

BUSINESS ETHICS

Lecture # 24

Handout

1. Is the offer of a payment initiated by the payer (the one who pays the money), or does the payee (the one who receives the money) demand the payment by threatening injury to the payer's interests? In the latter case, the payment is not a bribe but a form of extortion. If the threatened injury is large enough, the payer may not be morally responsible for his or her act, or the moral responsibility may at least be diminished.
2. Is the payment made to induce the payee to act in a manner that violates his or her official sworn duty to act in the best interests of the public? Or is the payment made to induce the payee to perform what is already his or her official duty? If the payee is being induced to violate his or her official duty, then the payer is cooperating in an immoral act because the payee has entered an agreement to fulfill these duties.
3. Are the nature and purpose of the payment considered ethically unobjectionable in the local culture? If a form of payment is a locally accepted public custom and there is a proportionately serious reason for making the payment, then it would appear to be ethically permissible on utilitarian grounds.

Oligopolies and Public Policy

What should society do in the face of the high degree of market concentration in oligopolistic industries? There are three main points of view:

First, the **Do-Nothing view** claims that the power of oligopolies is not as large as it appears. Though competition within industries has declined, they maintain that competition between industries with substitutable products has replaced it. In addition, there are "countervailing powers" of other large corporate groups, the government, and unions that keep corporations in check. Finally, they argue that bigger is better, especially in the current age of global competition. Economies of scale, produced by high concentration, actually lower prices for consumers.

Second, the **antitrust view** argues that prices and profits in highly concentrated industries are higher than they should be. By breaking up large corporations into smaller units, they claim, higher levels of competition will emerge in those industries. The result will be a decrease in collusion, greater innovation, and lower prices. Clearly, the antitrust view is based on a number of assumptions. J. Fred Weston has summarized the basic propositions on which this traditional view is based:

1. If an industry is not atomistic with many small competitors, there is likely to be administrative discretion over prices.
2. Concentration results in recognized interdependence among companies, with no price competition in concentrated industries.

3. Concentration is due mostly to mergers because the most efficient scale of operation is not more than 3 to 5 percent of the industry. A high degree of concentration is unnecessary.
4. There is a positive correlation between concentration and profitability that gives evidence of monopoly power in concentrated industries—the ability to elevate prices and the persistence of high profits. Entry does not take place to eliminate excessive profits.
5. Concentration is aggravated by product differentiation and advertising. Advertising is correlated with higher profits.
6. There is oligopolistic coordination by signaling through press releases or other means.

The third view is the **Regulation view**, which can be seen as a middle ground between the other two. Those who advocate regulation do not wish to lose the economies of scale offered by large corporations, but they also wish to ensure that large firms do not harm the consumers. Therefore, they suggest setting up regulatory agencies and legislation to control the activities of large corporations. Some even suggest that the government should take over the operation of firms where only public ownership can guarantee that they operate in the public interest.

Whichever view we take, clearly the social benefits of free markets cannot be guaranteed, and the markets themselves cannot be morally justified, unless firms remain competitive.

ETHIC & ENVIRONMENT

This chapter on ethics and the environment begins with some rather sobering statistics from the World Watch Institute. This includes population growth, rising temperature, falling water tables, shrinking cropland per person, collapsing fisheries, shrinking forests, and the loss of plant and animal species. Our environment seems to be stressed nearly to the breaking point. The ethical and technological questions that this state of affairs raises are extremely important and complex.

First, there are still serious disagreements about the extent of the environmental damage that industrial technology has produced. Furthermore, there is no precise way of knowing just how much of a threat this environmental damage will have for our future welfare. And whatever the level of damage, we must surely sacrifice some values to halt or slow it.

To explore these issues, this chapter begins with an overview of the technical aspects of environmental resource use. Then it moves to a discussion of the ethical basis of environmental protection. It concludes with a consideration of our obligation to future generations and the prospects for continued economic expansion.

5.1 The Dimensions of Pollution and Resource Depletion

Environmental damage inevitably threatens the welfare of human beings as well as plants

and animals. Threats to the environment come from two sources, pollution and resource depletion. **Pollution** refers to the undesirable and unintended contamination of the environment by the manufacture or use of commodities. **Resource depletion** refers to the consumption of finite or scarce resources. In a certain sense, pollution is really a type of resource depletion because contamination of air, water, or land diminishes their beneficial qualities.

Air pollution has been with modern society for nearly 200 years; its costs are increasing greatly. It negatively affects agricultural yields, human health, and global temperatures. The result is a large economic impact and a staggering effect on the quality of human life.

