Other companies such as the Swedish international retailer of furniture and household goods are taking a proactive approach to CSR both internally and within the supply chain. A visit to the IKEA website allows consumers and interested parties to view the company's sustainability reports and their policy on "People and Planet."

Regardless of where the pressure originates, companies are finding that ignoring their social and environmental responsibility and impact is ultimately bad for business.

Examples of Corporate Social Responsibility

Not all companies approach CSR in the same way. Their approach depends upon their resources, available assets, and corporate culture. In addition, some companies perceive more benefit from one type of CSR than another. The personal beliefs and priorities of senior management/ownership can also influence the company's approach to social responsibility. Below are some different approaches to CSR.

Corporate Philanthropy

Corporate philanthropy refers to a corporation's gifts to charitable organizations. There is an implication that the corporation's donations have no strings attached, which is probably quite rare. At a minimum, most corporations expect that their donations will be publicly attributed to the corporation, thus generating positive public relations. When corporations make large cash gifts to universities or museums, they are usually rewarded with a plaque or with a building or library named after the donor. Such attributions burnish the corporation's public image, and in such cases we are not dealing with true corporate philanthropy, strictly speaking, but something more in the nature of marketing or public relations.

Cause-Related Marketing

Cause-related marketing (CRM) refers to a corporation's associating the sales of its products to a program of donations or support for a charitable or civic organization. An example is provided by the famous Red campaign, in which corporations such as Nike and Gap pledged to contribute profits from the sale of certain red-colored products to a program for African development and alleviation of AIDS-related social problems. The basic idea of cause-related marketing is that the corporation markets its brand at the same time that it promotes awareness of the given social problem or civic organization that addresses the social problem. Another well-known example is the pink ribbon symbol that promotes breast-cancer awareness and is used prominently in the marketing of special lines of products by many corporations, such as Estée Lauder, Avon, New Balance, and Self Magazine. In addition to marketing products with the pink-ribbon symbol, Estée Lauder has made support for breast cancer awareness one of the defining features of its corporate philanthropy. Thus, Estée Lauder also frequently refers to such charitable contributions, currently on the order of $150 million, in its corporate communications and public relations documents.

Sustainability

Sustainability has become such an important concept that it is frequently used interchangeably with CSR. Indeed, for some companies it seems that CSR is sustainability. This is perhaps not surprising, given the growing media attention on issues related to sustainability.
Sustainability is a concept derived from environmentalism; it originally referred to the ability of a society or company to continue to operate without compromising the planet's environmental condition in the future. In other words, a sustainable corporation is one that can sustain its current activities without adding to the world's environmental problems. Sustainability is therefore a very challenging goal, and many environmentalists maintain that no corporation today operates sustainably, since all use energy (leading to the gradual depletion of fossil fuels while emitting greenhouse gases) and all produce waste products like garbage and industrial chemicals. Whether or not true sustainability will be attainable anytime in the near future, the development and promotion of sustainability strategies has become virtually an obsession of most large corporations today, as their websites will attest in their inevitable reference to the corporation's sincere commitment to sustainability and responsible environmental practices. No corporation or corporate executive today will be heard to say that they do not really care about the environment. However, if we observe their actions rather than their words, we may have cause for doubt.

Social Entrepreneurship and Social Enterprise

Social entrepreneurship and social enterprise refer to the use of business organizations and techniques to attain laudable social goals. Blake Mycoskie decided to create TOMS Shoes largely as a reaction to his travels in Argentina, which had exposed him to terrible poverty that left many school-age children without shoes. An important part of the corporate mission of TOMS Shoes lies in its pledge to give away a free pair of shoes for every pair purchased by a customer. TOMS Shoes' model has been imitated by many others, including the popular online eyewear brand, Warby Parker.

