

# **ONLINE TEXTBOOK ON BUSINESS ETHICS**

**By: Ronald F. White, Ph.D.**  
**Professor of Philosophy**  
**Mount St. Joseph University**

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## 1. INTRODUCTION

What is the most influential institution in the Western world? Well, let's look at some of the candidates. Now by "influential" I don't mean just "positive influence" but also "negative influence." Given the cultural forces that are currently at work here in the United States, most of you would say either religion or government. Both are pretty good candidates. But let's look a bit closer. Who made your clothes? Who produced the food that you ate this morning? Who sold your food to you? Who loaned you the money to go to college? Who built your computer? Who sold it to you? Who printed your books? Who sold them to you? Who brewed the beer that you drank last Saturday night, and who sold it to you? Who produced your cigarettes and who sold them to you? Who owns the Reds and the Bengals? Who built your home? Who financed it? Get the point? For better or worse, I would argue that corporations are the most influential institutions in the Western world, especially in the United States where corporations also wield a lot of political clout too.

I am full-time tenured professor at the College of Mount St. Joseph. It's not a "real corporation" but it is subject to the same "laws of economics." The college pays me to teach philosophical inquiry. Although I sell of my services to the college, you and your parents are the ultimate buyers. If any college wants to stay in business it must price itself competitively, effectively market its services to prospective students, and retain its students for at least four years. It also helps if it can also attract transfer students from other colleges. In short, higher education is a vast and highly competitive coterie of businesses; that is to say it is an *industry*. This industry is comprised of not only competing colleges, teachers and administrators, but also competing companies that sell books, computers, sports stadiums, and insurance. Many small colleges go bankrupt every year. The College of Mount St. Joseph is doing pretty well, which bodes well for your future and the future of my paychecks.

Given the extraordinary influence that corporations exert over our lives, it makes sense to ask whether these institutions are subject to evaluation. Are there better and worse kinds or corporate behavior? I believe that there are two relevant lines of inquiry: *economic inquiry* and *moral inquiry*. From an economic standpoint, a good corporation is a profitable one. From a moral standpoint, a good corporation is one that conforms to moral principles such as: beneficence, non-maleficence, utility, liberty, and justice. But what happens when there is a conflict between economic profitability and morality?

Because corporations serve these two masters, in this course you will have to know something about both economics and ethics. It wouldn't hurt if you also knew something about history, psychology, sociology, and even biology. Let's start with a bit of speculation down these lines.

## 2. THE FIRST BUSINESS TRANSACTION

A few years ago I was personally involved in a major business transaction. I bought a new electric guitar. I saw it in a music store and negotiated the price with the owner for about six months. The instrument was made in a factory in Japan owned by Yamaha Corporation, a multinational corporation. Yamaha had sold it to that store owner, and after an hour or so of intense bargaining that store owner sold it to me at a price that was agreeable to both of us. Why did I buy it? Simply put, I bought it in order to increase the pleasure I experience from playing music. When I decided to expend a portion of my MSJ paycheck on that guitar, I put it on a Visa card, which was issued by yet another corporation. When I got home, my wife was surprised, which is another story.

As one looks closely at the dynamics of this simple transaction, it becomes obvious that most, if not all, of the *goods* and *services* that permeate our social life today stem from of a complex web of interwoven business transactions forged between individuals, groups of individuals, and even government. As an evolutionary philosopher, I believe that economic behavior is the product of millions of years of biological evolution. But it has also been shaped by a few thousand years of cultural evolution. Let's speculate.

Deeply buried in the evolutionary past of our species, the first business transaction took place. Unfortunately, the details of this momentous historical event remain shrouded in mystery as the archaeological, anthropological and historical evidence has long since disappeared. Don't expect scientists to unearth the definitive documents outlining the terms of that first contract. It was probably something much less than a verbal contract. It may have even predated the human species. Moreover, we'll never really know for sure, whether that transaction involved an exchange of "goods," "services," or both. (As we

speculate as to the terms of that first transaction, we might argue that, given the human procreative urge, prostitution is probably the oldest service profession. However I'll resist that temptation for now!) Given the dearth of evidence, one might argue that this aspect of human history must remain, forever, a mystery and that one historical explanation is as good as another. Undaunted by the dearth of artifacts, economists, philosophers, and more recently evolutionary psychologists have been compiling evidence that might lead to a rough profile of what that first transaction must have entailed. What follows is my own speculative reconstruction of that even based on recent advancements in evolutionary psychology, philosophy, and economics.

There is an old theory that says that human beings single-handedly invented business. We can probably attribute this line of reasoning to a religious doctrine known as the "doctrine of special creation." In that case we might argue that only human beings forge contracts. But if human beings are uniquely endowed in the "Great Chain of Being," it is certainly not rooted in our capacity for economic exchange. In light of contemporary research on other species we can be fairly confident that the first economic transaction predated the appearance of *Homo sapiens*. Other "Great Apes" living today such as chimpanzees, bonobos, gorillas, and orangutans routinely exchange goods and services: "You scratch my back and I'll scratch yours."

Although other primates obviously barter goods and services, they do not buy and sell guitars made in Japan. Therefore, one might reasonably ask, "What kinds of psychological traits must have been present when that first transaction transpired between primates?" And, "why is it that we humans are capable of international trade, while other species are not?" I would argue that there are essentially two necessary conditions: *self interest* and the capacity to *cooperate*. Both involve enormous complexities rooted in evolutionary biology.

Economists and philosophers have long noted that self-interest is the foundation of "economic man." Today there is no reason to doubt that principle. It is also clear that this foundation is not unique to our species but, in fact, anchors the entire biological world. If there is a single fact that all contemporary biologists agree upon it is that all living things share that "selfish gene," which accounts for that universal primal urge to pass on genes to the next generation. Philosophically, it is also clear that self-interest is also the foundation for the predator-prey relationship, which led directly to the first "mugging." But unabashed self-interest alone certainly cannot account for that first business transaction, unless you consider predation to be an economic activity. The difference between predation and business activity is the process of bargaining. There is no real bargaining in the predator-prey relationship: although you can sometimes fast-talk your way out of a mugging! Therefore, the natural history of business enterprise requires also at least a certain degree of self-interested bargaining, between at least two intelligent organisms. But that's not enough: we need to account for cooperation too.

*Ideal altruism* signifies the deliberate, selfless provision of goods and/or services to others, often at the expense of one's own self-interest. Although altruism seems to be a fairly common behavioral pattern among many species, most altruistic acts benefit those who are most closely genetically related to the altruist, hence the term *kin altruism*. Kin altruism is actually the manifestation of the self-interest of genes to the extent that it facilitates the passage of genes onto the next generation. You might argue that I am really stretching philosophical license by characterizing the transfer of worms to a baby robin from its parents as an act of ideal altruism. But it is, at least in my book, an economic transaction. But how does the transfer of worms between birds relate to buying guitars on a global market?

Well, let's begin by pointing out that I seriously doubt that I have any relatives building guitars in Japan! My genetic lineage has been traced to Italy and the British Isles. So how is it that I can now purchase goods and services from strangers that I've never even met? As far as I know, birds and chimpanzees do not exchange goods and services via multi-national corporations. Therefore, there must be a difference between economic transactions between humans, and economic transactions between other species. This all sounds trivial, but it raises important evolutionary issues.

Obviously, kin altruism alone cannot account for the rise of economic activity among modern humans. That's because economic activity is marked by the fact that we routinely bargain with *strangers*! Business transactions require another form of altruism, namely *reciprocal altruism*, (or mutually self-interested cooperation). At some point in our evolutionary past, primates developed the mental capacity to exchange goods and services with strangers based on *mutual self interest*. "You scratch my back and I'll scratch yours" was probably among earliest contracts forged between primates. The earliest non-human contracts probably involved grooming, food, and/or sex. In order for reciprocal contracts to take root, rules had to be established and followed. The first, and most obvious, rule was probably, "keep your end of the

bargain" or in other words, "don't cheat!" Therefore, before business transactions outside of our immediate sphere of family and friends could evolve, a degree of *trust* must have developed between strangers. Of course, it certainly wouldn't have taken long to discover that you can't trust everyone: the rules are not always followed. Obviously, not every primate "keeps their end of the bargain." There was never a point in history when primates could unconditionally trust one another. So, cooperators and cheaters appeared among primates at about the same time. Let's just forget about that ideal altruism.

Perhaps a bit further along the evolutionary path, buyers and sellers must have developed the mental capacity to detect those individuals that habitually cheat on their agreements, or *contracts*. The minimal psychological requirements for an evolutionarily based defense against cheating probably included innate feelings of "injustice" when cheated and the desire to "get even" with those cheaters. Hence, we have the evolutionary emergence of *retributive justice*. Psychologically, this entailed the perceptive and cognitive capacity to recognize others as separate beings, the ability to recognize and label cheating, and the capacity to remember which of those individuals previously cooperated, and which ones previously cheated. Eventually, markets were able to share this information about habitual cheaters with the rest of the community.

Now the biological world is also occupied by both predators and prey. Again, predation is not a bargaining-based process, therefore under predatory conditions, there are no real buyers and sellers, and there are no cheaters. That's because there are no mutually agreed upon rules that govern predation. There is no deliberate bargaining process associated with predation.

Human beings exhibit both predatory and cooperative behavior. Strategic cheating arises only in the context of rule-based behavior. So both cooperative bargaining and non-cooperative cheating probably advance the short-term long and/or long-term survival of those who employ those strategies. Imagine an evolutionary "arms race" taking place over millions of years where *cheaters* evolve increasingly complex cheating strategies and *cooperative bargainers* evolve more efficient methods for detecting and preventing cheating. Over the long-run, the game always turns out to be a stalemate, thanks to that "Red Queen Effect."

It is important to emphasize that cheating only works within populations occupied by rule-based cooperators, and that the incidence of cheating within any group is naturally limited. Imagine a population composed entirely of "cheaters" and "suckers" (Suckers are idealists that are easily and repetitively duped by cheaters.) If a population comprised of "cheats" and "suckers" existed, something would have to give in order for that population to survive. If the population became overrun with the genes for cheating, that population would eventually devolve into a population of "cheaters." But strategic cheating, only works in the presence of suckers. Without those suckers the cheating strategy simply won't work, cheaters would starve to death, and be weeded out by natural selection. In other words, the incidence of cheating within cooperative groups must be self-limiting. On the other hand, one cannot ignore the fact that both cooperation and cheating must have profound evolutionary resiliency. Despite millions of years the perennial arms race between cheaters and suckers, both strategies are still evident in modern economic environments.

Thanks to biological and cultural evolution, most of us humans are neither fulltime cheaters nor fulltime suckers, but probers and retaliators. That means most of us will cheat under certain conditions; most notably if we believe we can get away with it. (Do you come to a dead stop at all stop signs when you're out late at night?) It also means that we are cognizant of the fact that our potential bargaining partners (reciprocates) might cheat. Therefore, before we strike a bargain, we probe (or inquire) into whether we can get away with cheating or whether others might be able to get away with cheating. When are cheated by others, we don't sit around and sulk. We get even. *Retribution* among primates often involves the infliction of violence and/or the expropriation of resources. Humans and chimpanzees are noted for their propensity for retributive lethal violence. Cheaters beware!

So, the evolutionary appearance of the behavioral pattern known as cooperation, or reciprocal altruism, serves as the foundation for the non-predatory exchange of goods and services between self-interested survival machines. This development required the pre-existence of certain collateral brain structures, which we humans call *mentality*. With the evolution of language, we began to label most forms of cheating as "evil" or "wrong" and label cooperation as "good" and "right." Unpleasant feelings of injustice and indignation toward cheaters among cooperators must have also been present. In short, morality (or business ethics) probably coincided with our ability to both cooperate and cheat. Call it co-evolution.

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Now the first business transaction based on reciprocal altruism, must have contributed substantially to the long term survival (*fitness*) of the genes of those self-interested survival machines. As this strategy became rooted within the first primate population, it is reasonable to suppose that the only transactions that were "deliberately" repeated were those that satisfied the self-interest of both the buyers and the sellers. The moral concepts of "liberty" and "fairness," therefore, are primarily cultural artifacts: the products of cultural evolution. "Voluntary transactions," were labeled "good transactions," and/or "fair transactions" because they satisfied the self-interest of both buyers and sellers. "Involuntary transactions," were labeled "bad transactions" or "unfair" because they were based on predation or cheating. Now here's where things get murky.

Once our cooperative progenitors further refined the business transaction, the demand to control cheating must have become crucial, requiring increasing levels of cooperation between cooperators. It must have involved sharing information about cheaters. I would say that these forces led, not only to the evolution of *friendship*, but also large scale social organizations and eventually government.

It is probably safe to assume (somewhat controversially!) that the first friendships were based on mutual self-interest, involved the exchange of goods and services. The first effective bargaining probably took place within extended families, and therefore, was based on kin altruism. Friendships outside of the realm of "kin altruism" were ultimately based on reciprocal altruism. My guess is that friendships forged between strangers based on pure reciprocity, evolved much later. We cannot underestimate the importance of being able to exchange goods with not only our relatives but also with friends, and eventually even strangers. After all, the hallmark of friendship is that we believe we can trust them, and that they'll probably keep their end of a bargain. When our friends cheat us, we tend to dissolve those friendships. But trading with relatives can also be risky and it is likely that early humans had imperfect information in regard to paternity and genetic relatedness. Therefore, kin altruism as a commercial strategy is limited by human nature. Conversely, trading with *strangers* always runs the risk of being cheated. It probably didn't take long for our Pleistocene ancestors to figure all this out.

The forging of economic relationships based on friendship probably followed the rise of increasingly larger social groups, where known lines of kinship became increasingly obscured. (Do you know your third cousin?) However, at some point in our not-so-distant past we simply had to trust individuals beyond family and friends. When transactions did take place between strangers and either the buyer or seller was cheated, our sense moral indignation no doubt sought out private retribution. But this was of limited value. If the cheater was bigger, stronger, or more intelligent, then private justice would have been difficult or impossible to enforce: especially if the cheater also had a lot of friends. But as language, culture and government developed, *justice* became a public virtue, enforced by group dynamics. Business transactions between strangers suddenly became more reliable, but nevertheless, imperfect.

With the advent of hierarchical governmental structures, moral strictures against cheating evolved into legal strictures. These laws eventually became embedded in culture along with specific strategies for preventing future cheating. Hence, criminal justice systems probably came into existence as a defense against cheaters as well as predators. Indeed, if you think about it, government can only exist within a sufficiently large group of cooperators. Individual humans that survive solely on the basis of predation and/or cheating, obviously, have no use for government, and therefore tend to thrive under conditions of anarchy. In sum, any significant level of reciprocity requires at least a minimal degree of organized cooperation. Obviously, higher levels of cooperation entail the evolution of more complex mental capacities: especially self-awareness, memory, and symbolic representation (language).

As we explore the social structure of cooperative species, we are struck with the persistence of hierarchical relationships, where some group members are afforded more favorable terms in the transfer of goods and services and sexual favors within the group. Among most mammals, it is usually the "Alpha Male" that gets the most food and the most procreative opportunities. However, hierarchical political structure has always been tempered by the ability of the individual members within these social groups to forge alliances and friendships (coalitions) which also affect the distribution of power and transfer of goods and services within the hierarchy.

If my arguments thus far have been at all persuasive, you probably agree that the first business transaction predates human existence and that morality, friendship, and hierarchical government may have evolved out of that genetically programmed desire to pass on genes to subsequent generations. Moreover, morality, friendship, and hierarchy paralleled the evolution of the physical brain structures that created the mentality that underlies these social activities. But if you are an astute student of philosophy (which you no doubt are!) you may be thinking down these lines. "Ron, that all sounds great, but didn't we also learn that

during the Enlightenment, equality and democracy were proven to be consistent with our true nature as rationally self-interested beings in possession of free will; and that hierarchical political structures, such as totalitarian dictatorships were incompatible with that human nature and therefore are "wrong?" My simple answer is that, throughout the long course of human history, very few democracies have been able to resist the evolutionary inertia of hierarchy. We here in the United States are fortunate to live in one of the longest reigning democracies in the history of our species, but our nation has been around for less than two hundred and fifty years. But of course, our democracy is also a very indirect form of democracy that is easily manipulated by predatory self-interested politicians and cronies via, gerrymandering, well-paid lobbyists, and voter-fraud. Indeed, political scientists have long acknowledged that "democracy" is enormously malleable and subject to social construction. It may be, in fact, a meaningless concept.

You might retort, "But Ron, if democracy is both vague and fragile in light of our evolutionary urge toward totalitarian hierarchy, what has enabled our particular democracy to survive this long?" My answer would also be very simple, *culture*. Although much of what we are as survival machines is passed on to us through our *genes*, we have also evolved the capacity to pass on *information*, through language in the form of ideas or *memes*. Many of these ideas that get passed on to us through culture relate to the availability and distribution of goods and/or services. Surely language and culture, which also involve mentality, required the evolution of many of same kinds of physical structures, especially the brain. Other species also possess the physical structures necessary for rudimentary language and culture, especially the other Great Apes. But we ought to not focus entirely on the evolution of those physical structures alone. Ideas themselves undergo an evolutionary process similar to biological structures based on variation and natural selection.

This would suggest a parallel between biological and cultural evolution. Some ideas, like "God" and "immortality" have survived many generations of cultural evolution. These ideas survive the struggle for survival because they become embedded in bodies of tradition that get passed on from one generation to the next, through language in the form of *information*. Some ideas embedded in tradition do not survive for very long. Some elements of popular culture are strategically manipulated by corporations via marketing. Products such "hoola hoops," "lawn jarts," and record albums were etched into our collective consciousness for a brief period of time, only to be replaced by video games, high-definition televisions and iPods.