Global warming itself poses a difficult and frightening challenge. Global warming greenhouse gases such as: carbon dioxide, nitrous oxide, methane, and chlorofluorocarbons, are gases that absorb and hold heat from the sun, preventing it from escaping back into space, much like a greenhouse absorbs and holds the sun's heat. Most scenarios concerning the effects of global warming predict massive flooding, increase of disease, loss of plant and animal species, and expansion of deserts at the expense of agricultural land. These effects will have high human and economic costs. However, to halt the increase of greenhouse gasses, we would have to reduce emissions by 60% to 70%, a level that would damage the economies of countries around the world. To halt global warming, experts say that we would need to change our lifestyles and values drastically.

Ozone depletion is also a serious concern. Caused by the release of CFCs into the atmosphere, ozone depletion may lead to several hundred thousand new cases of skin cancer each year and destroy many valuable food crops. Also, ocean plankton, on which the entire ocean's food chain depends, may be severely damaged. Even though CFC production has been nearly halted, we can expect the gasses already released to continue damaging the ozone for the next century.

Burning fossil fuels causes acid rain and global warming. Though not as devastating as global warming, it nevertheless is harming many fish populations and trees, corroding bridges and buildings, and contaminating drinking water. Airborne toxins and air quality in general are also serious concerns for human health.

Airborne Toxics are less catastrophic but highly worrisome air pollution threats; 2.4 billion pounds of airborne toxic substances released annually into the nation's atmosphere, including phosgene, a nerve gas used in warfare, and methyl isocyanate.

BUSINESS ETHICS

Lecture # 26

Handout

Report of World Watch Institute

FORESTS AND BIODIVERSITY

The number of plant and animal species inhabiting the planet is not accurately known. Nearly 2 million species have been identified, but estimates of the number yet to be described range from 10 million to 30 million (United Nations Environment Program, 1995). Ecosystems of all kinds are under pressure worldwide. Coastal and lowland areas, wetlands, native grasslands, and many types of forests and woodlands have been particularly affected or destroyed. While forests decreased by about 5 per cent between 1980 and 1995, the rate of deforestation has been declining slightly (Food and Agriculture Organization of the United Nations, 2000b). Additional threats confront fragile aquatic habitats, including coral reefs and freshwater habitats, which face an array of assaults from dams to land-based pollution to destructive fishing techniques.

Over the past 150 years, deforestation has contributed one third of the atmospheric build-up of CO₂, and it is a significant factor in the loss of species and critical ecosystem services (Intergovernmental Panel on Climate Change, 2000). Since the beginnings of agriculture 10,000 years ago, by some estimates, almost half of the earth's forests have been converted to farms, pastures and other uses, and only one fifth of original forest remains in large, relatively natural ecosystems. Forested areas, including forest plantations as well as natural forests, occupied about one fourth of the world's land area in 1995. Tropical rain forests are important for the quantity and diversity of life they support. They cover only 7 per cent of the earth's land area, but contain at least 50 per cent of terrestrial species (Food and Agriculture Organization of the United Nations, 1999b). The influences of forests and biodiversity are global, reaching far beyond national borders, in both space and time. Therefore, international cooperation is essential in order to integrate environmental issues better into global, regional and national decision-making processes.

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Water pollution is likewise a serious problem. About 40% of the world's surface water is too polluted to fish or swim in. Pollution comes from agriculture, mines, oil wells, human wastes, manufacturing, detergents, and the food industry, among other sources. Today, almost 1 billion people lack access to safe water and the world's per capita supplies of water are shrinking.

The pollution of the land by toxic substances also causes increased mortality and illness. Hazardous or toxic substances are those that can cause an increase in mortality rates or irreversible or incapacitating illness, or those that have other seriously adverse health or environmental effects. Over 58,000 different chemical compounds are currently being used in the U.S., and the number is increasing each year. How many of these chemicals affect humans, no one really knows. The sheer volume of solid waste is staggering: each U.S. resident produces about seven pounds of garbage per day. Though this quantity is massive, it is not even close to the quantity of industrial waste. The EPA estimates that about 15 million tons of toxic waste is produced in the U.S. each year. This does not include nuclear wastes, which, because they are so concentrated and persistent, present special problems for storage and disposal. Each nuclear reactor produces 265 pounds of plutonium waste a year, a substance so toxic that only twenty pounds would be sufficient to cause lung cancer in everyone on Earth. So far, no one really knows how to dispose of this and similar wastes safely and securely.