The difference between social entrepreneurship and CSR is that, with social entrepreneurship, the positive social impact is built into the mission of the company from its founding. Other examples of social entrepreneurship include The Body Shop, Ben & Jerry's ice cream, and Newman's Own. The Body Shop was founded by noted activist Anita Roddick who insisted that all products be derived from ingredients that were natural, organic, and responsibly sourced. Her employment policies famously allowed every employee to take off one day a month from work to engage in social or community projects. Similarly, Ben & Jerry's was founded to promote the use of organic, locally-produced food. The company's founders insisted on a policy that executives earn no more than seven times the salary of factory line-workers (although this policy was eventually relaxed when it became difficult to recruit a competent CEO at those wages). Ben & Jerry's engaged in a number of high-profile political activities in which they encouraged their employees to participate, such as protesting the building of the Seabrook nuclear power plant in Vermont. Newman's Own was founded by film actor Paul Newman and his friend A. E. Hotchner with the goal of selling wholesome products and giving away 100 percent of the profits to charitable ventures. To date, Newman's Own has given away more than two hundred million dollars.

Social Marketing

Social marketing refers to the use of business marketing techniques in the pursuit of social goals. Often, governments and nonprofit organizations make use of social marketing to make their points more forcefully and effectively to a wide audience. Classic examples are the extremely powerful TV commercials warning of the dangers of unsafe driving or of failing to use seat belts. Cinematic techniques are employed to portray dramatic, arresting images of crumpled cars and bodies, children and mothers crying. The source of social marketing advertisements is usually a local government or nonprofit organization.

Social marketing is usually used to try to convince citizens to drive more safely, eat better, report child and domestic abuse, and avoid various forms of criminality and drug use. As with ordinary advertising, social marketing can seem overdone or maudlin, and some social marketing ads have been mocked or considered silly. For example, former First Lady Nancy Reagan participated in a social marketing campaign that urged young people to "Just Say No" to drugs, an approach that was ridiculed as simplistic by many. Noted radical activist Abbie Hoffman said that telling drug users to "just say no" to drugs was like telling manic-depressives to "just cheer up." Despite that, drug use in America declined over the time period that the campaign was in progress, though there is no evidence that any part of this decline was due to the campaign.

While there is no universally accepted definition of *social entrepreneur*, the term is typically applied to an individual who uses market-based ideas and practices to create "social value," the enhanced well-being of individuals, communities, and the environment. Unlike ordinary business entrepreneurs who base their decisions solely on financial returns, social entrepreneurs incorporate the objective of creating social value into their founding business models. Social entrepreneurship has become exceedingly popular in recent years and a number of prestigious business schools have created specific academic programs in the field. It is often said that social entrepreneurs are changing the world. They are lauded for their ability to effect far-reaching social change through innovative solutions that disrupt existing patterns of production, distribution, and consumption. Prominent social entrepreneurs are celebrated on magazine covers, praised at the World Economic Forum in Davos, and awarded millions of dollars in seed money from "angel" investors, and applauded as "harbingers of new ways of doing business."

The enthusiasm associated with social entrepreneurship is perhaps emblematic of increased global social awareness, which is evidenced by increased charitable giving worldwide. A 2012 study showed that 83 percent of Americans wish brands would support causes; 41 percent have bought a product because it was associated with a cause (a figure that has doubled since 1993); 94 percent said that, given the same price and quality, they were likely to switch brands to one that represented a cause; and more than 90 percent think companies should consider giving in the communities in which they do business.

Despite the eager reception from consumers, critics of social entrepreneurship have raised concerns about the creation of social value in a for-profit context. Thus, TOMS is sometimes mistaken for a charity because it donates shoes to children in developing countries, yet it is also in business to sell shoes. The company earns an estimated $300 million a year and has made Mr. Mycoskie a wealthy man. While companies are starting to look more like charities, nonprofits are also increasingly relying on business principles to survive an uncertain economy in which donors expect to see tangible results from their charitable contributions.