Although many elements of popular culture change rather quickly, others become, at least temporarily, frozen in time. Call them traditions. Some longstanding traditions survive over rather long periods of time even though they make no logical sense apart of economics. Take for example the traditions that comprise our Easter holiday, which includes the unlikely juxtaposition of the crucifixion of Jesus Christ, colored eggs, and an Easter Bunny surreptitiously delivering candy in the middle of the night. Inexplicably, all of these traditions tend to line the pockets of corporations that sell baskets, candy, eggs, and coloring. Go figure.

It is important to reiterate that *ideas* evolve much faster than *genes* and therefore we can expect "time lags" between the two evolutionary processes. The democratic governmental structures delineated in our constitution have become embedded in American culture, primarily through educational institutions. Given the fact that our *genetic* inclination toward hierarchy has evolved over millions of years and our *ideational* tradition of democracy has evolved over hundreds of years, one might justifiably express concern for the future of our democratic institutions. One thing is certainly clear. We must continue to vigorously *nurture* our democratic ideals if they are to survive the primordial pressure exerted by our hierarchical *nature*.

There are specific business practices that get frozen into cultural traditions. They also get passed over generations. Some of these practices, such as hierarchical business structures headed by an "Alpha Male," are deeply rooted expressions of our biological nature. However, many of these biologically-rooted practices may no longer work within certain markets. Hence, there may be market-specific *time lags* between *cultural evolution* and *biological evolution*. For example, one might argue that most consumer electronics manufacturing in the United States moved overseas, at least in part, because American corporations were too slow in adopting new and more efficient manufacturing technologies and more streamlined and efficient horizontal managerial systems. And of course, American corporations have also been also saddled with mindless traditions instigated by government, such as asking corporations to pay for employee health care and retirement pensions. In other words, as business culture evolves, traditions that worked during one time period may no longer work in another.

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But unfit (or bad) ideas or practices often become hopelessly *embedded* in tradition, which slows down the process of adaptation. Therefore, *conservative* corporations operating within relatively stable markets with “fit” business practices wed to *tradition*, tend to survive. However, conservative businesses that maintain “unfit” business practices based on tradition alone, tend toward extinction. Conversely, innovative corporations that operate in relatively stable markets, and abandon fit practices that work, also tend toward extinction, but survive when the market changes.

My jaded view is that government is often the primary purveyor of unfit ideas sustained by tradition. We libertarians like to point out that here in the United States we have a tendency to protect unfit ideas that no longer work. We still have public schools, veteran’s hospitals, and e-check, even though we know that none of these ideas work particularly well. Evolutionarily, this is because when government tampers with markets it tends to restrict variation, limit competition, and hence maintain unfit traditions.

In summary, that first business transaction involved the exchange of goods and/or services between buyers and sellers. Initially it probably took place in the context of kin altruism and later expanded to reciprocal altruism. For humans complex language and culture refined the terms of those primordial business transactions. The initial buyer’s self interest was no doubt rooted in a biological need, probably food, sex, or security. The seller’s self interest was similarly conditioned. It’s hard to know whether this initial transaction involved individuals or small cooperative groups of genetically related individuals. We can, however, assume that in a social setting, other individuals or groups of individuals were also self-interested in those same goods or services. Hence, we have the evolution of the first *market*. This, no doubt, triggered competition between buyers that wanted that desirable good or service, and also competition between sellers who hoped to profit from selling that good or service. Although it is possible that the first self-interested seller, simply accepted the first offer made by a relative or close friend, at some point he/she accepted enticing offers made by strangers.

Several million years later, the same evolutionary forces remain at work. Although today, we routinely engage in business transactions with strangers, via multi-national corporations like, Yamaha Corporation, we all still attempt to guard ourselves against fraudulent entrepreneurs that want to cheat us. (How many e-mail lotteries have you won this week?) That’s why we have laws against fraud. Similarly, corporations sell their goods and services to strangers but are often burned by bogus checks, late payments, stolen credit cards, and counterfeit money. In contemporary American culture, this bilateral threat of cheating has led to the rise of consumer advocate groups, credit bureaus, and governmental intervention in markets. These innovations are, of course, countered by organized groups of criminals, and corrupt politicians. The eternal “arms race” between cheaters and cooperators continues.

### **3. NEOCLASSICAL AND INSTITUTIONAL ECONOMICS**

In order to explain the transition from small-scale economic relationships between friends and relatives that characterized the Pleistocene era to the large-scale relationships between strangers that characterize the modern corporation, we must take a look at the evolution of economic inquiry. The underlying assumption of the “modern era” has been that science is a privileged form of inquiry that can discover natural order through the application of empirical and/or rational methodologies; that is, the “Scientific Method.” Since the early twentieth-century, disciplinary inquiry into the descriptive “*nature*” of the modern corporation and its management has been dominated by social scientists; primarily economists. Post-modern worldviews doubt the privileged status of scientific inquiry.

Economic theorists, like all scientific theorists, have always been prone to a certain degree of heterodoxy, as evidenced by the various schools of economic thought, including the: Neoclassical School, Austrian School, Post-Keynesian School, Institutional School, and the Marxist School. The theories generated by these schools of thought reflect the kinds of questions and answers engaged by their respective communities of inquirers. However, the precise status of these “schools of economic thought” is still subject to debate.

Orthodoxy” in economics today is usually associated with acceptance of neoclassical economic theory. These economists, steeped in modernism, argue that the various “schools” actually reflect internal debate within the broad dictates of the larger neoclassical framework and that all economists really agree on the basics of their science. On the other hand, the proponents of the various opposing “schools” often portray their own orientation as “revolutionary” and indicative of a whole new paradigm. All of this suggests that economists, like other disciplinary inquirers, often disagree over whether or not they disagree.



Evolutionary scholars agree that a certain degree of internal disagreement is regarded as normal and a precondition for scientific innovation and advancement. Admittedly, any evolutionarily-based sociology of science will be messy at times.

Despite scholarly debate over the nature and extent of descriptive heterodoxy, there is general agreement that there are at least two broadly-based lines of inquiry (or paradigms) that have dominated economic thought since the early twentieth century: the “*neoclassical theory*” and the “*institutional theory*.” Neoclassical economic theory based on the *Newtonian Worldview*, interprets economic phenomena from the perspective of Newtonian physics; that is, via closed mechanical systems amenable to mathematical description via linear calculus. Neoclassical economists accept the empirical fact that “business” has underlying social, informational, technological, and institutional structures. But those facts are regarded as external to economic inquiry and therefore relegated to “*black boxes*” to be explored by other inquirers (historians, psychologists, sociologists etc). Hence, the early neoclassical economists really had no use for the entity called the corporation. A corporation was viewed as the property of the person that owned it and therefore corporate behavior was equated with the behavior of the self-interested entrepreneur.

Under the modern neoclassical paradigm, business management culture was reduced to applied mathematics; that is, became an exercise in *engineering* (like building a bridge or skyscraper) based on the application of linear mathematical models. Managers were deemed to be *experts* at controlling change, armed with both *power* and *information* (or true beliefs) as they stood at the top of their hierarchical business models. Information was located (or at least was supposed to be located) in the “minds” and/or “brains” of the experts employed by the firm. Brains according to this stalwart Newtonian paradigm are regarded as “computers” that “process” information via inputs and outputs. Economic agents, endowed with computer-like rationality process this “information” and make thereby rational choices. Corporations led by rational leaders effectively predict and control change and survive, while corporations led by unskilled and/or irrational leaders go bankrupt.

Based on this Newtonian model, the assumption was that “Truth” and “Goodness” were at least “out there” and could be deduced from mathematical formulae that more or less “correspond” to what’s going on in the “Real World.” Information was simply “true belief,” a corporate asset that could be utilized, bought and sold like any other form of property. The primary managerial problem was how to “control” the flow of information, within and between corporations.

Again, through the lens of the Newtonian paradigm, there was little if any inquiry into the “black boxes” that contained information, institutions, social structures, or even the technologies that process that information. That kind of probing was left mostly to sociologists, psychologists, and philosophers. Everything that is subject to change over time was labeled an “externality” and locked away in those “black boxes.” Institutional economics has long sought to break open those “black boxes.” *Old institutional economic theory* was associated with the advent the *Darwinian Worldview* and the seminal works of Thorsten Veblin in the late nineteenth and early twentieth centuries. By the 1920s and 1930s, this tradition was overshadowed by the neoclassical theory and Keynesian economic theory. Today, *new institutional economics* is most often associated with *transaction costs economics* and *agency theory*.

#### **4. BUSINESS ETHICS**

Orthodoxy in business management and business ethics is currently occupied by a deontological “Nexus-of-Contracts Theory.” It basically argues that the *firm*, or *modern corporation*, is a complex adaptive system comprised of definable subsystems, known as *stakeholder groups*. Its ontological status as a single system is forged out of a body of legality. Hence the modern corporation is often described as a legal fiction forged out of moral and legal agreements between various *stakeholder groups*. The nexus of stakeholder groups, engaged in this self-interested bargaining process include: stockholders, employees, customers, suppliers, financiers, and local communities.

The basic descriptive bases of NOC are fairly simple. The idea is that economists can scientifically analyze the “*transaction costs*” associated with *economic activity*. Traditionally, this approach usually requires protecting transactions against cheating. We human beings tend to break contracts when those contracts no longer appear to serve our short-term or long-term self-interest: especially if we believe we can get away with it. Who said, “Cheaters never prosper?” So one of the main foci of NOC is to explain, predict, and control cheating.

Opportunism or cheating is contingent upon variables present in an economic environment, especially: information, freedom, and competition. Whereas neoclassical economics assumed perfect information, perfect freedom, and perfect competition within the system, NOC accepts the reality of imperfect information, imperfect freedom, and imperfect competition. Therefore, economic activity is not entirely “natural” but requires at least some cultural “nurturing.” But in a capitalist society, this nurturing adds to the cost of doing business. In order to nurture the human capacity to maintain contracts, and control opportunism, we need both *moral rules* (enforced by public sentiment) and *legal rules* (enforced by the coercive power of government). The relative proportion of morality and legality is debated by economists, political scientists, and business ethicists.

Now in order for the Nexus-of Contracts Theory to be both descriptive and prescriptive (or normative) it must do more than explain how the various constituencies or classes of stakeholders (stockholders, consumers, managers, employees, consumers etc.) *in fact* bargain in the real world within various competitive environments. NOC must also prescribe moral and/or legal rules that govern how stakeholders *ought* to bargain, and the role that managers ought to play in this process. So NOC theory must prescribe moral and/or legal rules that ought to constrain global industries, non-governmental organizations (NGOs), and national and international governments.

Again, NOC holds that corporations are “legal fictions” that have no ontological status apart from the laws that are enforced by governmental entities. And of course, corporate laws vary between national and state governments. This implies, at least a degree of descriptive and prescriptive *relativism*. One of the internal debates facing the “Nexus-of-Contracts Theory” is whether there are, at least some, “*hyper-norms*” that form the basis for universal human morality, or whether business ethics is hopelessly mired in legality and cultural relativism. NOC suggests that markets must be nurtured in order to control the transaction costs associated with minimizing opportunism. All markets require monitoring and enforcement of rules that control opportunism as they attempt to negotiate the conflicting interests of stakeholder groups: stockholders, employees, consumers etc.

So if the descriptive dimension of the modern corporation is based on nexus of contracts theory, then what are the prescriptive parameters? In terms of corporate governance, much of the descriptive and prescriptive analysis of corporations can be summarized in terms of three basic questions:

1. Whose ends (rights or interests) are in *fact* served by corporate managers? (E.g.: stockholders, consumers, employees, financiers, suppliers, local communities, nations, humanity etc.) AND, whose ends (rights or interests) *ought* to be served by corporate managers?
2. By what means can managers *in fact* employ in order to efficiently realize these stated ends (rights or interests) AND, what means can managers employ within the bounds of morality?
3. What role does government in fact play in the realization of these various corporate ends AND, what role “ought” government play in this process.

Despite the idealistic ruminations of various “win-win” strategies, in the real world, what’s “good” for one or more classes of corporate stakeholders (stockholders, employees, consumers, etc) may or may not be “good” for the other stakeholders. Generally speaking, if you raise the pay of employees, either the consumers pay higher prices, or the stockholders earn less. And, what’s “good” for society may or may not be “good” for individual industries or corporations. What’s “good” for United States may or may not be “good” for the rest of the world. And what’s “good” for present stakeholders, may not be good for future stakeholders. Under the classical economic theory, this balancing act has been conducted in the context of general *equilibrium theory*, which holds that there is a natural point where everyone will do about as well as they can given the prevailing circumstances. So within the context of rights-based corporate governance, the concept of a “good manager,” is contingent upon how well he/she can mesh the often conflicting interests of the various classes of stakeholders. NOC scholars have identified three alternative roles for managers.

1. *Stockholder Theory*: Managers are morally and legally obligated to serve as agents of the stockholders, and advance their interests regardless of how those decisions might affect the other stakeholders.

2. *Stakeholder Theory*: Managers are morally and legally obligated to serve as agents of all stakeholder groups, and try to advance all of these interests collectively, without favoring any one group.
3. *Marxist Theory*: Managers are agents of the government that aspire to advance collective interests, often at the expense of the other stakeholder groups. This theory, therefore, views corporations as the property of the state.

#### 4.1 STOCKHOLDERS AND STAKEHOLDERS

Nexus of contracts theory says that corporations are a nexus of contracts between various stakeholder groups: stockholders, employees, consumers, financiers, sub-contractors, and the local community. Business ethics, therefore, is about how to manage a corporation. Within the contractual constraints implied by the Nexus-of Contracts framework there are two opposing theories that offer different strategies for dealing with “conflicts of interest” and “natural inequality:” *stockholder theory* and *stakeholder theory*.

Stockholder theory states that the best (most efficient) way to serve the interests of all stakeholders is to always manage the corporation to serve the interests of stockholders. Corporations are money machines that are the property of the stockholders. The CEO is regarded as an agent of the stockholders: stockholders hire the CEO to make money for stockholders. The interests of the other stakeholders are economically relevant, but are best met via the impersonal “invisible hand” of the market. In other words, stockholder theory argues that the CEO ought to deal with the other stakeholders based on economics but not ethics. So when corporations are deciding how much to pay their employees, who to hire, how much to charge consumers for their products and services etc. they are expected to rely on supply and demand rather than vague moral principles such as beneficence, non-maleficence, utility, liberty, or justice. Of course, the stockholders can collectively choose to operate based on morality, as long as it is their morality and not the CEO’s personal morality. And of course, any corporate morality must be clearly disclosed so that stockholders that do not agree with it can sell their stock.

All real world contractors go to the bargaining table armed and/or burdened with natural inequalities. Hence, we have the political question concerning the role of government in mediating the process. Based on stockholder theory, which is based on libertarianism, all stakeholder rights are “negative rights.” Bargainers are guaranteed the equal right to bargain, but there can be no “positive rights” guaranteeing that any one stakeholder or stakeholder group will emerge victorious as a result of the competitive process. According to libertarian stockholder theory, government ought to be “impartial” or “neutral” in the determination of winners and losers. The primary purpose of government, therefore, is to simply enforce contracts between rational self-interested bargainers and promote competition. This includes providing a legal framework that includes the monitoring and enforcement of impartial rules of competitive fair play.

From the standpoint of stockholder theory, the challenge is how to manage corporations in such a way that the pursuit of self-interest by stockholders benefits the other stakeholders. The traditional natural law approach suggests that Mother Nature prefers equilibrium, which tends to “float all boats.” The stockholder theory is “naturalistic” in the sense that it is based on “reciprocal altruism,” which if left to its own devices can settle into equilibrium; whereas, utilitarianism requires a degree of other-worldly “ideal altruism.” Therefore, stockholder theory avoids the problem of how to cultivate ideal altruism (utilitarianism) into a system naturally populated with self-interested bargainers. But it also requires a bit of altruism. Not on the part of the contractors themselves, but on the part of the governmental institutions responsible for maintaining free market competition and monitoring corporations to insure contractual compliance.

“Stakeholder Theory” is management designed to serve the interests of the multiple constituencies that ‘have a stake in’ management decisions including: stockholders, employees, consumers, suppliers, financiers, and the local community. Many stakeholder theorists are followers of the philosopher John Rawls: the most important figure in the doctrine called *welfare liberalism*. Stakeholder theorists argue that serving the interests of stockholders does not always maximize the interests of the other stakeholders. Managers (and/or government) must at least occasionally intervene on behalf of the “least-advantaged”

stakeholders, or those that find themselves bargaining under conditions of unequal liberty. Hence, there are at least some “positive rights” associated with stakeholder theory.

The argument against Rawls’ account of the prescriptive bargaining process as the pursuit of an “overlapping consensus” conducted under a hypothetical “veil of ignorance” is that it’s not clear how bargainers in the “real world” could go about bargaining under that veil (impartiality), given that in the real world we all come to the bargaining table armed with our “natural advantages” and/or burdened with our “natural disadvantages.” We are also naturally inclined toward partiality: that is, we treat our friends and relatives better than strangers.

Again, in the real world stakeholder theory must provide an explanation as to why the “most advantaged” would bargain with the “least advantaged.” One typical Rawlsian response is that rational, self-interested bargainers would sacrifice their short-term “advantages” for long-term “security.” After all, even Donald Trump gets sick, and will eventually suffer the infirmities of old age. But when an agreement is forged between the “advantaged” and “least advantaged,” there is always the question of whether the contractors can “Trust” each other to keep their promises. For a realist, this uncertainty once again underscores the need for external monitoring of contracts by government and the use of coercive force to punish non-compliance. Of course, then the bargainers have to idealistically “Trust” the impartiality of government. So although, the Nexus-of-Contracts Theory embraces realism’s naturalistic critique of corporate altruism, it invariably raises the question: “Who is monitoring the monitors?” In the end, Nexus-of-Contracts Theory ultimately requires trustworthy international monitors, or governmental altruism.