As if pollution was not serious enough, we also must consider the depletion of species, habitats, and natural resources. The world loses about 1% of its rain forests each year, and between 15% and 20% of species had become extinct by 2000. Our consumption of fossil fuels has recently been rising at exponential rates, but this cannot continue much longer because we are coming close to the depletion point of fossil fuels. Minerals are also being depleted, so we can expect them gradually to become more scarce and expensive. This scarcity will have a serious impact on the world economy.

The Ethics of Pollution Control

Businesses have been ignoring their impact on the natural environment for centuries, largely because the economic costs and harmful effects of this impact

have been unclear. Businesses have treated air and water as free goods that no one owns. Since the carrying capacity of both is so large, each individual firm sees its own contribution to pollution as negligible. Combined, however, the effects are enormous. The harm comes not only from the direct activity of businesses. Pollution also occurs as a result of consumer use of manufactured items. The problems of pollution have a variety of origins, and will require a similarly varied set of solutions. The rest of this chapter concentrates on a single range of problems, the ethical issues raised by pollution from commercial and industrial enterprises.

BUSINESS ETHICS

Lecture # 27

Handout

Sometimes an everyday product choice can make a world of difference. Below are some new studies that reveal how some cookware, raincoats, carpets, shoes and pesticides can expose the people who manufacture them—and our families—to problematic chemicals. Check out our healthier alternatives.

Toxic Chemicals in Teflon

New information is coming to light about the toxic effects of a chemical used in making non-stick coatings such as Teflon. The chemical goes by the name PFOA (short for perfluorooctanoic acid), or C8, and is also used in the manufacture of food wrap and water- and stain-resistant fabric coatings.

Studies presented at a March 2005 national toxicology meeting show that PFOA exposure during pregnancy causes miscarriage and low birth weight in mice; many of the exposed offspring went on to experience delayed puberty. The U.S. Environmental Protection Agency (EPA), which conducted these studies, is evaluating the possible human health risks of PFOA. Animal studies have shown that PFOA, in addition to harming development, is also linked to hypothyroidism and cancer.

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Waste categories

2.1. The following items are collected by this scheme :

- a. Highly reactive chemicals.
- b. Water reactive chemicals.
- c. Waste that cannot pass the compatibility test (refer to Item 7.6 of Section A "Procedures for disposal of general chemical waste").
- d. Unwanted raw chemicals.
- e. Expired chemicals.

2.2. The Labpack service collects chemical wastes in liquid, solid and sludge forms.

2.3. The following items are NOT acceptable by Labpack:

- a. Radioactive materials.
- b. Explosive materials.
- c. Shock sensitive materials.
- d. Sealed metal articles or containers.
- e. Pressurized containers.
- f. Any asbestos bearing material and articles contaminated with asbestos.

Business Ethics

Handout

Lecture No. 29

To make this position clear, it is helpful to distinguish between private costs and social costs. **Private costs** are the actual cost a firm incurs to produce a commodity. **Social costs** include the costs that the firm does not pay—the costs of pollution and medical care that result from the manufacture of the commodities. The divergence of private and social costs is problematic because the divergence means that price no longer accurately reflects all of the costs of a commodity. This means that resources are not being allocated efficiently, and society's welfare consequently declines.

When markets do not take all costs into account, more of a commodity will be produced than society would demand if it could measure what it is actually paying for the commodity. In addition, producers ignore these costs and do not try to minimize them. Since goods are no longer efficiently distributed to consumers, pollution violates the utilitarian principles that underlie the market system.

The remedy for external costs, according to utilitarians, is to internalize them to ensure that the producer pays all of the real costs of production and uses these costs to determine the price of the commodity. To internalize the costs of pollution, a firm may be required to pay all those harmed by pollution. A problem with this way of internalizing the costs of pollution, however, is that when several polluters are involved, it is not always clear just who is being harmed and by whom. Alternatively, the firm might install pollution control devices and stop the harm at its source.

This way of dealing with pollution is consistent with the requirements of distributive justice. Since pollution's external costs are largely borne by the poor, pollution produces a net flow of benefits away from the poor and towards the rich. Internalizing these costs can reverse this flow. However, if a firm makes basic goods, such as food, then internalizing costs may place a heavier burden on poorer people.