Our understanding of social entrepreneurship is complicated by the absence of any consensus on ways to measure social outcomes. As a result, there is little concrete statistical data available on the impact of social entrepreneurship. Indeed, there is not much agreement on a precise definition of social entrepreneurship, so it becomes difficult to say to what extent any given company is an example of social entrepreneurship. TOMS' Chief Giving Officer, Sebastian Fries, recently told the *New York Times* that the company is "not in the business of poverty alleviation." (Herrera) Does this mean that increased social value is merely a happy by-product of the business of selling shoes? If so, what makes Blake Mycoskie a social entrepreneur?

Some critics go so far as to suggest that social entrepreneurs are merely using public relations tactics to engage in social or environmental greenwashing—taking advantage of consumers' desire to do good. In some cases, it has been argued, social entrepreneurs can even do more harm than good. Lacking a full understanding of the socioeconomic and cultural dynamic of the developing countries in which they intervene, social enterprises can undermine fragile local markets and foster dependence on foreign assistance. But in the end, the individual impact of social entrepreneurial ventures may outweigh some of these concerns.

Controversies Surrounding CSR

From the beginning, CSR has been the subject of much debate. CSR's critics argue that the main responsibility of businesses is to maximize return to their shareholders. They point to the corporate legal system as the proper place for regulating businesses' conduct with society. And besides, businesses are already fulfilling a key public service by providing jobs and services that society needs.

Other critics assert that many so-called CSR activities are really just publicity stunts and corporate "greenwashing." **Greenwashing** refers to corporations that exaggerate or misstate the impact of their environmental actions or promote products as being "eco-friendly" when in fact they're not.

Supporters of CSR contend that there are significant profit-related benefits in socially responsible behavior. Companies are using their CSR activities to recruit and keep the best management talent and to establish partnerships with communities to increase company influence on legislation. And companies that make social responsibility an integrated part of their business actually are managing risk—a key part of corporate development strategy.

Despite the ongoing debate, trends indicate that CSR is gathering force and is here to stay. More and more leading companies in America and worldwide are releasing sustainability reports. Plus, new industries like clean energy provide social and economic benefits while fighting environmental problems like climate change. The result of that combination has been called one of the greatest commercial opportunities in history.
The importance and nature of CSR is the topic of ongoing debate and controversy. Consider the following:

CSR: Sincere Ethics or Hypocritical Public Relations?

- **Facts:** CSR is a rapidly growing field of study in universities and business schools, and most large corporations have adopted CSR programs.
- **The controversial aspect:** Is CSR a good thing or is it just corporate window dressing?
- **In favor of CSR:** CSR motivates corporations to address social problems, it energizes and rewards workers, it strengthens ties to the community, and it improves the image of the corporation.
- **Against CSR:** Surveys show that citizens are more concerned about corporations treating their workers well and obeying laws than about engaging in philanthropic activities, and CSR may allow corporations to distract consumers and legislators from the need to tightly regulate corporations.

Climate Change and CSR

- **Facts:** There is a scientific consensus that global warming and climate change represent an enormous threat facing mankind.
- **The controversial aspect:** Can corporate CSR really have a significant impact on climate change, or is it just a public relations vehicle for companies and a distraction from the need for stronger government action, such as through a carbon tax?

- **In favor of global warming–related CSR:** Corporations can have a major impact in the battle against global warming by reducing their large carbon footprints, by encouraging other corporations to follow suit, and by helping discover and develop alternative sources of energy.
- **Against global warming–related CSR:** Companies spend a lot of advertising money to boast about small measures against global warming, but many of these companies are in industries—such as fossil fuels or automobiles—that produce the most greenhouse gases to begin with; self-serving claims of climate-change concern are often simply greenwashing campaigns intended to distract us from the need for society to take more effective measures through taxation and regulation.