Finally, it is important to point out that all collective moral and legal decision-making involves leaders and followers, which raises the problems related to “agency relationships,” and therefore requires “agency theory.” In its simplest terms, agency raises the question is how corporations and the nexus of stakeholders can develop strategies that induce self-interested “agents” (such as CEOs) to act in the interest of “principals” (such as stockholders). Stockholder theorists try to arrange incentives in order to align the interests of agents with stockholders. Stakeholder theorists tend to rely heavily on the coercive power of government to blend the interests of the various stakeholder groups. Of course, the main point of contention between the stockholder and stakeholder theories is how government ought to manage legality and morality in order to minimize the ill-effects of coercive, predatory, self-interested corporate behavior. I have argued that the Nexus of Contracts Theory, in both the stockholder and stakeholder traditions, require altruistic governmental institutions, although stockholder theory expects government to do less.

John Boatright argues that the descriptive claims made by stockholder and stakeholder theory are empirical matters that can be resolved based on scientific methods within the larger context of the Nexus-of-Contracts Theory. So although, stockholder theory still reigns supreme in the United States, given the complexities raised by the Nexus-of-Contracts Theory, there is no guarantee that it will, in fact, maintain its status as orthodoxy, nor can there be any moral basis for arguing that it “ought” to prevail in the future or that it “ought” be adopted by other socio-political environments. Canada and most of Europe tends toward stakeholder theory.

## **5. CORPORATIONS AND EMPLOYEES**

Nexus of Contracts Theory requires that we acknowledge the fact that corporations are complex entities comprised of competing stakeholder groups: stock holders, employees, consumers, financiers, sub-contractors, and a local community. Therefore, business ethics is about the moral relationships between stakeholders.

As stated earlier, I think morality is a social phenomenon rooted in *reciprocal altruism*. Although some philosophers talk about moral obligations toward one’s self, based on virtue, I treat morality as an “*other-regarding*” activity. All businesses require at least one employer and one employee. In very small businesses, the employer and employee may be identical, and therefore self-interest rules. However, in larger corporations, where the employers and employees are different persons, moral standards based on reciprocal altruism are necessary. *Reciprocity*, of course, suggests that corporations have obligations toward employees and that employees have obligations to the corporations that employ them.

Some stakeholder theorists defend a virtue-based theoretical framework. Such a theory might conclude that employers ought to exercise the virtue of *generosity* and the workers ought to exercise *gratitude*, and or visa versa. In the Aristotelian tradition, generosity resides midway between the vices of excess and deficiency. Hence, a tightwad boss would be deficient and a spendthrift boss would be

excessively generous. The problem is finding that "*golden mean*." Actually the virtue of gratitude has a reciprocal relationship with generosity; that is, we express gratitude for acts of generosity. But both virtues are subject to rational limitations. An employee might exhibit excessive gratitude toward his/her employer, but violate other more salient moral standards. For example: an employee might lie under oath to protect her employer from just prosecution. Conversely, workers are under no obligation to express gratitude toward a tightwad boss. However, one might be temporarily grateful for a spendthrift boss that pays you more than you are worth, but then you may eventually regret that ill-placed gratitude when the company goes bankrupt. (Thank that tightwad boss!) In sum, in the Aristotelian virtue-based tradition, both employer generosity and employee gratitude are both limited by rational limits imposed by the concepts of excess and deficiency. While I think there is room for virtue-based reasoning in business ethics, I am more inclined toward invoking *moral principles*.

If you apply moral principles to the employer-employee relationship, you will not focus so much on the character or mental states of particular persons as much as the rightness or wrongness of the actions themselves (deontological) and/or their consequences (teleological). On the question of compensation, for example, liberty, utility, and/or justice might be invoked. Of course, these approaches may prescribe vastly different decisions. In this chapter I'll discuss the employer's obligations toward its employees and the employee obligations toward the employer. Stockholder and stakeholder theorists tend to do things differently.

### 5.1 COMPENSATION AND WORKING CONDITIONS

In regard to the treatment of workers by corporations there are two basic issues: *compensation* and *working conditions*. There are two ways to approach these questions, via stockholder theory (libertarianism) and stakeholder theory (egalitarianism). Based on stockholder theory, companies make employment offers to employees which they either: accept, reject, or renegotiate. Historically speaking, negotiation between corporations and workers are sometimes stacked in favor of corporations, and sometimes in favor of employees. In the United States, this fact led to the rise of both labor unions, and governmental regulation, which over the years has influenced negotiations. Stockholder theory requires only a bare minimum of governmental oversight in order to enforce contracts and punish cheaters. Stakeholder theory requires a lot more out of government.

#### COMPENSATION

How much is your labor worth? Is there some objective method that corporations might utilize in order to compensate their workers fairly? Typically, the morality of compensation falls under the category of *distributive justice*. The *formal principle* of justice suggests that it is unfair to pay workers either more than they deserve or less than they deserve. Of course, the obvious question here is which *material principle(s)* of justice do we employ in determining what those employees actually deserve?" Is it merit, need, equality, or utility? Here are some of the options:

**MERIT-BASED COMPENSATION:** Based on the material principle of *merit* it would be unfair to pay the "best workers" the same or less than the "worst workers." In other words, merit-based compensation is based on compensation. Sometimes "pay" involves salary, sometimes benefits, sometimes it involves other variables (or perks). But how would a corporate leader determine what the "best" means in any given workplace, and would he/she go about "objectively" grading work performance? Stock holder theorists would argue that merit is inseparable from the free market. If you underpay an employee relative to what's being offered by other corporations for the same or similar work, that employee will most likely resign and take the more lucrative (or attractive) job. If you overpay workers, you'll have to charge consumers more for your product or service and/or earn less profit and adversely affect stockholders and stock price. Defenders of merit-based compensation argue that compensation also influences employee performance (and employee loyalty). Workers will be more loyal to the company and work longer, harder, and better if they believe that they will be fairly compensated. Do they have merit pay at your place of employment? How is it distributed? Do you think it's fair? Are you overpaid? Are you underpaid?

**NEED-BASED COMPENSATION:** Based on *need*, it would be unfair to pay workers less than what they need. Need-based compensation usually incorporates ideas such as a “minimum wage,” or a “living wage.” The problem here is how does one objectively set these standards? How does an employer differentiate between “wants”-(e.g. a new guitar) and “needs” (e.g. a liver transplant)? And unfortunately, the neediest workers are not necessarily the best workers. Sometimes workers are in need because they are sick, incompetent, or just plain lazy. Stockholder theorists argue that need-based compensation ( minimum wage and living wage) are unfair because they involve paying the least valuable workers more than they deserve. Need-based compensation also incentivizes employers to hire fewer low end workers, which leads to unemployment of the least advantaged. Stakeholder theorists argue that corporations have a tendency to *exploit* their less valuable workers and that exploited workers become alienated from their work, family and themselves. How much salary do you need? If you are ill, do you need more salary or benefits to survive? Do workers have positive right to: home ownership, health care, cell phones, or wide-screen televisions?

**EQUALITY-BASED COMPENSATION:** Based in *equality*, it would be unfair to pay any worker more or less than any other worker, regardless of merit, need, or utility. After all, all workers may not, in fact, be of equal value in terms of merit, need, or utility. As a general rule, companies that compensate all workers at the same level, lose the best workers and attract the worst workers. This is called adverse selection. Unions often pursue variants of equality-based compensation, such as basing salary on non-competitive factors such as seniority. Would you want to work for a corporation that equally compensates all workers, regardless of their competence? How long would that corporation stay in business?

**UTILITY-BASED COMPENSATION:** Based on *utility*, it would be unfair to pay a less useful employee more than a more useful employee. But how does one determine what “*greatest happiness*” means in any particular workplace? Low employee wages might make the stockholders and consumers happy. High executive wages might make executives happy, but make everyone else unhappy. Many stockholder theorists argue that corporations compensate executives at a higher level because they have utility; that is, stockholders, employees, consumers, financiers, etc. benefit by retaining these workers. Hence, utility-based compensation is really merit-based compensation.

**MARKET-BASED COMPENSATION:** Based on market-based reasoning, it would be unfair to pay employees (including CEOs) more than what the market dictates. A corporation’s best overall strategy is always to hire best person for the least cost. The more costly it is to replace a worker, the more you have to pay that worker. If you underpay good workers, they will quit and work for someone that pays them more. Stockholder theorists argue that companies that adopt compensation schemes ignore the free-market tend to go bankrupt over the long run.

In the real corporate world, rationally self-interested corporations simply cannot hire the neediest workers unless doing so provides a favorable cost-benefit ratio (e.g. those individuals are willing to work longer hours for less compensation), unless the government forces them to (Americans with Disabilities Act), or unless government provides economic incentives (Enterprise Zones). Also in the real world, *merit* and *utility* usually mean the same thing. The best workers are usually the most useful, in the sense that they contribute more to the company. Therefore, in determining just compensation there are really only two principled alternatives: pay scales based on *merit* and pay scales based on *equality*: stockholder theory v. stakeholder theory.

For example, some small colleges try to pay their professors based, more or less, on *equality*; that is, they try to pay all professors on essentially the same scale, regardless of merit or utility. Sometimes these compensation policies involve setting up a pay-scale based on seniority, so that long time workers get paid more than recent hires. Of course one might argue that since workers with seniority have more job experience and tend to be the best workers, this is really a merit-based system. I would argue that these schemes are nevertheless equal as long as each worker has an equal opportunity to gain seniority. Many people think that compensation based on equality is fair. But, unfortunately, salaries based on equality often bump heads with economic reality.

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For example, there are, in fact, more high-paying employment opportunities than engineers. But there are more philosophers than jobs in philosophy. That's why colleges pay their engineering faculty much more than they do their philosophers. When defending these higher wages, college administrators might invoke several different moral principles. Some *utilitarians* might say that "since there are more engineering majors than philosophy majors, the whole college benefits more from engineering than philosophy, and therefore the higher wages for engineers is justified." Utilitarians would also justify paying football and basketball coaches more than any other employees.

Alternatively, one might argue based on the material principle of *equality*, that it is unfair to pay engineers more than philosophers if they hold Ph.D.s, write books, and teach excellently. However, if Aristotle were on the philosophy faculty, one might argue, based on the material principle of *merit*, Aristotle is the most academically accomplished faculty member, and therefore he ought to be paid the most. Then again, even though he may be the most *meritorious* faculty member, he may not necessarily generate the most *utility* for the college. Of course, libertarians would probably say that, if the college really wants to have either an engineering program or Aristotle on the faculty, they will, *in fact* have to pay market value for their labor. Otherwise those rationally self-interested individuals involved will simply exercise their liberty and change their place of employment. The labor market, they say, is not unlike any other market: it is inherently unequal.

This fact of inequality means that at least some workers may not be worth very much to the corporation and therefore are compensated at a very low level, perhaps so low that those individuals may not be able to support themselves and/or their families. In the United States, government tries to compensate for the ruthless labor market by instituting minimum wage laws, unemployment insurance, Social Security, Medicare and Medicaid etc.

Minimum wage laws are prime examples of *egalitarianism*. They are often justified on the basis of Rawl's concept of a *social minimum*. (Utilitarians sometimes join forces with welfare liberals and argue that minimum wage laws make life better for all of us by reducing poverty, dependency, and crime.) Back in nineteenth-century America, before minimum wage laws were passed, workers were often paid extremely low wages for long hours working under extremely dangerous working conditions. Even children were subjected to working long hours in dangerous factories. Libertarian stockholder theorists argue that "those were the good old days!" when wages and working conditions were set by blind market forces and not by the whims of nosy, "do-good" government officials. In exercising their liberty, factory owners offered wages under certain working conditions and workers, who owned their labor, either accepted or rejected those offers. Once minimum wage laws took effect, libertarians argue, corporations were forced to pay workers more and as a result corporations couldn't afford to hire as many workers. Hence, one might argue that welfare liberalism helped fuel the advancement of labor-saving technology which led directly to the rise of unemployment and poverty in the United States. But really technology opens up more high-paying jobs for engineers and salesperson.

Stockholder theorists conclude that programs based on welfare liberalism are fundamentally ill-conceived. They say that the value of one's labor is, in fact, determined by voluntary choices by buyers and sellers of labor. Hence, if these poor workers had stayed in school and/or chosen more promising career paths, then their labor would be worth more. But when the government protects the *least advantaged* from the consequences of their bad decisions, it amounts to encouraging future bad decisions with public funds. So I am penalized via the tax code for having made good decisions, while high school drop outs are rewarded by overly generous minimum wage laws, Medicaid, and welfare checks. Hence, government inadvertently discourages workers from staying in school and/or choosing more promising career paths. Why work at all if you can stay at home and collect that welfare check? That's called "moral hazard."

Welfare liberals respond by arguing that the fatal flaw of libertarianism is that it assumes that poverty is always caused by irrational or unfortunate decisions, when in fact, a lot of poverty is the result of natural inequality (the *natural lottery*) and predatory behavior by more powerful stakeholder groups. Through no fault of their own, many people simply cannot support themselves because they are genetically and/or socially disadvantaged. As Rawls argued, in the state of nature, the distribution of genetic and social advantage is inherently unfair. The fact of inequality, egalitarians argue, does not make it right. That's why our ancestors invented civilization to begin with! What do you think?

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## WORKING CONDITIONS

The moral questions associated with *working conditions* typically involve the harm principle and therefore are very complex. Ideally, one would expect companies to provide a safe working environment for all employees. But unfortunately, some occupations are inherently more dangerous than others, such as: steel work, police and military work, and lion taming. Although the workplace of a policeman or steel worker will never be as safe as that of a college professor, one might argue that companies ought to spare no expense in reducing those known risks. But providing safety always has a cost. Libertarians are fond of pointing out that government could make our interstate highways 100% safe by instituting a 25 MPH speed limit. But of course, that won't happen because the loss in terms of travel time is *not worth the lives it would save*. (What do you think about that one?) Similarly, most modern safety measures designed to protect policemen, such as well-equipped police cruisers, state of the art defensive weapons, bullet-proof vests, and well-trained police dogs all cost money. An *idealist* (usually a stakeholder theorist) might argue that the life of one policeman is more valuable than any amount of money, and therefore communities ought to spare no expense to insure the safest possible working environment. Although this may appear to be a sound moral position, I would argue that we must also take into account other principles such as utility and liberty.

A *utilitarian* would apply *cost-benefit analysis* and provide only those safety measures that are *cost effective* and most likely to actually protect the valued policeman from the most probable threats. Hence, if a small-town policeman rarely encounters armed bad guys, community leaders might justifiably decide to forego the bullet-proof vests and the AK47s. Some communities might decide to issue bullet proof vests and AK47s to their public school teachers.

Sometimes corporate enforcement of safety measures violates the *liberty* of its workers. Suppose a construction worker prefers to not wear a hard hat on the job, even though it substantially reduces the risk of head injuries. Should the company force her to wear that hard hat? Should policemen be forced to carry guns? Should college professors be forced to wear bullet proof vests? Self-interested utilitarian companies have no moral qualms with forcing employees to abide by safety standards. The liberty of its workers is always secondary to the "greatest happiness principle." They might deal with our risk-taking employee as follows: "Look! We spent thousands of dollars training you. If you get hurt on the job, it will hurt the company and we'll have to train someone else to do your job. We won't take that risk. Therefore, put on that damn hard hat or you're fired!"

Paternalistic companies routinely violate the liberty principle in order to protect its workers from self-inflicted harm. They might say: "We realize that you would prefer not to spend \$100 on a hard-hat, but it's in your best interest to wear one. We'll buy it for you. You wear it!" Of course, modern corporations must also deal with third-parties, especially insurance companies and paternalistic government regulators. Libertarians, however, elevate personal self-interest over communal self-interest. They would simply require that companies *warn* workers of all known job-related risks and perhaps provide access to safety equipment. But in the end it is the worker alone that has the right to decide whether to use it or not. Of course, this means that if a worker suffers a head injury on the job because she didn't wear her hard hat, she alone is *responsible* for the injury, not the company. The libertarian boss would, however, exercise his/her liberty and hire someone to replace our risk-taking, brain-damaged libertarian worker. Hence we have the classic moral tension between *utilitarian policies* which violate the liberty of individual workers by forcing them to work safely in order to promote the "greatest good," and *liberty-based policies* which avoid force, protect the liberty of both employers and employees, but sometimes sacrifice utility in doing so.

Stockholder Theorists argue that workplace safety standards, like wages, ought to be market-based, voluntary and contractual: set by personal decisions forged between employers and employees based on market forces. If a company has unsafe working conditions, rationally self-interested workers will either demand higher wages or gravitate toward other jobs that offer better working conditions. Moreover, if a worker is injured at an unsafe workplace because he/she chooses dangerous work at higher compensation level, then that worker himself would be responsible for the injury and not the company or the government: unless he earlier chose to purchase workman's compensation from another corporation.

## 5.2 PRIVACY ISSUES



To what degree is it morally acceptable for corporations to encroach upon the private, personal lives of their employees? For example, is it morally and/or legally justified for corporations to routinely test workers for drugs and alcohol?