Internalizing external costs is also consistent with retributive and compensatory justice, because those who are responsible for pollution bear the burden of rectifying it and compensating those who have been harmed. Taken together, these requirements imply that (a) the costs of pollution control should be borne by those who cause pollution and who have benefited from pollution activities, whereas (b) the benefits of pollution control should flow to those who have had to bear the external costs of pollution. Internalizing external costs seems to meet

these two requirements: (a) The costs of pollution control are borne by stockholders and customers, both of whom benefit from the polluting activities of the firm; and (b) the benefits of pollution control flow to those neighbors who once had to put up with the firm's pollution.

From an ecology-based organizational ethic are:

- a. Organizations' responsibilities go beyond the production of goods and services at a profit.
- b. These responsibilities involve helping to solve important social problems, especially those they have helped create.
- c. Corporations have a broader constituency than stockholders alone.
- d. Corporations have impacts that go beyond simple marketplace transactions.
- e. Corporations serve a wider range of human values than just economics.

Green Marketing, Environmental Justice, and Industrial Ecology

1. Green marketing is the practice of "adopting resource-conserving and environmentally-friendly strategies in all stages of the value chain."
2. Environmental justice is "the pursuit without discrimination based on race, ethnicity, and/or socioeconomic status concerning both the enforcement of existing environmental laws and regulations and the reformation of public health policy."

Rights of Future Generations and Right to a Livable Environment

1. The debate about the rights of future generations centers on the extent to which present generations should bear responsibility for the preservation of the environment for future generations. According to the ethicist John Rawls, "Justice requires that we hand over to our immediate successors a world that is not in worse condition than the one we received from our ancestors."
2. This "environmental right" supersedes individuals' legal property rights and is based on the belief that human life is not possible without a livable environment. Therefore, laws must enforce the protection of the environment based on human survival.

Recommendations to Managers

Boards of directors, business leaders, managers, and professionals should ask four questions regarding their actual operations and responsibility toward the Environment:

- a. How much is your company really worth?
- b. Have you made environmental risk analysis an integral part of your strategic planning process?
- c. Does your information system “look out for” environmental problems?
- d. Have you made it clear to your officers and employees that strict adherence to environmental safeguarding and sustainability requirements are a fundamental tenet of company policy?

Business Ethics

Handout

Lecture No, 31

Because of these problems, some contend that utilitarianism cannot lead our pollution control policy. Perhaps absolute bans on pollution are more adequate. Some writers even suggest that when risk cannot be reliably estimated, it is best to steer clear of such projects. Others maintain that we should identify those who will bear the risks and take steps to protect them.

It holds that until those patterns of hierarchy and domination are changed, we will be unable to deal with environmental crises. In a system of hierarchy, one group holds power over another and members of the superior group are able to dominate those of the inferior group and get them to serve their. Many thinkers have argued that the environmental crises we face are rooted in the social systems of hierarchy and domination that characterize our society. This view, now referred to as **social ecology**, ends. What literally defines social ecology as "social" is its recognition of the often overlooked fact that nearly all our present ecological problems arise from deep-seated social problems. Conversely, present ecological problems cannot be clearly understood, much less resolved, without resolutely dealing with problems within society. To make this point more concrete: economic, ethnic, cultural, and gender conflicts, among many others, lie at the core of the most serious ecological dislocations we face today--apart, to be sure, from those that are produced by natural catastrophes.

If this approach seems a bit too "sociological" for those environmentalists who identify ecological problems with the preservation of wildlife, wilderness, or more broadly, with "Gaia" and planetary "Oneness," it might be sobering to consider certain recent facts. The massive oil spill by an Exxon tanker at Prince William Sound, the extensive deforestation of redwood trees by the Maxxam Corporation, and the proposed James Bay hydroelectric project that would flood vast areas of northern Quebec's forests, to cite only a few problems, should remind us that the real battleground on which the ecological future of the planet will be decided is clearly a social one.

Indeed, to separate ecological problems from social problems--or even to play down or give token recognition to this crucial relationship-- would be to grossly misconstrue the sources of the growing environmental crisis. The way human beings deal with each other as social beings is crucial to addressing the ecological crisis. Unless we clearly recognize this, we will surely fail to see that the hierarchical mentality and class relationships that so thoroughly permeate society give rise to the very idea of dominating the natural world.

Unless we realize that the present market society, structured around the brutally competitive imperative of "grow or die," is a thoroughly impersonal, self-operating mechanism, we will falsely tend to blame technology as such or population growth as such for environmental problems. We will ignore their root causes, such as trade for profit, industrial expansion, and the identification of "progress" with corporate self-interest. In short, we will tend to focus on the symptoms of a grim social pathology rather than on the pathology itself, and our efforts will be directed toward limited goals whose attainment is more cosmetic than curative.