Corporate Lobbying and Governmental Influence

- **Facts:** Most large corporations spend money on lobbying and on seeking to influence legislators and regulators. In *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the Supreme Court ruled that, as "corporate persons," corporations enjoy the same freedom of speech protections as ordinary citizens and are entitled to relief from strict government control of their rights to political speech.
- **The controversial aspect:** Many citizens are outraged to find that the justice system accords multinational corporations the same rights as ordinary people on the grounds that corporations are "persons." However, others point out that *The New York Times* and CNN are also corporations, and that it could have a chilling effect on freedom of speech if all corporations were legally-constrained from speaking out freely.
- **In favor of corporate lobbying:** As major employers and technological innovators, corporations benefit society. They should be free to oppose inefficient and cumbersome government regulations and taxation that can limit the benefits they provide. In this way, freedom of political speech is so important that we should be cautious about limiting it in any way.
- **Against corporate lobbying:** Corporations are not "persons" in the same sense that humans are, and therefore, they should not enjoy the same freedom of speech protection. Since corporations can become vastly wealthier than ordinary citizens, allowing them to participate in politics will enable them to bend laws and regulations to their will.

In each of the debates outlined above, there are intelligent and well-informed people on both sides of the issue. How CSR is defined and practiced differs for each enterprise. But for all those companies, the view seems to be that CSR programs are a good investment.

Works Cited

1. Hayzlett, Jeffrey. "Why Should Your Business Care About Social Responsibility?" Entrepreneur. October 10, 2016. Accessed February 27, 2019. https://www.entrepreneur.com/article/269665. ↲
2. Barko, Tamas, Martijn Cremers, and Luc Renneboog. "Shareholder Engagement on Environmental, Social, and Governance Performance." Finance Working Paper N° 509/2017, 2017. Accessed June 10, 2019. https://ecgi.global/sites/default/files/working_papers/documents/5092017_1.pdf. ↲

4. Corporate Social Responsibility. **Provided by**: Wikipedia. **Located at**: https://en.wikipedia.org/wiki/Corporate_social_responsibility. **License**: *CC BY-SA: Attribution-ShareAlike*
5. Corporate Social Responsibility in the United States And Europe: How Important Is It? The Future of Corporate Social Responsibility. **Provided by**: The Clute Institute. **Located at**: http://www.cluteinstitute.com/ojs/index.php/IBER/article/viewFile/7970/8024. **License**: *CC BY: Attribution*
6. Good Corporation, Bad Corporation: Corporate Social Responsibility in the Global Economy. **Authored by**: Guillermo C. Jimenez and Elizabeth Pulos. **Provided by**: SUNY. **Located at**: http://pressbooks.opensuny.org/good-corporation-bad-corporation/chapter/1. **License**: *CC BY-NC-SA: Attribution-NonCommercial-ShareAlike*
7. Corporate Social Responsibility in America. **Provided by**: U.S. Embassy. **Located at**: http://iipdigital.usembassy.gov/st/english/audio/2011/04/20110412150705eniloracl.085407e-02.html#ixzz4Q0ZtVSdJ. **License**: *Public Domain: No Known Copyright*

G. Making Ethical Decisions

Josephson's Core Values Analysis and Decision Process

Michael Josephson, a noted American ethicist, believes that a current set of core values has been identified and that the values can be meaningfully applied to a variety of personal and corporate decisions.

Studies from the Josephson Institute of Ethics in Marina del Rey, California, have identified six core values in our society, values that almost everyone agrees are important to them. When asked what values people hold dear, what values they wish to be known by, and what values they wish others would exhibit in their actions, six values consistently turn up: (1) trustworthiness, (2) respect, (3) responsibility, (4) fairness, (5) caring, and (6) citizenship.