To me the main issues focus on utility; unfortunately the costs for these tests often outweigh the benefits. Some tests simply cost a lot of money to purchase from sellers. These costs must be balanced against their benefits. Some tests have less utility than their marketing claims. Some tests are inaccurate and really don't measure anything remotely objective. I'd put the ACT, SAT, and GRE in that category. And, personally, I'd be insulted in a corporation asked to take an honesty or drug test. Not because I'm dishonest or a drug abuser, but because I am honest and drug free (other than caffeine and alcohol!). But more than that, I'm afraid of inaccurate tests. Drug tests are notoriously inaccurate. Many laboratories that process the tests employ underpaid incompetent workers. Corporations, no doubt, alienate a lot of good workers by asking them to submit to drugs tests or honesty tests.

The most important rights-based arguments center on liberty. Drug tests, for example, may detect lingering quantities of illegal drugs that do not influence work performance. It's one thing to smoke pot two minutes before flying a passenger plane and another thing to smoke pot a week before takeoff. Is it my boss's business if I choose to smoke a joint on my day off? There may also be a big difference between a rock star smoking a joint before a performance and pilot smoking a joint before flying. But, unfortunately, due to the ongoing drug war, it is illegal for psychologists to conduct clinical trials that prove that pot impairs one's ability to fly a plane. What would happen if it turned out that pot smoking actually increased one's ability to fly a plane?

Performance enhancing drugs are gaining more popularity. Therefore, one might argue that the MLB and NFL have a right to test for these drugs. But those same drugs are often prescribed by doctors to facilitate the healing process. Do baseball players have the right to take the same drugs the rest of us can take?

And finally, testing is one thing but its something else deciding who gains access to the results of those test, and what a company can do with those results. Should a company be able to fire you because you have a genetic predisposition for alcoholism? Should they be able to hire someone over someone else because of a medical test? My view is that these tests are products that are sold to gullible, naïve corporations. Stockholders pay the price for these wasteful tests.

Other privacy issues involve the increased use of computers in the workplace. When personal information is stored in computers, the question again arises who has access to that information. How secure must that information be? How much money should corporations invest in protecting the security of information on their employees and consumers? What about identity theft?

E-mail is also problematic in the workplace. Many employees expend time at work checking their private, non-work-related e-mail. Hence, corporations end up paying for wasted time. On the other hand, what can a company do to minimize this behavior? Should they hire people to monitor computer use? Who'll monitor the monitors? How much will you pay the e-mail monitors? What do you think about: drug tests, honesty tests, IQ tests, or AIDS tests? Based on either utility or rights-based arguments, is it easier to justify testing one class of workers rather than another? For example, should we test airline pilots, physicians, and college professors to the same degree? What kinds of tests? How accurate are these tests? How much do the tests cost?

### **5.3 GENDER AND RACE**

Beginning in the 1960s, women first began to work outside of their homes in large numbers. So the presence of large numbers of women in the workplace is a fairly recent phenomenon. Over the years some occupations have been monopolized by females such as nursing, primary education, and sales. Some occupations have been monopolized by males such as manufacturing, mining, and engineering. Even today, it is difficult for males to compete in occupations dominated by females, and it is difficult for females to compete in occupations dominated by males. The difference is that most of the highest paying jobs have been long monopolized by males, and for a long time males were not interested in the work that females typically monopolized because they didn't pay very well. Since the 1960, the pay scales have certainly changed, but females still often encounter a "glass ceiling" that prevents them from advancing to the higher paying jobs in any industry. The key issues are: Why does this happen? Is this necessarily wrong? What role should government play in breaking down these sex-based barriers? The underlying moral principle is

the idea that “discrimination” in hiring and or firing based on race, sex, age or sexual preference alone is morally wrong.

The concept of “discrimination” is rooted in the formal principle of justice: “treat equals equally and unequals unequally.” Unfortunately, that concept often bumps heads with the principles of liberty and utility. Suppose that John Smith owns a store that sells guitars and hires only family and friends, all of whom happen to be young, guitar-playing, white heterosexual, and male. Does the fact that John “owns” the store mean that he has the liberty to hire whomever he chooses? One of the side-effects of exercising one’s liberty is that sometimes we make poor decisions. If John’s family and friends turned out to be incompetent, irresponsible thieves that know nothing about the guitar business, he would soon go bankrupt. That would be good news for all the other guitar stores that chose their workers based on impartial criteria such as job experience, knowledge of guitars, and honesty. Hence, stockholder theorists argue that most of the time, discriminatory hiring and firing practices are punished by the free market, and therefore we do not need laws to enforce non-discriminatory business practices. Stakeholder theorists argue that many corporations can survive and even thrive, for a long time despite discriminatory practices, therefore some government involvement is necessary.

### SEXUAL HARASSMENT

One form of sexual discrimination is sexual harassment. To what degree are corporations responsible for working conditions that are *harmful* and/or *offensive* to female employees? In recent years, *sexual harassment* on the job has become a major issue for many companies and workers, mostly because of increasing governmental involvement. The root of the problem is that in the vast majority of workplaces worldwide, men hold positions of *power* over women. Power means the ability to coerce. Moreover, in most cultures there is a strong body of *tradition* in support of sexist beliefs and practices; including belief in the inferiority of women in economic spheres and the practice of sexual exploitation. Therefore, when you combine the fact of power with sexist tradition we end up with inequality.

Some evolutionary psychologists *explain* both the dominance of men in economic spheres and their predatory nature on the basis of evolutionary principles. Hence, they argue that in the state of nature unencumbered by sexist tradition, we would still find male economic dominance and sexual predation. Some even argue that this genetic predisposition is so powerful that it is extraordinarily difficult, if not impossible for culture to eliminate it. In other words, it is natural for men to exercise coercion over women. However, in this course I have tried to argue that there is a difference between *descriptive facts* and *normative values*. The fact that men are naturally prone to exploit women (not to mention other men, children, and animals!) does not morally justify it.

Although libertarians eschew almost all forms of personal coercion, welfare liberals, utilitarians, sometimes morally justify it based on *utility*. Based on utility, one might justify the use of *coercive power* in the advancement of company interests (wear that hard hat!), or based on beneficence one might paternalistically prevent harm to workers (wear that hard hat). However, when powerful men use that same coercive power to advance their own self-interest, especially sexual interest, then injustice, utility, and even harm may enter into the equation. But what exactly is sexual harassment? Do companies have a moral obligation to actively prevent it by instituting rules governing the hierarchical interaction of males and females? Or, should women simply exercise their own liberty by either accepting or rejecting these offers?

Contemporary discussion on sexual harassment focus on two forms: *quid pro quo* (you scratch my back...); and *hostile work environment* (unwanted sexually oriented workplace).

In *quid pro quo*, sexual harassment in the workplace involves *offers* and *threats* imposed upon subordinates by superiors in hierarchical social structures. In our society (and almost all other societies) sexual harassment involves men making offers and/or threats to women. The *offers* associated with sexual harassment typically involve trading sexual favors for advancement opportunities (*benefits*) within the corporation. Offers are more or less enticing. *Threats* typically involve retaliatory *harms* for non-compliance such as withholding opportunities, or demotion. Threats are more or less harmful.

On the surface, quid pro quo sexual harassment may seem to have the same basic logical structure as *reciprocal-altruism*: “You scratch my back and I’ll scratch yours” or “tit for tat.” But sexual harassment potentially violates at least four moral principles: *harm*, *liberty*, *utility*, and *justice*.

First of all, sexual harassment violates the harm principle if retaliatory threats are involved, which makes those offers coercive and therefore also a violation of the liberty principle. However, in the libertarian tradition, if a female worker *freely chooses* to advance her career by sleeping with the boss, in

the absence of any retaliatory threats, then it is hard to argue that the offer is either harmful to her or coercive. Therefore, at least some sexual offers made by superiors may not violate the liberty of female employees and therefore would not necessarily constitute harassment. But that's not to say that promotion based on sexual prowess makes for a successful corporation. Stockholders would sell their shares if they knew that promotions are based on sexual favors.

Promotion based on sexual prowess may also violate *utility* and *justice*. Obviously, a company can be harmed financially when either inefficient workers get promoted because of exemplary non-work related skills, or when efficient but non-compliant women get passed over for promotion. Of course, based on libertarian policies, corporations have a right to harm themselves, as long as they do not threaten those non-compliant women.

The principle of justice requires that all employees (male and female) be treated equally and that promotions ought to be based on merit, and not on factors unrelated to job performance. If women who do great work, but get passed over for raises and promotion because they refuse to "play ball," then it is obviously unfair to those non-compliant women. (Incidentally, it is also unfair to the other competent male workers, who ordinarily do not benefit from offers like this.) *Quid pro quo* sexual harassment is rejected by both stockholder theorists and stakeholder theorists. However, stockholder theorists argue that companies that tolerate it will eventually go bankrupt. We don't need government.

The other form of sexual harassment relates to the presence of a *hostile work environment* toward women. Part of the problem here is differentiating between hostility and mere unpleasantness. Hostility can mean various forms of physical abuse such as unwanted touching, even rape. Or it can mean unpleasant language such as telling dirty jokes. This can involve a wide range of unpleasantnesses from crude language to outright physical threats. Of course all humans have different thresholds when it comes to being offended. Some women (and men) are easily offended, while others are impossible to offend. So where's the standard? Stockholder theorists say that the market place will set the standard. If the women in your corporation always complain about hostility in the workplace, and quit, then you might want to set some higher standards. Stakeholder theorists argue that government has to get involved.

But the main problem is how to regulate the workplace in such a way as to maintain efficiency without turning the workplace into a sterile, non-human environment. For example, a corporation could protect itself against hostile work environment by forbidding social interaction between workers. No talking in the workplace? But who wants to work in a place like that!

Some theorists do not generally employ the principles of liberty and justice in dealing with sexual harassment because they do not believe that human beings possess atomic free will nor do they necessarily accept the principle that all human beings should be treated equally. Instead, they rely on *tradition* to justify policy. Hence, some communitarians might accept sexism as a corporate tradition, while others might seek to re-engineer that tradition.

Because of the many moral and legal problems raised by sexual harassment, most companies have implemented rules governing the social interaction of male and female employees in the workplace. While everyone today agrees that sexual harassment is morally wrong, utilitarians often argue that it is notoriously difficult to regulate human sexual activity. After all, many of these personal "on the job" relationships also take place outside of the workplace, and therefore are inherently difficult to regulate. Indeed, companies that attempt to eliminate all sexual relationships from the workplace run against the force of tradition. The workplace has always been a great place to meet members of the opposite sex, and much more efficient than cruising bars!

Of course, there's a big difference between sexual harassment and dating on the job. Few women seek to cultivate long-lasting *friendships* with their bosses actually exchange job benefits in for sex. (But then again, men and women do not always seek long-term friendship in their dating preferences!) But even if the boss merely dates a subordinate, that fact alone tends to raise issues of distributive justice in the workplace. Remember, we do tend to treat our friends better than we do strangers. Would the boss be capable of acting *impartially* toward a woman he is dating? Did she really deserve that raise? Of course, co-workers tend to grumble when the boss treats his girlfriend better than all other workers. This might even affect corporate efficiency.

We might ask whether the government should attempt to regulate sexual harassment on the job? Again, libertarians argue that sexual harassment can be most effectively controlled by the self-interested, personal decisions of men and women on the job. If a woman is harassed, she ought to complain to a superior, if nothing is done, then she ought to quit and work for a company that treats women better. (If

she's raped she ought to prosecute!) After all, one would think that in the long run companies that sexually harass women would not be very successful in the market place, since they often promote incompetence.

However, if you are not a particularly valuable female worker and if you refuse your bosses sexual advances, and if the boss subsequently fires you, the cost to the company would be negligible. And because women tend to occupy the lower rungs of the corporate ladder, where replacements are easy to find, companies may not be particularly motivated to regulate sexual harassment. Moreover, if all the companies in a given industry routinely harass women, it may be difficult (if not impossible) for targeted women to find a less hostile work environment. Therefore, many of us argue that because sexism (like racism) is unjust, yet deeply entrenched in our culture, some form of governmental involvement is justified. Libertarians, of course, argue that any attempt to limit what men say to women is a freedom of speech violation and that we're all better off letting individual men, women, and corporations deal with sexual harassment.

Finally, corporations can always hire other corporations and/or entrepreneurs to teach workers how to comply with the law, and how to avoid expensive lawsuits. Sexual harassment training is a growing industry. I was not impressed with the quality of the training I had. It's a good thing I'm not inclined to sexually harass students.

#### **AFFIRMATIVE ACTION**

Another public policy issue that involves discrimination is *affirmative action*. Actually this is another rather vague term that refers to a variety of strategies adopted by the United States government to "correct" the fact that, white males are disproportionately represented in many of the most lucrative professions. This includes: lawyers, surgeons, corporate CEOs, engineers, and college professors. Even when women do manage to break into these male-dominated professions, they are often disproportionately compensated for doing essentially the same work that their white male counterparts. Based on stakeholder theory, one might argue this particular distribution in favor of white males is evidence of injustice toward women and minorities; that is, *racism* and *sexism*. They then argue that the government must intervene.

Despite the shallow rhetoric you often hear in the media, the issues involved in affirmative action are both philosophically complex and of great social and political importance. The complexity arises from its association with the concept of "justice" and its importance stems from its fundamental influence upon social and political institutions. For this course, my question for you is whether the government has a right to force businesses to hire women and minorities.

#### **"NATURAL" AND "SOCIAL" DISTRIBUTION OF RESOURCES**

Affirmative action is an attempt by government to redistribute resources. The perceived need to *redistribute* resources arises from the basic condition of biological existence; namely, *scarcity*. In the state of nature, all organisms are thrust into life or death competition. Nature distributes resources unequally by blindly doling out competitive natural *advantage* and *disadvantage*. Among human beings, competitive advantages such as good health, physical appearance, and intelligence are all unevenly distributed. In general, organisms and species that benefit from this *natural lottery*, survive, and those who are disadvantaged do not survive. In short, nature distributes resources based on "survival of the fittest!" Fortunately for us humans, the vast majority of us have a stockpile of talents.

Natural advantage and disadvantage are also unevenly distributed throughout the lifespan of most organisms. The very youngest and very oldest individual organisms are usually disadvantaged in the competition for scarce resources and frequently end up in the food chain, as prey to other more "fit" organisms. With the evolution of human social tendencies, culture, and/or intelligence, human beings have managed to escape much of the struggle for survival through reciprocal altruism; that is, by helping one another through the creation of and by social and political institutions that shelter the youngest, oldest, and the otherwise disadvantaged members of our species.

The first collectivist systems of *social redistribution* were, no doubt, based on the principle of *partiality*; that is, certain individuals and groups of individuals were favored over others. In primitive times this probably involved redistributing resources based in familial or tribal association. Since then, other forms of partiality have evolved along with new systems of redistribution based on age, sex, nationality, racial characteristics, and sexual preference.

As philosophers began to examine the social redistribution of resources among persons the concept of justice became the battleground. Aristotle noted, that there are two spheres of justice: justice in the *distribution* of resources and justice in *retribution*. Both involve the formal principle of justice, which states that "Individuals ought to receive no less nor more than they deserve." or "Treat equals equally and unequals unequally." As a formal principle, this does not tell us much about which individuals are to be considered equals. Arguments involving affirmative action may invoke either or both.

#### **AFFIRMATIVE ACTION BASED ON DISTRIBUTIVE JUSTICE**

Justice in the distribution of resources requires that we make some material determination of who deserves what. This entails *material principles* of distributive justice, or "patterns" which include: *merit, need, equality and utility*.

Unfortunately, it is not often clear which of these "patterns" ought to govern the social redistribution of any given resource and different individuals benefit from adopting any of these redistribution schemes. For example, merit scholarships are awarded to the best students, but not necessarily the neediest and scholarships based on need do not necessarily reward the best students.

Much of the debate over affirmative action can be traced to philosophical differences between *libertarians* and *welfare liberals*. Libertarians believe that all human beings naturally seek ownership of private property. This often precipitates competition for the most coveted and therefore most valuable resources. Hence, in order for an individual to privately own any resource, it is often necessary to expend one's own time and/or already held resources. Welfare Liberals acknowledge that economic competition for most scarce resources is probably unavoidable. However, they believe that, at least some very important resources (*needs*) ought to be distributed equally and not simply awarded as prizes in open economic competition. They often argue that all competition occurs under naturally unequal circumstances.

If I were to play chess against the world champion, even though the rules of engagement seem impartial, I cannot reasonably expect to win. Indeed, some of us are naturally advantaged with unearned genetic and/or social advantages such as intelligence, speed, agility, and even good looks. Others are disadvantaged. As long as the champ and I are competing for some trivial award, there is no problem. However, if the stakes include *needs*, or those resources essential to the preservation of life, then competition between us might be considered to be unfair. Even though we play by the same rules, we come to the game with unearned and unequal natural attributes.

Stakeholder theorists argue that the primary function of government is to redistribute some resources, rather than merely preside over a mediated form of Darwinism, where the naturally advantaged win and the naturally disadvantaged lose. Therefore, while libertarians favor small government with minimal interference in voluntary choices of individuals, welfare liberals favor intervention by government on behalf of the least advantaged segments of society: the poor, the sick, the elderly and children. Since any one of us can become disadvantaged at any time, even those of us who are presently greatly advantaged, it is in our rational self-interest to agree to contribute toward welfare.

But for libertarian stock holder theorists the rights of individuals are generally construed as *negative rights*, which guarantee only a right to compete for scarce resources without interference from others or the government, unless that pursuit harms others. Welfare liberals, claim at least some *positive rights* for all citizens, which guarantee actual possession of at least some resources, without being subject to competition. Welfare liberals, therefore, must necessarily use the power of the government to forcibly take resources away from advantaged individuals (usually through a progressive income tax) and redistribute some of those resources to the least advantaged. Some commonly proposed positive rights or entitlements include: the right to basic health care, the right to competent legal assistance, the right to a sufficient quantity of food, and the right to basic shelter.