While some have questioned whether social ecology has dealt adequately with issues of spirituality, it was, in fact, among the earliest of contemporary ecologies to call for a sweeping change in existing spiritual values. Such a change would mean a far-reaching transformation of our prevailing mentality of domination into one of complementarity, in which we would see our role in the natural world as creative, supportive, and deeply appreciative of the needs of nonhuman life. In social ecology, a truly *natural* spirituality centers on the ability of an awakened humanity to function as moral agents in diminishing needless suffering, engaging in ecological restoration, and fostering an aesthetic appreciation of natural evolution in all its fecundity and diversity.

Thus social ecology has never eschewed the need for a radically new spirituality or mentality in its call for a collective effort to change society. Indeed, as early as 1965, the first public statement to advance the ideas of social ecology concluded with the injunction: "The cast of mind that today organizes differences among human and other life-forms along hierarchical lines of 'supremacy' or 'inferiority' will give way to an outlook that deals with diversity in an ecological manner--that is, according to an ethics of complementarity."¹ In such an ethics, human beings would complement nonhuman beings with their own capacities to produce a richer, creative, and developmental whole-not as a "dominant" species but as a supportive one. Although this idea, expressed at times as an appeal for the "respiritization of the natural world," recurs throughout the literature of social ecology, it should not be mistaken for a theology that raises a deity above the natural world or that seeks to discover one within it. The spirituality advanced by social ecology is definitively naturalistic (as one would expect, given its relation to ecology itself, which stems from the biological sciences), rather than supernaturalistic or pantheistic.

To prioritize any form of spirituality over the social factors that actually erode all forms of spirituality, raises serious questions about one's ability to come to grips with reality. At a time when a blind social mechanism, the market, is turning soil into sand, covering fertile land with concrete, poisoning air and water, and producing sweeping climatic and atmospheric changes, we cannot ignore the impact that a hierarchical and class society has on the natural world. We must earnestly deal with the fact that economic growth, gender oppressions, and ethnic domination-not to speak of corporate, state, and bureaucratic interests-are much more capable of shaping the future of the natural world than are privatistic

forms of spiritual self-regeneration. These forms of domination must be confronted by collective action and major social movements that challenge the social sources of the ecological crisis, not simply by personalistic forms of consumption and investment that often go under the rubric of "green capitalism." We live in a highly cooperative society that is only too eager to find new areas of commercial aggrandizement and to add ecological verbiage to its advertising and customer relations.

Until these systems (such as racism, sexism, and social classes) are changed, we will be unable to deal adequately with the environment. Eco-feminists, a related group of thinkers, sees the key form of hierarchy connected to the destruction of the environment as the domination of women by men. They believe that there are important connections between the domination of women and the domination of nature—patterns of thinking, which justify and perpetuate the subordination. This logic of domination sets up dualisms (artificial and natural, male and female) where one of the pair is seen as stronger and more important. To solve our ecological problems, we must first change these destructive modes of thinking.

According to the ethics of caring, the destruction of nature that has accompanied male domination must be replaced with caring for and nurturing our relationships with nature and other living things. Nature must be seen as an "other" that must be cared for, not tamed or dominated. Thought-provoking as these approaches are, they are still too new and undeveloped to give us specific direction.

The Ethics of Conserving Depletable Resources

Conservation refers to the saving or rationing of natural resources for later use. In fact, even pollution control can be seen as a form of conservation, since pollution consumes air and water. However, generally, conservation refers to the saving of finite, depletable resources. The only source of such resources is what has been left over from previous generations.

As we deplete the world's resources, there is unavoidably a smaller amount of them left for future generations. If future generations have an equal right to the world's resources, then by depleting them we are stealing what is actually theirs.

A number of writers have claimed that it is a mistake to think that future generations have rights. They advance three main reasons to show this:

First, future generations cannot intelligently be said to have rights because they do not now exist and may never exist. I may be able to think about future people, but I cannot hit them, punish them, injure them, or treat them wrongly. Future people exist only in the imagination, and imaginary entities cannot be acted on in any way whatsoever except in the imagination. Similarly, we cannot say that future people possess things now when they do not yet exist to possess or have

them. Because there is a possibility that future generations may never exist, they cannot "possess" rights.

Second, if future generations did have rights, we might be led to the absurd conclusion that we must sacrifice our entire civilization for their sake. Suppose that each of the infinite number of future generations had an equal right to the world's supply of oil. Then we would have to divide the oil equally among them all, and our share would be a few quarts at the most. We would then be put in the absurd position of having to shut down our entire Western civilization so that each future person might be able to possess a few quarts of oil.