- **Trustworthiness:** *Be honest*—tell the truth, the whole truth, and nothing but the truth; be sincere, forthright; don't deceive, mislead, or be tricky with the truth; don't cheat or steal, and don't betray a trust. *Demonstrate integrity*—stand up for what you believe, walk the walk as well as talking the talk; be what you seem to be; show commitment and courage. *Be loyal*—stand by your family, friends, co-workers, community, and nation; be discreet with information that comes into your hands; don't spread rumors or engage in harmful gossip; don't violate your principles just to win friendship or approval; don't ask a friend to do something that is wrong. *Keep promises*—keep your word, honor your commitments, and pay your debts; return what you borrow.
- **Respect:** Judge people on their merits, not their appearance; be courteous, polite, appreciative, and accepting of differences; respect others' right to make decisions about their own lives; don't abuse, demean, mistreat anyone; don't use, manipulate, exploit, or take advantage of others.
- **Responsibility:** Be accountable—think about the consequences on yourself and others likely to be affected before you act; be reliable; perform your duties; take responsibility for the consequences of your choices; set a good example and don't make excuses or take credit for other people's work. Pursue excellence: Do your best, don't quit easily, persevere, be diligent, make all you do worthy of

pride. Exercise self-restraint—be disciplined, know the difference between what you have a right to do and what is right to do.

- **Fairness:** Treat all people fairly, be open-minded; listen; consider opposing viewpoints; be consistent; use only appropriate considerations; don't let personal feelings improperly interfere with decisions; don't take unfair advantage of mistakes; don't take more than your fair share.
- **Caring:** Show you care about others through kindness, caring, sharing, compassion, and empathy; treat others the way you want to be treated; don't be selfish, mean, cruel, or insensitive to others' feelings.
- **Citizenship:** Play by the rules, obey laws; do your share, respect authority, stay informed, vote, protect your neighbors, pay your taxes; be charitable, help your community; protect the environment, conserve resources.

Note that these values are distinctly ethical. While many of us may value wealth, good looks, and intelligence, having wealth, good looks, and intelligence does not automatically make us virtuous in our character and habits. But being more trustworthy (by being honest and by keeping promises) does make us more virtuous, as does staying true to the other five core values.

The importance of an individual's having these consistent qualities of character is well known. Often we remember the last bad thing a person did far more than any or all previous good acts.

For example, Eliot Spitzer and Bill Clinton are more readily remembered by people for their last, worst acts than for any good they accomplished as public servants. As for a company, its good reputation also has an incalculable value that when lost takes a great deal of time and work to recover. Shell, Nike, and other companies have discovered that there is a market for morality, however difficult to measure, and that not paying attention to business ethics often comes at a serious price. In the past fifteen years, the career of ethics and compliance officer has emerged, partly as a result of criminal proceedings against companies but also because major companies have found that reputations cannot be recovered retroactively but must be pursued proactively. For individuals, Aristotle emphasized the practice of virtue to the point where virtue becomes a habit. Companies are gradually learning the same lesson.

Once you recognize that there is a decision that involves ethical judgment, Michael Josephson would first have you ask as many questions as are necessary to get a full background on the relevant facts. Then, assuming you have all the needed information, the decision process is as follows:

- STEP 1: Identify the stakeholder, that is, who are the potential gainers and losers in the various decisions that might be made here?
- STEP 2: Identify several likely or reasonable decisions that could be made.
- STEP 3: Consider which stakeholders gain or lose with each decision.
- STEP 4: Determine which decision satisfies the greatest number of core values.
- STEP 5: If there is no decision that satisfies the greatest number of core values, try to determine which decision delivers the greatest good to the various stakeholders.

It is often helpful to identify who (or what group) is the most important stakeholder, and why. In Milton Friedman's view, it will always be the shareholders. In the view of John Mackey, the CEO of Whole Foods Market, the long-term viability and profitability of the organization may require that customers come first, or, at times, some other stakeholder group.

When individuals and organizations confront ethical problems, the core values decision model offered by Josephson generally works well (1) to clarify the gains and losses of the various stakeholders, which then raises ethical awareness on the part of the decision maker and (2) to provide a fairly reliable guide as to what the most ethical decision would be. In nine out of ten cases, step 5 in the decision process is not needed.