So in the United States, the argument over affirmative action has been staged primarily between the libertarians, who loath all forms of social redistribution of resources, and welfare liberals (and some communitarians) who generally defend it. Much of their debate is over the concept of "equality of opportunity." At the level of common sense, the concept of an "opportunity" refers to the conditions under which an individual competes. It stands midway between a mere *chance* and a *guarantee*. A lottery ticket is less than an "opportunity" to become a millionaire. On the other hand, if that lottery were rigged so that my winning was inevitable, that would be more than an "opportunity" for me, and much less than an "opportunity" for you! An equal opportunity, then, suggests that impartial rules govern the competition.

However, if I won the Ohio Lottery three times in a row, you might begin suspect that the lottery was rigged or that the rules governing it were less than equal and impartial.

In the United States, many believe that the highest paid jobs ought to be impartially distributed based on merit; that is, the person best suited for the job ought to get it. Impartiality entails that public policy be blind to those attributes that have nothing to do with the determination of merit, such as race and gender. Welfare Liberals find it hard to believe that competition for the good jobs is, in fact, impartial when white males overwhelming occupy the most prestigious and high paying professions such as corporate executive, surgeon, college professor, and U.S. senator. If the rules of competition for resources consistently yield results that reward white males, then either a.) men are naturally better at doing those things. Or, b.) those rules must be biased in favor of men. In other words sexism and/or racism must have surreptitiously entered into rule making process.

Welfare liberals say that government has an obligation to revise the rules of competition and mould our culture until women and minorities are represented in the highest paying jobs proportionate to their numbers. *In short, an end state that reveals a predominance of white male winners, must be either the product of unfair rules or an unfair application of those rules.* In order to change patterns of unequal distribution, some defenders of affirmative want to require companies to hire a certain number of women and minorities. This is called a *quota*.

Many of the best jobs require many years of education. That's why many affirmative action programs target *educational opportunity*. Some African Americans, for example, say that they are denied access to an equal education because tax supported urban public schools are inferior and under-funded, while white suburban schools are superior and funded lavishly. In other words, educational opportunity is not equal. Some critics of affirmative action admit that we ought to improve inner-city schools, but not by reducing the quality of suburban schools or by lowering the standards for admission in professional schools for African Americans.

Although white middle class women are typically afforded better educational opportunities than African American males, some professional programs are still dominated by white males, especially in engineering and business. But even when women do receive the necessary education they find advancement in these professions difficult. Welfare liberals say that it is because male prejudice in the workplace, the "glass ceiling."

Some libertarians say that this is because women generally lack either the professional commitment, or the natural abilities necessary to become engineers or business leaders. Because of the perception that many of these occupations do not afford equal opportunities for women and minorities, many women and African Americans have simply chosen not to compete for these high paying jobs. This has also tended to perpetuate white male dominance in those professions.

Other defenders of affirmative action point out that, even well-intentioned systems of merit often harbor covert racism, sexism, and other forms of partiality. Hence, even though we might intend to devise impartial procedures for distributing a merit scholarship, those procedures might actually end up unfairly rewarding entire classes (or groups) of individuals. That's why many of us doubt that I.Q. tests, ACTs, SATs, and Civil Service Exams are impartial measures of merit.

Libertarian defenders of meritocracy insist that merit is objective and measurable. Merit, they argue, is indeed often tied to natural attributes associated with age, sex, and race. All of us are naturally advantaged and disadvantaged in certain respects. I am a naturally disadvantaged basketball player because of my advanced age, lack of athletic ability, and short stature. It would make no economic sense for the NBA to level the playing field, just so I can play professional basketball. If the NBA has no moral or legal obligation to hire short, middle-aged, white guys then why should engineering firms, fire departments, and major corporations be forced to hire disadvantaged women and minorities? They say that in some areas "White men are simply more 'fit' to compete!"

Although civilized society must set the rules for the competition for scarce resources, it must not interfere with nature's own distribution, even if it consistently rewards white males. Libertarians consistently argue that the role of government consists in preserving open competition. The principle of equality, they say, refers to the right to compete not the right to win. So when social scientists point out that the best jobs are held down by white males, libertarian economic conservatives respond by saying that , as long as the rules of competition did not a priori exclude women and minorities from competition, society ought to let the results of that open competition stand.

#### **AFFIRMATIVE ACTION BASED ON RETRIBUTIVE JUSTICE**

The principle of retributive justice is often also applied in the context of retribution. If, distributive justice "looks forward" to correcting a future unjust distribution, retributive justice "looks back" in time and attempts to "pay back" those who have suffered unjustly through the actions of others. Retribution, serves as the basis of our criminal justice system.

The victims of crimes receive just or fair retribution when the perpetrator is justly punished by society. Historically many disadvantaged groups have suffered unjustly at the hands of the most advantaged groups. In the United States the best examples include: Native Americans, African Americans, Japanese Americans (during WW II), women, and homosexuals. Many welfare liberals argue that some of these groups and are entitled to retribution to make up for the injustices inflicted by white men over the past centuries.

Affirmative action, then, can be seen as one attempt to pay back groups for historic discrimination. Historically, African Americans have been the victims of unjust distributional schemes based on racism. How do we make up for these transgressions? Retributive affirmative action programs might "pay back" present African Americans for past injustices against their ancestors. Or we might "pay back" more recent individual victims of injustice. There is much philosophical ambiguity over whether retributive affirmative action ought to operate at the level of individuals, racial or ethnic group, gender group, or social class.

Some argue that given our long history of racism and sexism, retributive affirmative action is impractical. After all, how far back into the past should we go in redressing past injustices committed against racial minorities? Moreover, why should I now bear responsibility for past injustices committed by my white ancestors when I played no part in those decisions? Two problems here: I cannot be held responsible for what other white guys have done collectively; and how far back can the present generation be held responsible for what past generations have done? One might, therefore, conclude that if retributive affirmative action can be justified at all, it should merely "pay back" individuals for recent or existing injustices and reform redistributive schemes so that future individuals do not become victims.

Affirmative action based on retribution attempts to correct historic injustices by repaying the descendants of those who have been treated unjustly. Typically this means compensating contemporary African and Native Americans. However, critics of retributive affirmative action object to the principle of requiring innocent individuals in the present generation to "repay" the descendants of those who were victims of injustice committed by previous generations. Justice, they argue, entails the reconciliation of the actual victims and perpetrators, not their descendants. How can I be held personally responsible for the unjust acts committed by previous generations of white men against native Americans? Not only was I not there, but my descendants, who came over from Italy, weren't either!

#### **UTILITY BASED AFFIRMATIVE ACTION**

Some defenders of affirmative action eschew arguments based on distributive and retributive justice and embrace the principle of *utility*. They say that a given social policy can be justified if society as a whole benefits from it. Hence, affirmative action, they argue, is justified because the overall social benefits of having it outweigh its cost. For example, one utilitarian argument in favor of affirmative action is that, in the United States, women and African Americans are more likely to live in poverty than white men. Since poverty has a high social cost (welfare, crime etc.) it makes sense to force companies to hire more women and minorities. Of course, utilitarian critics of affirmative action say that the costs of affirmative action outweigh the benefits, if companies become loaded down with less competent women and African Americans.

Most utilitarian critics of affirmative agree that public policy ought to be impartial; that is, "color blind" and or "gender blind." But they also say that by elevating the significance of race and gender in public policy, affirmative action has encouraged Americans to think of themselves as primarily white, black, male and female. This has led to widespread race and gender consciousness and discrimination. Deontological defenders of affirmative action say that when the government remains colorblind or gender-blind, it becomes a partner in perpetuating already existing forms of prejudice that stack the deck in favor of white males.

#### **DISCRIMINATION AND REVERSE DISCRIMINATION**

Discrimination is a violation of the formal principle of justice because it gives some individuals more than they deserve and others less than they deserve. But if we do adopt affirmative action policies,

then some previously advantaged groups become disadvantaged: in particular, white males. Some libertarians argue that reverse discrimination also violates the formal principle of justice and therefore it is equally wrong. In sum, the key philosophical questions raised by affirmative action include:

1. In terms of public policy, should government treat persons as individuals or as group members? If, we are fundamentally group members, which group determines our identity? Am I essentially unique individual or am I simply a white male? In other words, should public policy be based on "impartiality" and be blind to the attributes of particular individuals such as race, gender, age, or sexual preference; or should it exercise "partiality" and help the disadvantaged?
2. What role should government play in mediating the competition for scarce resources between groups and individuals? Should government simply guarantee the freedom to compete, or should it redistribute resources based on moral principles such as merit, need, equality, or social utility? Do individuals or groups have only a *negative right* to compete for resources, or do they also have a *positive right* to possess at least some resources?
5. What role should government play in fighting economic effects of racism, sexism, and other forms of prejudice?
6. Should public policy aim at *utility* (preventing future injustice) or *retribution* (paying back) groups and individuals that have suffered injustice in the past?

#### **5.4 EMPLOYEE OBLIGATIONS TO CORPORATIONS**

Based on reciprocal altruism, if employers have moral obligations toward employees, then employees also have reciprocal obligations toward their employers? I think it is fairly obvious that, at a bare minimum, employees ought to treat employers within the same general moral parameters as treat anyone else. At a bare minimum, employees ought to obey the terms of their contracts. Above and beyond contractual obligations this might include abiding by the principle of non-maleficence and not deliberately harming the company. Obviously this precludes all acts of theft, which include not only stealing toilet paper but also stealing compensation by showing up for work impaired *under the influence* of drugs or alcohol, or spending the morning answering private e-mail; all of which might impair productivity. But are there other special virtues and/or obligations that beyond not stealing toilet paper from the restrooms or smoking pot in the stock room? Business ethicists have identified two specific arenas of controversy: *whistle-blowing* and divulging *trade secrets*.

Generally speaking both whistle-blowing and trade secrets involve conflicts of interests. The classic *conflict of interest dilemma* arises when an individual's self-interest conflicts with the interests of others. As I noted earlier, there is always strong evolutionary pressure for these conflicts to be resolved in favor of self interest. That's why NBA players change teams so often. When the virtue of *commitment* to the team is pitted against the self-interest of players (and their families) self interest almost always wins out. Sometimes a conflict of interest can arise when an employee must choose between advancing the best interests of a company and the interests of society as a whole. This is often the case with whistle-blowing.

#### **WHISTLE-BLOWING**

Whistle-blowing typically occurs when an employee or former employee attempts to correct moral or legal wrongs committed by a business organization. Sometimes wrongdoing is reported within the corporation to management, and sometimes employees take their complaints outside of the organization and invoke the power of the media or government. There are many ways to approach this whole phenomenon. Let's examine a hypothetical case of whistle-blowing involving sexual harassment. Suppose your immediate supervisor badgers you for a date, offers work-related benefits, and threatens to demote you if you do not accept his/her amorous advances. Should you blow the whistle on that jerk? If so, what are the moral parameters?

First of all, in order to blow the whistle there must be legal or moral rules that make that kind of behavior wrong. If there were, in fact, no legal or moral rules against sexual harassment whistle-blowing would be pointless. Therefore, whistle-blowing presupposes a moral and or legal framework. If you do



blow the whistle, you are certainly morally obligated to tell the truth, which means you must do some research. False accusations in whistle-blowing violate the principles of justice and utility, especially if the company punishes your supervisor under false pretenses. Similarly, the company has an obligation to make a "good faith" effort to find the truth. In this regard, most companies have rules and procedures designed to deal with complaints. When you accept a job, you tacitly *promise* to abide by these company regulations. Therefore, I would argue that, based on the particulars stated in your contractual agreement, you may be under a moral obligation to exhaust corporate procedures first, before taking your complaints outside of the company.

*Trust* is a virtue and therefore it is simply good character to at least initially allow the company to enforce the rules that protect women from sexual harassment. This might mean reporting your supervisor's crappy behavior to the appropriate level of management within the company. Of course, it is then the company's *responsibility* to discover the facts of the case, detect wrongdoing, and punish the guilty party, or parties.

Unfortunately, sometimes the facts of the case are not always clear and therefore guilt and innocence are not always easily discerned by outside parties. Sexual harassment is particularly difficult to "prove" in that it usually occurs in private settings, involves what people say, and therefore in court it often ends up as a "he-said/she-said" ordeal pitting one person's word against another. Moreover, sexual harassment also necessarily involves a hierarchical difference in power between you and your boss. Hence, the company probably has more time and money invested in your scumbag superior than it has in you and he probably gets paid much more than you do. Based purely on corporate self-interest, and utility, who do you think is more likely to win any internal dispute between bosses and subordinates? Again, expect conflicts of interest within corporations to be resolved in favor of corporate self-interest. But again, this is *fact*, not a *value*. It is just the way it *is*, it's not necessarily the way it *ought* to be.

Hence, because of the fact of corporate self-interest and unequal power differentials, it is often difficult, if not impossible for companies to resolve cases of whistle-blowing and/or sexual harassment with any degree of *impartiality*. In fact, until fairly recently, whistle blowers were routinely fired by their "self-interested" employers. This is why government recently passed laws protecting whistle-blowers. Interestingly, government is more likely to punish whistle-blowers than corporations. Go figure.

#### TRADES SECRETS

Is it morally wrong for a former worker to sell (or giveaway) trade secrets to a competing company? For example, suppose Pepsi Cola Corporation enticed a CEO at Coca Cola Corporation to quit Coke and work for Pepsi. Would it be morally wrong for that CEO to divulge Coca Cola's secret formula to her new employer? After all, knowledge does increase the *value* of a worker, and if Pepsi could use that formula to make a "generic" substitute for Coke, it could enhance Pepsi's market share.

A *virtue-based* ethicist would reason around the virtues of *trust* and *fidelity*. Employees would simply promise to keep the secret. Of course, in the *state of nature*, (in the absence of government) virtue is often sacrificed on the altar of self-interest. Therefore, one would expect employees to routinely break promises based on personal cost-benefit analysis. (If you were offered \$2 million to break a promise, would you?) Under the *social contract*, these virtues are therefore enforced by legal contracts between the company and workers, which prevent workers from divulging "proprietary information" or "trade secrets" to competitors. Hence, employers can then *trust* employees with sensitive information because that promise is enforced by legal *sanctions*.

Interestingly, both welfare liberals and libertarians tend to support governmental enforcement of contracts involving *information*. The libertarian approach is found in the concept of *intellectual property*. Hence, stealing ideas would be like stealing the toilet paper from the rest room, only perhaps much more harmful to the company. Libertarians, however, might also eschew governmental involvement and simply choose to pay rationally self-interested workers with access to sensitive information enough to reduce the likelihood of them "moving on to greener pastures." Of course, this may create utilitarian problems industry-wide, especially if all competing companies end up paying persons with access to proprietary information (CEOs, computer operators, secretaries, and others) more than they would be worth otherwise.

In an *ideal* world governed solely on the basis of "good character" everyone would keep their promises without the threat of governmental sanction. But in the *real* world where where self-interest rules, trade secrets are like anything else, commodities to be sold to the highest bidder. Indeed, this whole

question of governmental protection of *proprietary information* does raise some interesting philosophical issues.

First of all, sometimes there is a fine line between what a corporation might consider to be a *trade secret* and what a former employee might consider to be *useful information* or *knowledge acquired by experience* under a previous employer. Moreover, a corporation might attempt to conceal embarrassing, immoral, or illegal behavior on its part by classifying it as a trade secret. (Governments routinely use the designation "Top Secret" to hide its transgressions!) Tobacco companies, for example, have known for many years that tobacco is an addictive product. Is that really proprietary information? Was it wrong for whistle-blowers to divulge the fact that the companies knew this? Can tobacco corporations legitimately prosecute those former employees for divulging a trade secret?

Secondly, utilitarians and radical libertarians might argue that we ought to abandon this whole concept of intellectual property. Utilitarians might say that laws limiting the free flow of information (patents and copyrights) impede social progress and create artificial monopolies. Even if these laws could be justified based on cost-benefit analysis, they would be too difficult and/or expensive to enforce. Radical libertarians might argue that the trade of both *ideas* and *commodities* ought to be left to the free market. Businesses are better off protecting their own information than relying on inefficient government bureaucrats. They can do this by choosing their employees more wisely, paying them commensurate to their market value, and developing new technologies that limit the number of person with access to trade secrets.

## 6. CORPORATIONS AND CONSUMERS

Remember when I bought that Yamaha guitar from the music store? Suppose I opened the case when I got home, and found an AES 1500 with an ugly sunburst finish instead of the bright orange color that I liked. Or better yet, suppose I discovered that there was a boat paddle in the case and not a guitar. I called back the store to complain but they said "Sorry Ron, but you should have checked the case before you left the premises. We'll keep your money and try that same brilliant strategy again on some other naïve consumer." Or, suppose I got that guitar home, plugged it, and got electrocuted. Was a moral wrong committed in any of these scenarios, or was the fact that I didn't get what I expected my own fault as a naïve consumer, buyer beware?

### 6.1 INFORMED CONSENT

The foundation of all business transactions between stakeholders is essentially the *contract*, which really is nothing more than a *promise* enforced by legal and moral mechanisms within a communal setting. In the liberal tradition, business transactions between buyers and sellers must be *voluntary*; that is, the liberty of both parties must be respected. This is essentially the concept of informed consent. It contains two related components: *information* and *consent*. Both are philosophical minefields.