Third, we can say that someone has a certain right only if we know that he or she has a certain interest that that right protects. The purpose of a right, after all, is to protect the interests of the right holder, but we are virtually ignorant of what interests future generations will have. What wants will they have?

John Rawls, on the other hand, argues that though it is unjust to impose heavy burdens on present generations for the sake of the future, it is also unjust for present generations to leave nothing for the future. We should ask ourselves what we can reasonably expect they might want and, putting ourselves in their place, leave what we would like them to have left for us. Justice, in short, requires that we hand over to our children a world in no worse condition than the one we received ourselves.

BUSINESS ETHICS

Handout

Lecture No. 33

The Ethics of Consumer Production and Marketing

Gas Explosions on a construction site

Gas explosions are caused by an ignition source coming into contact with a gas leak. Construction workers must always remain alert to the presence of gas leaks. Gas can be a silent killer, filling an area with flammable toxins while going unnoticed by most people. When a flame or other source of ignition is introduced to a gaseous environment, the resulting gas explosion can be catastrophic.

In 1937, a natural gas leak was responsible for the New London School explosion in Texas. This disaster killed three hundred students and teachers. Similar explosions occur regularly throughout the world, although typically with a less dramatic loss of life.

Gas explosions are preventable throughout effective safety procedures and responsible leadership. If you are a victim of a gas explosion, you deserve justice and compensation for your suffering. Contact an attorney who will fight for what you are entitled to. Do not hesitate to move forward with your life and speak with a lawyer today.

Multi-Country *Per Capita* Fatality Data for 2003

Last updated on January 20, 2005 (re USA and Republic of Ireland) and on January 29 (Jamaica)

	OECD ^a Pos'n	<i>Per Capita</i> ^b Death Rate	Country	Number of ^c Deaths in 2003	Population ^d (millions)	Number of ^m Deaths in 2004
1	----	3.29	Brunei	12 ^g	0.37	
2	----	4.00	Malta	16	0.4	
3	----	5.62	F Y R Macedonia	118	2.1	
4	1	5.81	United Kingdom	3,508 ^{ae}	60.3	3,221 ^{ae}
5	2	5.88	Sweden	529	9.0	
6	3	6.01	Norway	280	4.6	
7	4	6.31	Netherlands	1,028	16.3	
8	5	6.97	Japan	8,877 ^t	127.3	
9	6	7.02	Finland	379	5.2	370/377 ^{aa/ac}
10=	7=	7.33	Switzerland	546	7.45	

10=	7=	7.33	Iceland	22	0.3	
12		7.54	Albania	264	3.5	
13		7.77	Israel	482	6.2	
14		7.94	Serbia and Montenegro	858	10.8	
15	9	8.00	Denmark	432	5.4	
16	10	8.03	Germany	6,613	82.4	
17	11	8.21	Australia	1,634 ^v	19.9	
18	12	8.43	Ireland	337	4.0	
19		8.46	Ireland -- Republic of	336 ^k	3.97	
20	13	8.55	Canada	2,778 ^x	32.5	
21		9.09	Azerbaijan	718	7.9	
22	14	9.49	France	5,731	60.4	
23		9.66	Moldova	425	4.4	
24		9.98	Romania	2,235	22.4	
25		>10	Bahrain			
26	15	11.36	Austria	931	8.2	
27	16	11.48	New Zealand	459 ^y	4.0	435 ^y
28	17	11.52	Luxembourg	53	0.46	
29	18	11.7 ^s	Italy	^s	58.0	
30	19	12.09	Slovak Republic	653	5.4	
31	20	12.10	Slovenia	242	2.0	
32		12.17	Georgia	572	4.7	
33		12.62	Estonia	164	1.3	
34		12.80	Bulgaria	960	7.5	
35	21	12.91	Portugal	1,356	10.5	
36	22	-----	Turkey	3,966 ^f	68.9	
37	23	13.26	Hungary	1,326	10.0	
38	24	13.40	Spain	5,399	40.3	
39	25	14.19	Czech Republic	1,447	10.2	
40	26	14.5 ⁱ	Belgium	ⁱ	10.3	
41	27	14.61	Poland	5,640	38.6	
42		14.7	Jamaica	399 ^l	2.71	
43	28	14.75 ^{ag}	U.S.A.	42,884 ^{ag}	290.8 ^j	42,636 ^{at}
44	29	14.9 ^u	Repub. of Korea	^u	48.6	
45	30	15.24	Greece	1,615	10.6	