On the information side, informed consent requires an exchange of information between buyers and sellers. Information, of course can be either *true* or *false*. Obviously, the basic epistemological problem is how to know the difference between the two. I would argue that informed consent actually entails an obligation on the part of sellers to pursue the truth, but it does not have an obligation to obtain it. That's because what is known to be true changes over time. My mother's physician prescribed the drug DES as a treatment for nausea during her pregnancies. She was told, based on what was known at the time, that the side-effects would be minimal. However, based on new information, DES was later discovered to cause congenital malformations in the reproductive organs female children born to women treated with the drug.

We cannot simply blame the company for all those malformations and for failing to discover the truth. But I think, under certain circumstances, we can blame them if they failed to make a *good faith effort* to discover it. Sometimes companies simply fail to make that effort and sometimes they even know the truth, but act out of self-interest and fail to disclose it. *Fraud in the inducement* occurs when a seller deliberately falsifies or conceals true information about a good or service in order to trick the buyer into accepting the terms of a contract. As I have stated throughout this essay, truth telling is an essential part of any business contract. When either side of the transaction (deliberately) makes false statements in order to deceive the other side into making a transaction, it is a form of cheating, a violation of the liberty principle, and therefore the contract is considered to be null and void both legally and morally. But in the real world, information is invariably imperfect.

The concept of consent is also philosophically problematic. All human beings are, at least to a certain degree, programmed by their genes and their cultural environment. This raises the age-old debate over free will. The flip side of free will is personal coercion. In business ethics coercion can also be attributed to circumstances, especially when a buyer's alternatives are limited. Under monopolistic circumstances, as when only one drug is available to cure your illness, you might not have any choice. But that, strictly speaking, is not coercion. You have a choice. No one is forcing you to buy that drug, you just have lousy options. Sellers often exploit buyer vulnerability by raising the price of their goods and services under these circumstances. The classic form of exploitation is known as "*price gouging*." Stockholder theory says that "price-gouging" is actually good in that the higher prices tend to encourage other sellers, as long as entry into the market is not limited by government. Hence, as more contractors move to Florida after a hurricane, there will be more competition and prices will naturally decline.

In my earlier chapter on the First Business Transaction I argued that there is a fundamental difference between predatory cheating and reciprocal altruism. Although human beings employ both strategies in their quest for resources, predatory behavior alone, such as cheating, cannot sustain a community. If everyone routinely broke their promises in order to advance their own personal interests, cooperation would be impossible. If you knew that all human beings always break their promises, would you ever participate in any business transactions? Could you trust anyone? Fortunately, human beings have evolved, not only the mental capacity to participate in reciprocal agreements, but also the psychological mechanisms necessary to detect and prevent cheating.

The concept of informed consent raises issues involving consent, or the *liberty principle*. Recall that in the liberal tradition, *harm* is conceptually related to that liberty principle. Immoral harm is something that others do to you, and that you do to others. It is not something you deliberately do to yourself. This is because under the liberty principle, there is a tacit assumption that rational persons do not voluntarily invade their own interests. For example, I might choose to sell you my guitar for less than I paid for it. From one perspective that choice might appear to harm my interests. However it might be perfectly rational for me to sell it to you if I had an interest buying another guitar temporarily on sale that I like even more. I might even sell it to you because we are friends. Therefore, liberty allows me to manage my own harms and benefits without having to conform to someone else's values. One cannot overstate the central importance of liberty and harm for business ethics in the liberal tradition. Together they form the basis for rational reciprocity.

In business ethics, there are three moral and legal issues that are rooted in the concept of informed consent. They involve: *marketing*, *product safety*, and *price fairness*.

## 6.2 PRICE FAIRNESS

It is widely acknowledged that there are two types of market structure: *perfect competition* and *imperfect competition*. On the supply side of a perfectly competitive market, a large number of individual sellers compete among themselves, without collusion, to provide consumers with a product or service. There must be no external legal, financial, or cost barriers to enter or exit the market; an important consideration because the fewer the competitors, the easier it is for competing sellers to engage in collusion or *price-fixing*. On the demand side, perfect competition occurs when individual buyers compete, without collusion, in full knowledge of the offers made by the sellers. Under perfect competition, the price a seller receives for its goods or services is, therefore, determined solely on the basis of what the buyers are willing to pay. Companies that offer the best product at the lowest price may be rewarded by earning a profit.

Profit is defined as the excess of total revenue over total cost. *Normal profits* are what a company must earn in order to simply remain in a given market. *Economic profits* are anything beyond that margin. In the long run under perfect competition, most companies can expect only *normal profits*. Economic profits would be zero. Although some successful companies may earn economic profits for a short time, the absence of entrance barriers to a perfectly competitive market guarantees that other firms will soon be attracted to that successful market. This competition eventually drives the selling price down and profits are pushed back to normal levels.

Imperfect competition may appear on either the supply or demand side of a market. On the supply side, imperfect competition, occurs when either a single seller (*monopoly*) or a group of sellers (*oligopoly*) operating in collusion, are capable of unilaterally controlling both supply and price of a product or service for which there is no substitute. On the demand side, imperfect competition, or *monopsony*, occurs when a single purchaser, or a group of purchasers (such as an HMO, or a group of HMOs) in collusion, are capable

of influencing the price it pays a company for its product. When both trading partners are monopolies (bi-lateral monopoly) market forces resemble perfect competition.

Pharmaceutical prices today are the end product of competition between pharmaceutical companies, HMOs, and Government. In order to insure that the price that consumers pay for pharmaceutical products is fair, many governments, such as the one in Canada, have assumed the role of a *single-payer* of health care services in order to maintain bi-lateral monopolies and bargain on behalf of citizens.

### **WHAT IS A FAIR PRICE?**

In classical economics, the price a corporation charges its customers for a product is the total cost of investment plus normal profit. Stakeholder theorists often argue that some corporations that exorbitant prices are unfair to consumers. The question of price fairness, however, cannot be examined apart from a theory of justice.

Any unjust pricing structure violates the *formal principle of justice* which states that we are obligated to "treat equals equally and unequals unequally." In any economic relationship, an unfair price structure effects both the buyer and the seller. If either the buyer or the seller receives more than what is deserved, than the other naturally receives less. A fair price, then, is one in which both the buyer and the seller receive exactly what they deserve. This formal principle, however, does not provide insight into which individuals are equal and what it is that they are entitled to as a matter of fairness. Hence, the formal principle requires a *material theory of distributive justice*.

Any material theory of distributive justice, attempts to establish rules that govern the distribution of pains and pleasures connect the properties or characteristics of persons and the morally correct distribution of benefits under specific conditions. There are two broad kinds of material theories of justice *patterned theories* and *unpatterned theories*.

Patterned theories, which are usually espoused by stakeholder theorists, judge the fairness of a distribution procedure based on the distribution pattern evident in the *end-state* after the distribution actually takes place. Traditionally, material distributions based on utility, need, merit, and equality fall into this category. Today two patterned theories seem to dominate the literature: *egalitarianism* which espouses an equal distribution of at least some social goods in the end-state; and, *utilitarianism* which promotes distributions that maximize the public good in the end-state. Hence, the difference between these "patterned" theories is reflected in the kinds of end-state patterns that are deemed morally preferable.

Unpatterned theories of justice, such as defended by libertarianism, reject the notion that any particular distribution found in the end-state is any more fair any other distribution. Unpatterned theories, therefore, focus on the fairness of the procedures that produce an end-state. Hence, any end-state that is generated by a fair procedure is deemed just or fair, regardless of how the benefits and burdens are distributed in the end-state. Stockholder theorists tend to defend unpatterned theories. The idea is that fair distributions are determined by blind market forces and not by beneficent (or malevolent) persons acting as empowered distributors. If you believe that you are being short-changed by the designated distributor, you can claim that that person was being unfair. If things are distributed based on impersonal market forces, there is no one person to blame. Market-based distributions can be unfortunate, but not unfair.

Worldwide, this basic philosophical distinction between patterned and unpatterned distribution schemes has spawned two opposing political philosophies that relate to how governments might regulate corporations: the *unpatterned free market model* and the *patterned regulatory model*.

### **THE UNPATTERNED FREE MARKET MODEL**

Stockholder theorists embrace the unpatterned free-market model of pricing of everything: products, services, labor etc. The unpatterned free market model espouses *laissez faire* economic theory, where government intervention in markets is justified only to the extent that it enhances competition. As long as the selling price is determined by free market forces, the price and the resulting end-state distribution is deemed fair. Hence, stock holder theorists who endorse this model pursue *procedural justice* in public policy. Some libertarians are also committed to *opportunity-based* and *risk-based* pricing policies. Opportunity-based pricing sets the price at the highest possible level that buyers are willing to pay, without increasing production volume to the point where it diminishes total profit. In some markets some buyers are

inevitably priced out of the market as the result of opportunity-based pricing. However this is not deemed unfair, since unfairness is thought to arise only under imperfect competition.

*Risk-based* pricing takes into account the financial and market risk that a company takes by exploiting an economic opportunity in a given market: the greater the risk that a company takes in marketing a given product or service, higher the expectation for profit; and conversely, the lower the risk taken, the lower the profit expectation. Under a risk-based pricing policy, an unfair price violates the formal principle of justice when prices are set higher than the risk exposure can justify. Both opportunity-based and risk-based pricing are blind to the end-state pattern (the actual distribution of their product among consumers), therefore it is impossible for pharmaceutical companies to exercise any social obligations toward price sensitive patients. Moreover, both pricing policies require a bare minimum of governmental interference in the market's natural mechanisms.

Although, according to stockholder theory, corporations exist solely to generate profits and therefore have no direct obligation to serve the public good. They often argue that the public interest is best served by free competition in the marketplace and that at least some temporary monopolies are morally unacceptable.

Stockholder theorists argue that there are two different kinds of monopoly: *Natural Monopolies* and *Artificial Monopolies*. Natural monopolies arise when business drives all of its competitors out of the market by offering superior products, more efficient operation, or lucky supply sources. Sometimes natural monopolies arise because of a contagion of incompetent competitors. The only condition here for natural monopoly is that has been forcibly prevented from entering the market. Artificial Monopolies, in contrast, arise where the sole provider of the services or goods gains a favorable market position because the government won't allow anyone else to enter that market to compete with them. Stakeholder theorists often create artificial monopolies where they believe market failure is inevitable, most notably in medicine and education.

Pharmaceutical companies are artificial monopolies that enjoy the benefits of imperfect competition. Libertarians generally reject this kind of tampering with markets and believe that artificial monopolies are the progeny of misguided patterned distribution schemes. Price unfairness in pharmaceutical markets occurs most often when the sellers profit more than could be justified under perfect competition.

#### **PATTERNED REGULATORY MODEL**

Defenders of the patterned regulatory model argue that one cannot evaluate the fairness of a drug pricing policy apart from how it affects both sellers *and* the buyers in the end-state. Indeed, many distributions that result from opportunity-based and risk-based pricing policies end up depriving, at least some buyers of necessary, life-saving drug treatment. The Patterned Regulatory Model holds that in the distribution of essential goods and services (needs) unpatterned pricing policies are amoral, and therefore are irrelevant to the question of fairness.

Patterned theorists, therefore, prefer *cost-based* pricing policies which take into account a company's total investment in development, testing, manufacturing, and marketing of the product and then profit margin is set at a certain "reasonable" percentage. Here much depends on how one arrives at this percentage and how one defines a reasonable profit. It is generally agreed, however, that a reasonable price is one in which the price does not greatly exceed the full cost of researching, developing, manufacturing, marketing, and distributing the products. Costs might also a reasonable return for investors.

The inherent problem with cost-based pricing is that companies own this basic information, which sets up legal access barriers. Behind this wall of protection corporations are prone to manipulate costs in order to justify higher profits. So the first step toward instituting cost-based pricing for pharmaceutical products marketed in the United States would be for the government to gain legal access to the records of pharmaceutical companies.

In the United States, where corporate records are regarded as private property, this has been a difficult task. But it is important to acknowledge that pricing policies serve rationing mechanisms for products and services. As a result, products and services in the United States have been, in effect, rationed by the private decisions made by corporate leadership. Corporations typically justify high prices by arguing that they are entitled to be rewarded for the economic risks they assume for investing in research and development. However, many companies have resisted pressure from interest groups and the government to reveal their actual costs.

Indeed, the U.S. Federal Government is anything but a passive observer when it comes to research and development. Government routinely subsidizes private R&D, regulates the introduction and marketing of new products and services in various ways. Moreover, federal tax policies also alter R&D costs and returns of those companies.

### 6.3 MARKETING

Suppose the music store had advertised a sale on Yamaha AES 1500 guitars. But when I got there they said, "Oh, we just advertised that price! We don't intend to actually sell it for that price! We just wanted to attract customers." I argued earlier that there are two moral principles that must be upheld in all business transactions: the *liberty principle* and the *harm principle*. Together these principles comprise the foundation for the concept of *informed consent*. However, the epistemological requirements for informed consent often conflict with the concept and traditions associated with advertising.

Historically, the purpose of advertising is to increase market share. One obvious way to increase market share is to make false or unproven claims about your product or service. During the nineteenth century, the pharmaceutical industry was dominated by entrepreneurs who sold patent medicines. Advertisements claimed that these concoctions cured everything from baldness to tuberculosis. However, at the time, there were no legal standards for advertising. Most of these "medications" contained alcohol or opiates, which often made patient's feel good, but in fact, cured nothing.

In a self-interested world dominated by mass communication and computer technology, false advertising is probably inevitable. Indeed, false advertising is partially supported by a longstanding *tradition* in the advertising industry that condones the telling of "*white lies*" in advertising. Sometimes these white lies make claims so outrageous that any rational person ought to know that they are false. For example, the old Keystone Beer commercials promised consumers a visit from the Swedish Bikini Team. Soft drink advertisers promise to make our lives more exciting, vitamin advertisers promise to make us feel and look younger etc. But the line between *white lies* and *black lies* is not always very clear. Medications are especially tricky. There are, for example, several expensive products now on the market that claim to grow hair on the heads of balding men. Although, these products do seem to work for some patients, many patients do not benefit at all. But then again, the Swedish Bikini Team never showed up at my house either.

### 6.4 PRODUCT SAFETY

Suppose that guitar I bought had a defect in its electrical components so that whenever I plug it in I get a shock. Under what conditions might the store, the company, the factory, or I be responsible for that shock. Based on informed consent, if the store knew about the defect and had clearly *warned* me about that problem, then the harm I suffered could be considered to be self-induced and my own responsibility. After all, it might be a perfectly rational business decision on my part to buy a guitar with an electrical problem, as long as the seller gives me a good deal, and especially so if I possessed the technical knowledge to cost-effectively repair it.

Of course, some products are inherently safer than others, and some products are unsafe in the hands of certain persons. Guns are unsafe in the hands of children. Alcohol is unsafe in the hands of alcoholics. Viagra is unsafe for men with heart disease. In general, I suspect that guitars (without electrical problems) are safer products than guns, cigarettes, and alcohol. If my kids found my guitar and played with it without my supervision, it is not likely that they would harm either themselves or others. This is not to say that it would be impossible for them to harm each other. Sky could hit Eli over the head with it! But that's pretty improbable. If that did happen, would it make sense for me to sue Yamaha Corporation for selling me an unsafe product? Would requiring Yamaha to put a label on guitars warning that you might hurt someone if you hit them over the head their guitars make sense? Similar, that guitar might harm my marriage, if I sat around and played it all day, started a mental band, and neglected my job, wife, and kids. Should Yamaha warn new owners that excessive use of this product might cause irreparable harm to one's family life?

A few years ago a woman bought a cup of hot coffee from McDonald's at the drive through window, put it on her lap, spilled it, and severely burned herself. Was that a product safety issue? Who caused that harm? Let's analyze that case. Most of us thought that the woman: a.) should have known that the coffee was hot; b.) should have known that hot coffee in paper containers spills easy; and that c.) should have known not to put hot coffee between her legs and attempt to operate a motor vehicle. Therefore, our

logical and moral intuitions say that the injury was her fault. Although I basically agree with this moral argument, there is room for debate. We might, for instance, question whether it was really necessary for McDonald's to make its coffee *that* hot, knowing that it might spill and burn a customer, especially in the drive through. Of course, based on libertarian arguments, McDonalds might counter that the vast majority of its customers prefer their coffee hot, especially when they buy it to take somewhere else to drink. They also put milk products in it. It's simply a matter of supply and demand. They are giving their customers what they want! Unfortunately, paper is not a great insulator against heat loss. If McDonalds could use Styrofoam cups, they could sell less hot coffee knowing that Styrofoam keeps the coffee hot longer. But those environmentally conscious welfare liberals would complain that Styrofoam harms the environment.

Similarly, Yamaha could also make its guitars out of Styrofoam in order to *paternalistically* prevent my kids from harming each other. But that would be an ugly and lousy sounding guitar and I wouldn't buy it. More importantly, I'd rather teach my kids not to hit each other than force them to play an ugly, dissonant sounding guitar that is safe.

Utilitarians would tend to balance the potential harms against the potential pleasures associated with serving hot coffee. Since only a few customers would ever burn themselves, and that those burns would probably not be all that serious, I suspect that utilitarians would side with the libertarians. The costs of serving cold coffee might be more than the benefits. Stakeholder theorists and welfare liberals are probably the most likely to want government to regulate the temperature of coffee, guns, cigarettes, and alcohol. Stockholder theorists, in most cases are inclined toward the "buyer beware" principle.

## 7.0 GLOBAL ISSUES

We now live in a global economy. Much of our food is grown in other countries and most of the products that we purchase are now manufactured in China. As we confront this economic reality how do we go about dealing with the fact that different countries have different moral standards?

### 7.1 RELATIVISM AND OBJECTIVISM

So how should we think about the wages corporations pay workers in other countries? How should we think about working conditions? As I pointed out earlier in this essay, in the United States we take a welfare liberal approach to both wages and working conditions: that is we have minimum wage laws which set lower limits on wages, and we have laws protecting workers from unsafe working environments. I think there are three philosophical positions that might guide international policy.

1.) MORAL OBJECTIVISM: There are universal, rationally objective rules that govern international morality. There are at least some hyper-norms that apply across cultures. "When in Rome, do what's right." (Stakeholder theory)

2.) MORAL RELATIVISM: There are no universal, rationally objective rules that govern international morality. There are culturally-bound norms but no hyper-norms. "When in Rome, do what the Romans do." (Stockholder theory)

3.) MORAL SKEPTICISM: There are no rationally objective moral rules either within cultures or between cultures. Morality is simply the exercise of power of the strong over the weak: "might makes right." "When in Rome, do whatever you can get away with." (Political realist theory)

Kant is the primary authority on stakeholder theory. The basic Kantian position is that all human beings (*persons*) are rational beings endowed with free will, and therefore deserve to be treated with *dignity*. One version of Kant's *categorical imperative* states that we should "*always treat a person as an end and never as a means.*" This would seem to imply that workers, regardless of their geographical location, should be paid at least enough to survive with dignity. Unfortunately, the moral concept of *dignity* is rather vague and our standard of dignity may not be the same as the standard in other countries. In some third world countries, large segments of the population are live under extraordinarily dangerous living conditions ravaged by poverty, famine, disease, pestilence, and war. Therefore, they are often more than willing to work under dangerous conditions, for long hours, for a few cents an hour. Does it make sense to

require workers to wear hard hats at work when the streets are so dangerous that they are lucky to get home alive?

Obviously, all three perspectives pose serious philosophical problems. Do impoverished countries governed by corrupt, totalitarian military regimes that harm their citizens, have a right to exist free from external moral condemnation? Does “might always make right?” If so, is it morally acceptable for multinational corporations to take advantage of the resulting economic opportunities presented by those countries, such as: low wages, unregulated working conditions, and unregulated pollution? Stockholder theory says that both wages and working conditions are to be set by the market forces present within any given society and that it’s impossible to arrive at anything that resembles a universal “living wage.” What do you think?

### **7.1 WAGES AND LABOR STANDARDS**

Stockholder theorists argue that both wages and working conditions are relative to the laws of specific countries. Stakeholder theorists argue that sometimes the laws of other countries are immoral and that when there is a conflict between legality and morality, corporations must do what’s right.

Stakeholder theorists want to set minimum wages for workers. They sometimes want to set it at a level called a “living wage.” The problem here is that its not easy to decide how much a worker needs to live. At kind of a standard of living is fair for an unskilled worker? The concept “living wage” is therefore enormously vague and contingent upon “what level” we’re talking about. Most of us in the U.S. would not be satisfied with a third-world minimum wage. But we can’t live without wide-screen televisions, automobiles, cell phones, or video game systems. We wouldn’t be satisfied with food, clothing, and shelter.

The same quandary is evident for global working conditions: how can we set a minimal safety standard in a country where they are already safer at work than at home? How safe is safe? Of course, the higher the wage, the fewer employees a company can hire, and the higher the safety standards the more costly the operation. Stockholder theory says, let the individual workers decide how much they are willing to work for, and how safe the workplace. Some stakeholder theorists seek to set the minimum standards at a national level, while others seek global standards.

### **7.2 BRIBERY AND CORRUPTION**

Another problem associated with the global market is the widespread use of bribery and kickbacks in other countries. In most Western countries, offering a bribe and paying a bribe are considered immoral, but the legal systems tend to treat the offerers different from the payers. In other parts of the world, bribery is regarded as a business expense: the cost of doing business. Many cultures regard gift-giving as a necessary part of establishing working relationships. So, one of the initial puzzles is how to differentiate between a “gift” and a “bribe.”

In many countries bribery is regarded as tradition. Public officials in many countries are routinely under-paid relative to market forces, and therefore they supplement their income by taking bribes. Of course, there are small time petty “bribes” by lower level public officials, and big time “BRIBES,” by higher level officials. Is bribery always wrong, never wrong, or sometimes wrong? Are there hyper-norms involved?

The most serious problem with regulating bribery at a global level is that it is almost impossible to monitor and enforce laws against it. It takes place in private. Bribes are often perceived by both offerers and payers as a business opportunity, and therefore tend to perpetuate the tradition.

Conceptually, bribery is a problem for both stockholder and stakeholder theorists. Stockholder theorists tend to “Do as the Romans do.” But on the other hand, bribery does raise the cost of doing business, without adding to the value of the product or service. Stakeholder theorists seek international laws that insist on corporate “transparency” and laws that make it more difficult to pay bribes, especially laws against money laundering. Stockholder theorists often argue that some of these laws violate the right to privacy, or that these laws are costly and ineffective.

### **7.3 PRODUCT SAFETY**

In recent years there has been growing concern that many of the products manufactured and food grown in other countries is unsafe. What does “unsafe” mean? Are there objective standards of product



safety that ought to be enforced globally, or are there only multiple standards. Stakeholder theorists argue that there are some fairly object standards. Stockholder theorists say there are no objective standards. Even if there were global standards, there is no global government capable of monitoring and enforcing those standards.

### 7.3 GLOBAL PORNOGRAPHY

With the growth of the internet, sexually-oriented businesses involving the sale and distribution of sexually explicit pictures, videos, and sex toys have grown exponentially. The economic success of these businesses suggests that there is a huge market of both buyers and sellers. But are there any moral limits to this kind of economic activity and do these moral limits justify legal limits? There are two fundamental positions: Stockholder and Stakeholder Theories.

Stakeholder theory's perspective on sexually-oriented businesses is rooted primarily in the *liberty principle* and the *harm principle*. In order to justify laws regulating the market in sexually-oriented material liberals must show that the material in question involves either *coercion* or *harm to others*. The underlying assumption is that individuals operating in the *private sphere* have a right to pursue happiness in any way they choose so long as they do not force others to participate or harm others. In the *public sphere*, individuals have an almost absolute right of free speech. Libertarians, however, draw a sharp line between *speech* (which rarely harms others: "But don't yell fire in a crowded theater!") and *acts*, which are more likely to harm others and therefore are subject to potential regulation). Although, the liberal point of view generally acknowledges that private "consenting adults" have a moral and legal right to indulge in a wide variety of sexual acts, there has still been much debate.

The main issue seems to be who is in charge of public places. So the first question must be whether the business of sex takes place in the private or public sphere. Libertarians argue that all markets ought to operate in the private sphere, and therefore all places ought to be immune to collectivist or governmental regulation. Indeed, libertarians will not intervene in any market unless there is personal coercion or harm to others involved. Hence, even libertarians might be willing to pass laws restricting child pornography. Mostly because either: children are too young for consent, or because sexual activity between adults and children sometimes harms children. However, libertarians are loathe to regulate sexually oriented business transactions between consenting adults, such as prostitution. Adult men and women are capable of making their own self-interested choices in respect to sex. Any harm that result from these transactions are "self-inflicted." But one might argue that these businesses promote the spread of diseases. But that's a factual question. We'd need empirical evidence to substantiate that claim.

Some stakeholder theorists have sought to outlaw pornography and prostitution because they believe that a.) economically deprived women are coerced into the market and/or b.) prostitution harms others (the public) by threatening the public institution of marriage, and by spreading sexually transmitted diseases etc.. Of course, libertarians disagree and say that marriage is really a private contract between individuals, and that the spread of STDs can be avoided without using government to regulate the sex life of individuals. Some welfare liberals and utilitarians expand the concept of the *public good* to include the regulation of some businesses. Welfare liberals might seek legislation to protect women and children from the alleged harms associated with sexually oriented businesses. Some utilitarians might argue that prostitution, pornography, and other sexually oriented businesses lead to drugs, alcoholism, sex crimes and other social costs that outweigh the economic benefits. Other utilitarians say that it is impossible to regulate sexual businesses because those efforts lead to *black markets* on those products and activities. Do you think it is possible to effectively outlaw prostitution, pornography, drugs, and alcohol without the black market effect taking over?

All stakeholder theorists tend to manipulate markets in order to advance their own particular concepts of the good life. Therefore, there is no one single communitarian view on sex markets because there are many different communities and cultures that uphold various traditions. Of course, many sub-communities argue that their own views are universally true and that all opposing views are false. These groups, therefore, seek the coercive power of government to enforce their traditions. Arab countries, for example, which do not have strong social and political traditions based on liberalism and democracy, have practiced the Islamic faith for hundreds of years and therefore have strict laws forbidding all sexually oriented businesses. Other countries, with very strong liberal traditions, such as the Netherlands, have almost no governmental regulation of sexually-oriented businesses, including child pornography.

In the United States pornography and other sexually-oriented businesses always face controversy. I think that's because we have so many sub-communities harboring different traditions. On the one hand, our constitution is widely acknowledged as the model of liberalism and democracy. In respect to that tradition, we have historically tended to defend personal liberty and free markets. On the other hand, many of our earliest settlers emigrated from countries with strong religious traditions. Upon arriving to the "New World" they formed religious sub-communities. During the seventeenth century it was Christian protestants (Puritans, Pilgrims, and Quakers), then, in the nineteenth century it was Roman Catholics and East European Jews, then followed by a huge variety of other religious groups. Since these groups tended to settle in specific geographical locations, they gained influence in local governments. That's why our laws in regard to sexuality vary from one community to the next. In Cincinnati, where there are strong Roman Catholic religious traditions, sexually oriented businesses typically face strict governmental regulation.

The basic problem with regulating pornography is that different countries have different cultural traditions in respect to the sociopolitical status of women and children. Even libertarians will agree that it's wrong to force women and children to work in the sex industry. Sex slavery is always wrong.

## **8. CORPORATIONS AND THE ENVIRONMENT**

Corporations often find themselves caught in the middle of environmental debates. There are two sets of issues that arise in this context. Are corporations and the environment persons; and what exactly does morality mean in the contexts of resource depletion and environmental pollution.

### **8.1 THE MORAL UNIVERSE**

Since the 1970s, many environmental philosophers have begun to seriously explore question of whether our use of the natural environment is subject to moral debate. If so, what exactly is the moral status of various species of animals, fish, trees, or even ecosystems? Consensus among philosophers is that either the various components of the environment *extrinsically good*, or good only in relationship to humans; they are *intrinsically good*, or good for their own sake. Throughout most of human history, the value of the environment was anthropocentric, that is its value is tied to the interest to humans. Stockholder theory is generally associated with the anthropocentric view, and stakeholder theory is generally associated with non-anthropocentric views. The basic question for both theories is whether it makes sense to say that the environment is a "person," in the moral sense; that is, does it make sense to talk about rights, duties, pains, or pleasures in the context of the environment. If the environment has "rights" who protects those rights?

#### **ANTHROPOCENTRIC VIEWS**

Anthropocentric environmental theories argue that the moral universe is composed of human beings, and that we have direct duties to persons and indirect duties to property. Therefore, anthropocentric theories reduce morality to the human consequences and/or personal and property rights of humans. Stockholder theory tends toward anthropocentrism, but there are also other competing anthropocentric environmental theories. Both *ecofeminism* and *social ecology* reject the eco-centered perspective championed by deep ecology. These philosophies, however are actually theories that explain why we deplete resources and pollute.

Although there are many varieties of ecofeminism, all ecofeminists identify the longstanding tradition of *patriarchy* as the social pattern responsible for the domination of women and environmental degradation. While all ecofeminists share this common belief, they differ in their analysis of it and their account for the connections between the domination of women and the environment. Since this pattern of male domination has persisted for centuries, many ecofeminists are historians attempting to identify historical forces that led to the rise of the Western practice of domination. Some of these historians attribute it to intellectual traditions of male domination contained in Greek philosophy and Christianity. Others trace it to later social and political forces such as the rise of capitalism, liberalism, urbanization, or science.

There are three facts that ecofeminists must justify empirically. First, is "*domination*," in fact, a natural or cultural attribute of males, and is "*caring*" is an attribute of females. Second, do males, in fact, dominate females, and thereby suppress "caring." Third, if females were, in fact, empowered, then would

the environment benefit? There are also two moral questions: is "caring" always good and is "domination" always bad. Second, does "caring" imply a moral and political framework that is incompatible with stockholder theory?

While there is healthy debate over the historical roots of sexism, most ecofeminists agree that because of their natural features, human females are closer to nature than men, and therefore more likely to embrace an environmental ethic based on "caring" rather than "domination." This, of course, is intended as a descriptive feature and therefore is either true or false. In recent years, *evolutionary psychology* has contributed significantly toward providing scientific evidence in support of the hypothesis that men are indeed prone toward domination and women toward caring. Drawing on larger themes within the feminist movement, some ecofeminists also seek to unseat the traditional Western concept of ethics based on abstract principles, such as: impartiality, rights, duties, and justice. Ecofeminists argue that this liberal framework presuppose a world view in which human interests are in conflict.

Some philosophers like Carol Gilligan, wish to replace this ethic of domination and subordination of women and the environment with an ethic based on "care," which draws more on the "mother-child relationship" in the private sphere than the "conqueror-conquered relationships" that permeate man's "public sphere." This approach, therefore, advocates a move away from Kantian abstract, universalistic moral principles based on impartiality toward a virtue-based ethic that stresses the promulgation of caring relationships. There are, I think, several philosophical problems with the ecofeminist approach.

First of all there is a cluster of problems related to the concept of "caring." Although ecofeminists are correct in recognizing that "caring" requires "particularity," libertarians argue that "caring" often implies advancing the interests of some individuals that you are related to or friends with, at the expense of other particular individuals. There are also problems with the metaphysics of the "caring-domination" dualism, especially the generalization that these attributes follow gender lines. Indeed many women are, in fact, domineering and many men are caring. Some recent ecofeminists have therefore attempted to escape from the whole male-female dualism.

Another cluster of theories are based on a vague set of principles called social ecology. *Social ecologist* tend to agree with ecofeminism in attributing the ecological crisis to social patterns of domination and hierarchy. The main difference between social ecology and ecofeminist is the scope of analysis. Social ecologists argue that the philosophy and practice of domination has led to not only sexism, but also racism, and class structures. However, the greatest rift is between social ecologists and deep ecologists. Social ecologists say that deep ecology lacks a clearly developed social analysis and ethics, and therefore serves as home-base for a variety of conflicting views. Hence, favorite target is eco-centric deep ecology, and its failure to address the social roots of the ecological crisis, specifically the historical origins of hierarchy. Like ecofeminism, social ecology also targets hierarchy and domination as the cause of both sexism and ecological disaster. But social ecologists take it a step further by targeting highly centralized governmental structures, and social institutions that support "consumerism."

Politically, social ecologists have, therefore, called for limits on economic expansion, population growth, and individual consumption. Many social ecologists that we abandon our urban-capitalist society in favor of a confederation of "eco-communities" that are socially engineered in terms of geographical size, population, technology. These ecologically designed small towns would contain vegetable and flower gardens, arbors, park land, and streams and ponds. Towns would be surrounded by small farms that practice diversified, organic agriculture that serve the local population.

This movement toward ecologically friendly small town confederations has been called "bioregionalism." The most serious criticism of bioregionalism is that it fails to take into account the fact that small independent municipalities are vulnerable to aggression by large hierarchical societies. So while it might be true that bioregionalism might be the ideal biological community, large, hierarchical communities are better suited to wage war. Hence, I think political realism wins out.

I believe that libertarianism, despite its many flaws, still offers the most promising groundwork for environmental ethics. Unfortunately, totalitarianism often lurks in the shadows of science. I would argue that totalitarian political regimes based on science transform fallible scientific theories into immutable political dogma. It is hard to imagine how scientific inquiry and open political debate can exist at all under dictatorial sovereignty. After all, political dogma often outlives scientific truth. A libertarian theory of science, based on competition, is probably the best way to develop environmental science.

#### **THE PROBLEM OF FUTURE GENERATIONS**

Although, I remain a proponent of environmental policies based on libertarianism, I must admit that it does raise another more vexing problem. This puzzle arises from the fact that the environmental decisions of one generation of human beings invariably affect the interests of subsequent generations. In part, that's why there is so much muddled debate over both resource depletion and pollution. Philosophers call this the *problem of future generations*. The logic of the problem goes something like this:

1. It is morally wrong to harm other persons (human beings).
2. Sometimes our decisions in respect to resource depletion and pollution harm other persons.
3. Sometimes our decisions harm the interests of existing persons from our generation, and sometimes our decisions harm the interests of non-existing future generations.
4. Non-existing persons cannot have interests and therefore, cannot be harmed. Future persons do not yet exist, and may never exist.
5. Even if we could argue that we have obligations toward future generations, in the case of distant generations, we may not know what their future interests might be.

This puzzle posed by "future generations" is both philosophically interesting and complex. First of all, all future generations, by definition, do not exist and may never exist. But how can mere "potential persons" have interests? If future persons have no interests, how can they have rights? Although if they eventually exist, they will surely have interests, but we in the present may not know what those interests might be? For example, I suppose that my parents' generation thought about the interests of my generation, and believed that those companies would remain there forever. In the very least, they might have reasoned that if those companies relocated, we would simply find another industry to set up business on the lake. But how could they know back then that the pollution laws would change so drastically.

If we could accurately predict what the interests of some future generation might be, how far into the future would our obligations extend? For example, I suspect that based on current pollution rates, the quality of the air that my children breath will be somewhat worse than the air that I now breath. That might be marginally acceptable in terms of cost/benefit analyses. However, given those same pollution rates, the air that my potential grandchildren breath will (might) breath would be much worse and the air that my great grandchildren will breath children will probably be toxic.