46		15.58	Croatia	701	4.5	
47		16.67	Liechtenstein	5	0.03	
48		17.12	Belarus	1,763	10.3	
49		18.37	China	238,584 ^z	1298.8	
50		19.69	Lithuania	709	3.6	
51		21.43	Latvia	493	2.3	
52		24.77	Russian Federation	35,600	143.7	>34,000 ^q
53		25.3 ^{ab}	South Africa	12,353	44.3 ^{ab}	
54		26.75	Malaysia	6,286 ^h	23.5	6,223 ^p
			Cyprus		0.78	117 ⁿ
			Ghana		20.8	649 ^o

Multi-Country Data for 2004

See a 15-year history of per capita death rates for the (now) 30 member countries of the OECD, including the USA

We also have a table showing the 2003 per capita data for all 50 American states, here

DSA Comments

It must be remembered that there are three primary measures for comparing multi-national crash and fatality data: the deaths per 100,000 population or *per capita* rate, as shown here, deaths in relation to overall distance travelled (known in the USA as the *VMT* rate), and deaths in relation to the number of registered motor vehicles in the country. All three measures should be considered when comparing disparate countries but using just one of these methods is generally acceptable when comparing countries of similar status (e.g. "highly motorized countries" [HMCs], developed nations, third world countries, etc.).

As a result, some countries in the above table may appear to present bizarre results, either because -- like China, for example -- they have a very high death toll but it is offset by a huge population, or they simply have, say, a very low proportion of motor vehicles per head of population -- such as Brunei, that is currently at the head of the *per capita* table, or Ghana.

There is also the question of how, exactly, a traffic fatality is defined in any particular country. Some may only include deaths at the scene, whereas others will stipulate deaths within 24 hours, and some may allow a full week or even 30 days.

In some cases, therefore, the data for the number of deaths simply cannot be relied upon as being accurate. In Turkey, for example, the national press state that over 9,000 people are killed in road crashes each year, and yet each year data is published by that country giving a much lower body count. For that reason

we have elected to position Turkey in the table to allow for an approximate per capita rate of 13.06 (based on the aforementioned 9,000 estimate) but have not shown the rate in the relevant column.

The Ethics of Consumer Production and Marketing

As the examples of Bridgestone/Firestone and Metabolife International clearly demonstrate, consumers are exposed daily to high levels of risk simply by using consumer products. The risk translates into injury, death, and astonishingly high costs as a result. As if product injuries were not enough, consumers must also bear the costs of deceptive sales practices, shoddy merchandise, and un-honored warranties. This chapter examines the ethical issues raised by product quality and advertising.

Markets and Consumer Protection

Consumers are at great risk every day. Many believe that consumers are automatically protected from injury by the operation of the free and competitive market. In the market approach to consumer protection, consumer safety is seen as a good that is most efficiently provided through the mechanism of the free market whereby sellers must respond to consumer demands. If consumers want products to be safer, they will indicate this preference in markets by willingly paying more for safer products and showing a preference for manufacturers of safe products while turning down the goods of manufacturers of unsafe products. Producers will have to respond to this demand by building more safety into their products or they risk losing customers to competitors who cater to the preferences of consumers. Moreover, if consumers do not place a high value on safety (or are unwilling to pay for it), then it is wrong to force them to accept higher levels of safety through regulation.

Critics to the market approach respond that the benefits of free markets are obtained only when the markets have all of the seven defining characteristics: (a) There are numerous buyers and sellers, (b) everyone can freely enter and exit the market, (c) everyone has full and perfect information, (d) all goods in the market are exactly similar, (e) there are no external costs, (f) all buyers and sellers are rational utility maximizers, and (g) the market is unregulated. Critics of the market approach to consumer issues argue that these characteristics are absent in consumer markets.

Most importantly, markets are efficient only if participants have full and perfect information about the goods they are buying. This is obviously not always the case, however; some products are simply too complex for anyone but an expert to understand them. Gathering information is also time consuming and expensive, so many consumers may not have the resources to acquire the necessary information on their own.

In theory, of course, if consumers really wanted this information, then a market would be created for consumer information. It is difficult, however, for such

organizations to cover their costs. Once costly information is released, it is easily leaked to others who do not pay. Because people know they can become free riders, the number of people who pay for the information is too small to cover the costs of gathering it. Second, consumers are unwilling to pay for information because they do not know what its value is until after they get it, and then they already have it and don't need to pay for it. When we buy information, we cannot know in advance what we are purchasing until we have it. Markets alone, then, cannot provide consumers with the information they need.