The basic problem here is that reciprocal altruism cannot exist between generations. The present can invade the interests of the future, but the future cannot invade the interests of the present. Hence, we in the present have power over the future. The best I can do, therefore, is blame my parents' generation for ruining Onondaga lake. There can be no retribution. But do I have any moral obligations, based on *kin altruism*, to help preserve clean air for my great grandchildren?

John Rawls thought that our obligations extend only to the next immediate generation. After all, it's more likely that I would actually know the interests of my children than I would know the interests of my potential great grandchildren. Then again, I may never have any great grandchildren. Therefore, Rawls reasoned that I have an obligation to see to it that my children have sufficient resources and relatively clean air, and they have an obligation to preserve sufficient resources and relatively clean air for my grandchildren, and my grandchildren care for my great grandchildren. Taken over many generations, this approach would seem to make sense.

But this strategy would surely require the use of government to regulate the use of resources. This is easier to do in regard to present generations than it is for future generations, simply because there is no way to guarantee that future politicians will be willing to enforce environmental ethics or environmental laws. Can we really predict how long the current ban on some forms of refrigerants in the United States will remain in place? Future scientists may decide that Freon is not so bad after all. Dark skins and sunbathing might go out of style. Maybe future human beings will actually prefer to live in artificial environments created indoors!

#### **ECOCENTRIC VIEWS**

Biologically speaking, ecosystems can be either as small as (or smaller than) your back yard or as large as the Amazon Rain Forests, or even the global ecosystem. Moreover, what I do in my back yard can

effect the neighborhood's ecosystem, which in turn can effect the ecosystem of Cincinnati, etc.. Because ecosystems are so interwoven, (*open systems*) some harm inflicted at the local level may spill over into higher levels. According to deep ecologists, nature as a whole, is a homeostatic system that seeks to preserve a natural balance among species. Sometimes human beings upset that natural balance.

As stated earlier, some levels of economic development are *sustainable*, in the sense that nature can often renew itself within certain objective boundaries. Of course, based on the *predator-prey principle*, harm to one species affects other species both above and below it on the *food chain*. There are, however, levels of resource depletion (living and non-living) caused by human beings, that lead to *extinction* and there are levels of pollution that lead to irreparable harm to species, ecosystems, and even the whole of nature.

Noted for its eclecticism, deep ecology builds upon both scientific and moral realism. At the descriptive "scientific" level it draws from *ecology*. At the prescriptive "moral" level it is a hybrid form of *large scale communitarianism* where the whole of nature replaces human nature as the object of moral concern. Philosophically, deep ecology faces two daunting tasks: *first*, it must integrate its *descriptive* and *prescriptive* elements; *second*, it must translate its *bio-centric* perspective into a coherent social and political doctrine.

Deep ecologists argue that nature is a homeostatic system that seeks a delicate balance between its sub-systems: individual organisms, species, and ecosystems. Hence, when natural homeostasis is preserved the number of individuals within each species, the number of species in each ecosystem, and the number ecosystems in the world are optimized. Ecological change, (variation) occurs only when an element of the ecosystem falls out of its natural static state. So systemic change and the extinction of species, can be regarded as "unnatural." But natural events such as forest fires, hurricanes, and ice ages also trigger ecological imbalance. Therefore deep ecologists must distinguish between "natural" and "unnatural" causes of extinction. But if homeostasis is an empirical element of ecological theory, then one must determine at what level it occurs and under what empirical conditions. If it occurs at the level of particular ecosystems, there must exist some ecosystems that have not changed over millions of years.

Deep ecologists are "holistic" in the sense that eternal homeostasis can only occur in a "closed system," and that all of the earth's particular ecosystems are "open" sub-systems." Therefore, they say that stasis must be preserved at the global level. However, if this intended as a scientific principle, it is hard to imagine how one might frame an experiment to detect global stasis.

There are two main problems with all this. First, it is unclear whether homeostasis is a true description of the state of nature as a whole. Other than the finite universe itself, there may be no "closed systems" in nature. The dinosaurs were apparently driven into extinction by an asteroid colliding with the earth millions of years ago. Was that asteroid part of the system or was it an external intruder? Moreover, deep ecologists think of nature as a caring mother doting over her unruly children. Hence, nature is seen as harboring some deeply rooted purpose that human beings must eventually conform to. But nature, at least according to post-Darwinian evolutionary theory, does not resemble a caring mother. It doesn't "care" about anything and it does not "value" anything. Even if it were a true description of nature, it would not necessarily entail that we ought to preserve every species or ecosystem on earth.

Although, human beings might be able to stop causing extinction of species and ecosystems, it is not clear that we possess, either: the resources, knowledge, or technology to rescue all known endangered species. Of course, deep ecologists can fall back on the distinction between "natural" and "human" caused extinction, and argue that natural extinction is systemically good and human caused extinction is systemically bad. But that presupposes the contra-Darwinian principle that nature operates with knowable purpose. Species often become extinct due to natural biological forces such as "unfitness." From a biotic perspective, unfitness and extinction might be considered good, since other species often benefit from the disappearance of its rivals.

Many philosophers argue science can discover the *facts* of nature but not its *values*. Natural selection and variation are scientific principles, but moral principles. So when a species or ecosystem goes extinct it is neither objectively good nor bad.

Deep ecologists attribute most ecologically destructive human behavior to human centered politics. They say that the fundamental problem with libertarianism is that it focuses on how nature's bounty (including plants and animals) are to be distributed among human beings as resources. In other words, libertarianism holds that only human beings have "intrinsic value" while the rest of nature possesses only "extrinsic," or "instrumental" value. But deep ecologists point out that human beings living in liberal regimes have unlimited wants, and therefore exert an unlimited effect on the world's ecosystems. They insist that because each species occupies a unique place in an ecosystem, and each ecosystem is a part of

the whole of nature, each pursue their own ends relative to the whole and therefore possess "inherent worth," "intrinsic value," and are "ends in themselves." Therefore, they say that human interests do not, in fact, trump the interests of other species. Of course, nature often constrains human effort. Indeed many moralists set standards so high that human beings are unlikely to obey them. Critics of deep ecology say that it is probably not possible for human beings to think of themselves as the moral equivalent of the Snail Darter.

Deep ecologists argue that it is a fact that human beings experience an "oceanic" feeling of "self-realization" when they recognize that they are part of this natural "gestalt" ecological community. If this experience of self-realization is not experienced by some human beings, deep ecologists say that they ought to experience it; and that person's who experience self-realization in the experience of individuality, separateness and uniqueness, are experiencing unnatural and immoral feelings. The question here is how much "cultural prodding" is necessary for human beings to experience the good form of self-realization? A liberal regime would have to remain neutral and allow that particular individuals and communities may rationally experience self-realization in different ways, unless self-realization is experienced at the expense of the rights of other human beings.

In sum, deep ecology's reliance on natural science to fix moral and political values impairs its ability to serve as a comprehensive doctrine. Good science changes over time and therefore we cannot expect it to serve as the basis for long-term decision-making. Conversely, religious doctrines disguised as science, such as homeostasis are based more on culture and tradition (or force) than fact, and therefore are incapable of adapting to the ever the changing perceptions of the world that science provide.

### **STOCKHOLDER THEORY**

A libertarian/stockholder theory based environmental ethic would require three key components: a defensible distinction between persons and property, a commitment to private property and repugnance for public property, and a free market system of exchange.

Any ethical theory requires a defensible distinction between the moral and amoral universes. In other words, there must be a clear line that distinguishes meaningful moral discourse from other forms of discourse, such as religious or economic discourse. Although most stockholder theorists tend toward anthropocentrism, there is certainly room for scientific debate. Where stockholder theorist's voice their concern is when environmentalists argue that an eco-centric environmental ethic requires public ownership, and collectivism. Although, stockholder theorists can offer both deontological (rights-based) arguments and teleological (consequentialist) arguments, the latter are probably the most convincing. Do governments do a better job of protecting the environment than private entities? The empirical answer is no. This descriptive theory, based on thousands of years of empirical study indicates collective or common ownership of property in general, including environmental property, leads to tragic results: call it the "*tragedy of the commons*." In short, "when everyone owns something, no one owns it." When that happens no one really cares what happens to it. That's how we end up with most resource depletion and pollution. Therefore, a libertarian would argue that the fate of non-human persons (air, water, and the rest of the natural world) would be better left under the stewardship of private, self-interested owners, than governments.

### **8.2 ENVIRONMENTAL ISSUES**

Two of the major consequences of economic development have always been resource depletion and environmental degradation. This is because most economic activity involves transforming resources into products. This creates two seeming inevitable consequences: the depletion of resources and pollution. What role should morality and government play in environmental matters involving corporations? Stockholder theorists, tend to be anthropocentric (but not always). They argue that environmental ethics is based primarily on two liberty limiting principles: the *harm principle*. Under any libertarian regime, personal liberty ends when you invade the interests of other persons. Hence, one would have to argue that the depletion of a given resource or a particular kind of pollution actually harms others. Generally

speaking, liberals cannot justifiably base environmental policy on the offence principle. Personally, I think much of the landscape devastated by mining interests in Eastern Kentucky to be offensive. However, the mere fact that it is now ugly cannot justify violating the liberty rights of property owners and coal companies. We would have to show that the now devastated landscape actually harms persons living in that region. We might also argue that short-sighted governmental policies led directly to those environmental harms.

### RESOURCE DEPLETION

Most economic activity involves processes which turn *natural resources* into *artifacts*. Most natural resources are renewed over time by nature. Some natural resources, like trees, are renewable, if and only if, they are given enough time to replenish themselves. Oil, gas, and coal are like trees in this respect, only the natural replenishment rate is much slower. Resource depletion occurs when resources are used up faster than the renewal rate: consumption rates become *non-renewable*. Economic growth based on the exploitation of non-renewal resources is not *sustainable* for extended periods of time. Is there any moral wrong committed when resources are depleted at a non-renewable rate?

First of all, let's set down the libertarian point of view on the use of resources. Libertarians reduce most resource-related issues to *private ownership*. If I own a particular parcel of land and decide that I would like to cut down all the trees and sell them to a lumber company, it's my right, as long as my doing so does not invade the personal or property rights of my neighbors. In short, if I deplete that resource, which belongs to me, that's my liberty-based right. There are several basic lines of criticism against this point of view. We might argue that:

*SOCIALISM: The earth's resources really do not belong to us as individuals, but rather belong to all of us collectively.* The basic flaw in this line of argument is that it falsely assumes that public ownership leads directly to conservation, which is simply not true. Some of the most egregious examples of resource depletion have occurred under the watchful eye of United States, China and the former Soviet Union.

*THEISM OR NATURAL LAW: The earth's resources really do not belong to human beings individually or collectively, but rather belong to "God" (theism) or "Nature" (naturalism).* The problem with these approaches is that each assumes that there exists a single universal point of view that might be called "religious" or "natural." In the end, both theism and naturalism rely some *authority* (religious text or scientific text). Therefore, environmental solutions often require reconciliation between conflicting authorities.

*RATIONALISM: The earth's resources belong to human beings individually and/or collectively, but that does not give us the unlimited right to use those resources irrationally.* The fatal flaw with this point of view is that it assumes that the use of resources is either rational or irrational and that we can easily discern the difference between the two. In fact, the main problem with resource depletion is that we don't really know with certainty whether any given rate of consumption is renewable or not. Even if we did know that a given rate were, in fact, non-renewable, it would not necessarily follow that that rate is also irrational.

Democracies are especially vulnerable to inordinate corporate influence, where resource consuming corporations gain largely unfettered access to publically owned resources, such as oil, coal, or timber. Resource depletion has been most often facilitated by governmental decisions that sanction overuse in order to advance the interests of powerful internal constituencies, such as fishing industry lobbyists. If oil companies had to deal with self-interested owners of resources, they would be less likely to overuse those resources. However, "less likely" is probably the best we can hope for. Some property owners will always act irrationally against their own best interest, and therefore, might choose to allow other companies to over-fish, over-mine, or over-drill on their property. But governments do the same thing. But I suspect that it is an empirical truth that current levels of resource depletion are the results of governmental decisions.

## POLLUTION

Industrial processes separate *resources* (useful materials) from (non-useful) *waste* in order to manufacture *products*. Traditionally, most industrial waste has always ended up in waterways and in the atmosphere. Once again, the debate over pollution centers on questions of ownership. If you own something, you have a right to do whatever you want with it. If you buy a large tract of land with a lake on it, you own the lake. If you want to use it as a source of pristine drinking water, or as a recreation resort, that's fine. If you choose to dump waste into it, that's also your business. But there are basically two problems here.

First of all, rivers, lakes and streams naturally flow from one place to another. This means that, unless I own the entire waterway and all its tributaries, my polluting behavior may invade the interests of other adjacent owners. If I have a commercial interest in dumping my sewage into the lake and you have an interest in drinking that same water, we have a classic *conflict of interest* at hand. Moreover, this kind conflict may involve not only individual owners, but also multinational corporations and governments. The state of Ohio shamelessly pollutes the air in other states.

Secondly, rivers, lakes, and streams also flow over time. The Ohio River has been around a lot longer than human beings and it will no doubt be around a lot longer than any of us living today. This means that our actions in the present effect, not current neighboring states, but also future generations. I grew up near Onondaga Lake near Syracuse, New York. Back in the 1940s residents sold the water rights chemical and steel factories on the lake. For decades, these companies dumped toxic waste in the lake, which gradually rendered it unfit for recreational use. Obviously, based on reciprocal altruism this arrangement worked well. The company profited greatly from being able to dispose of its waste and my parents' generation benefited greatly from low taxes and low unemployment.

But the company eventually moved operations to Mexico leaving behind one of the most polluted lakes, and unsightly empty factories littering the landscape. The present generation, therefore does not benefit from that original agreement. Tax rates are much higher now and unemployment is much higher. Hence, the current generation continues to pay the cost of the previous generation's short-lived benefits. The lake is still polluted and unfit for any other use. If it is at all possible to clean up the lake, it will take many years and cost millions on dollars. Who should pay for that? Many libertarians disagree with me on this, but I think this "problem of future generations" is very real, and enormously difficult to deal address.

According to anthropocentric theories, fish, wildlife, water etc. are resources (owned or unowned property) and not persons. Therefore, we have no direct duties toward them. So poisoning a waterway would not be harmful, unless it invaded the personal or property interests of other human beings. Of course, we might disagree over facts. You might argue that your actions did not in fact, created the pollution or that the harm was less. This often turns out to be the case because environmental science is very complex and scientists often come up with conflicting estimates: as evidenced by the global warming debate.

Ideally, you and I ought to be able to solve the pollution problem based on reciprocal altruism. That is, you might agree to compensate me for my fish that your pollution contaminated or the asthmatic symptoms that my children experience as the result of your air pollution. If you and I cannot come to some mutual agreement, I might even be justified in pursuing a court injunction to prevent you from invading my personal or property interests or even seek retribution.

Issues of both *ownership* and *liberty* permeate environmental ethics. Libertarians argue that almost all property ought to be owned by self-interested private individuals or corporations. It is better that governments NOT own resources, unless it is demonstrably shown to be "in the *public interest*." Generally this means that government might own the land occupied by public schools, or public roads. But unfortunately many waterways are publically owned and managed by government.

Libertarians have faith in the principle of self-interest. They argue that self-interested individuals and corporations are, in fact, much more likely to care for their property and the resources on that property than government is likely to care for public property. Rationally self-interested logging companies that want to stay in business are more likely to conserve trees the trees that they own and adopt prudent harvesting policies. Again, when everyone owns a piece of property, no one really owns it. Indeed, most public property is usually maintained poorly. As I stated earlier, public school buildings, public parks, and public housing are far more likely to be neglected than their privately owned counterparts. Libertarians and stockholder theorists, therefore, argue that resource depletion and pollution are more likely to occur on publically owned property.



Whether we like it or not, in the “real world” environmental policy must be *human-centered*. Therefore, we really have no *direct* obligations toward trees, animals, or even ecosystems apart from the interests of our species. Our environmental obligations are, therefore, *indirect*, in the sense that moral wrongs, or harms, must adversely affect the interests of human beings. So if human actions deplete resources or pollute the environment, the key moral question is "How are humans affected." In a democracy, the idea is for citizens to elect public officials to act in the public interest. In order to do this, we must somehow align the interests of politicians with the interests of the electorate. Therefore, we have a moral obligation not to re-elect to politicians who pursue self interest over public interest. Unfortunately, politicians can also stay in power by concealing the allegiance to corporations. Admittedly, environmental ethics is philosophically problematic; not only in terms of the composition of the moral universe, but also in terms of how to go about distributing natural resources among the various stakeholders. If ecosystems are, in fact, stakeholders, how does one go about protecting their interests? In the final analysis, the natural world is subject to not only the laws of ecology, but also the laws of economics. Stakeholder theorists typically argue that environmentalism implies the empowerment of governments in order to distribute natural resources and control pollution. If you are satisfied with the current state of world’s environment, which has been shaped by governments, then you’ll support the status quo. I am not satisfied with the current state of affairs. I’m willing to take a chance on empowering multi-national corporations that serve the long-term interests of their stockholders. In fact, many environmentalists work for self-interested corporations. Regardless of what you might believe about the environment, we must take into account the facts of human nature. I think it is a fact that environmental stewardship, invariably, must employ both morality and legality. In both instances, environmental rules and laws must be monitored and enforced by external power structures. Stakeholder theorists trust governmental power structures while stockholder theorists trust self-interested corporations. Who do you trust?