Another criticism of the free market approach to consumer issues refers to the sixth characteristic of perfectly competitive free markets, that of the consumer is a "rational utility maximizer." The consumers defined by the theory think ahead, consider, and watch every penny they spend, knowing how their choices will affect their preferences. This does not really characterize consumer choice, however. Most consumer choices are based on probability estimates that we make concerning the chances that the products we buy will function as we expect. Research shows, unfortunately, that we become inept and irrational when we make such choices.

First, most of us are not good at estimating probabilities. We typically underestimate risks and overestimate the probabilities of unlikely but memorable things. Our probability judgments go astray for five reasons:

1. We ignore prior probabilities when we get new information, even if the new information is irrelevant.
2. We emphasize "causation," but underweight evidence that is relevant but not seen as "causal."
3. We generalize based on small sample findings.
4. We believe in the nonexistent "law of averages."
5. We believe that we control purely chance events.

BUSINESS ETHICS

Handout

Lecture No, 34

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Second, as a number of researchers have shown, people are irrational and inconsistent when weighing choices based on probability estimates of future costs and payoffs. Research shows that people inconsistently rank one payoff as being both better and worse than another. Finally, markets often fail to have numerous buyers and sellers. Since most consumer markets are monopolies or oligopolies, the sellers are able to extract abnormally high profits by ensuring that demand always exceeds supply.

As a whole, then, market forces by themselves are not able to deal with consumer concerns for safety, freedom from risk, and value. Instead, consumers must be protected by governmental action and the voluntary initiatives of businesses. Of course, part of the responsibility for consumer injuries does rest on consumers. People often use items that they have neither the skill nor experience to handle.

Injuries also occur because of flaws in design, materials, or manufacturing, however. In these cases, it is the manufacturer's duty to minimize injuries. Their expertise makes them most knowledgeable about the safest materials and methods of making their products.

Where does the consumer's duty end and the manufacturer's duty begin? Three different theories address this question: the contract, "due care," and the social costs views.

Who Should Pay? The Product Liability Debate

Every year, 34 million people are injured or killed as a result of product related accidents. Such injuries are the major cause of death for people between the ages of 1 and 36, outnumbering deaths from cancer or heart disease. The estimated cost of these injuries is \$12 billion annually.

Tens of thousands of product injury lawsuits are filed each year. As the number of claims has risen, so too have the number of companies forced to file bankruptcy because of massive suits. Moreover, an increasing number of companies are claiming that they have pulled established products off the market and halted research on promising products for fear of liability.

Manufacturers claim that they are victims of a system gone haywire. According to strict liability laws, a manufacturer can be held liable for injuries even when he or she had no way of preventing those injuries. Holding manufacturers responsible for injuries caused by products known to be defective or potentially dangerous is one thing, but today manufacturers face lawsuits--often bordering on the outrageous--for injuries they could not have prevented.

Consumer activists, on the other hand, claim that the threat of product liability suits forces manufacturers to make product safety a priority and that those who suffer injuries caused by products should be compensated for their injuries by the manufacturers of those products.

Product injuries represent a major cost of introducing products into a society. Since virtually every new product carries some unknown risk, a possibility always exists that the product may cause injuries or imposes other costs on users. This raises an important moral question: How should these costs be distributed among the members of our society?

Should Consumers Bear More Responsibility?

Manufacturers contend that consumers should bear more responsibility for product injuries because the costs of placing full liability onto companies far outweigh the benefits. Since the 1960s, there has been a steady increase of product liability cases. According to one study, 13,500 product liability suits were filed in federal court in 1986, compared to only 1,500 in 1974. Due to this barrage of litigation, the cost of doing business has risen dramatically. Insurance premiums have skyrocketed, where insurance is available at all. Manufacturers' legal costs have also soared: about 60% of the average corporation's litigation expenses today are product liability cases. The rising cost of product liability insurance and lawsuits has led, in turn, to great increases in consumer prices.

The economy also has suffered from the boom in product liability claims. When companies facing massive lawsuits have been forced to scale down their operations, the result is a loss of jobs. In a recent report by the Conference Board, 15% of corporations surveyed had laid off workers because of product liability costs, while 8% had been forced to close plants altogether. In addition, the threat of liability has affected American businesses' ability to compete internationally. In other countries, there are severe limits on what manufacturers can be held responsible for and there is less tendency to sue. By not having to contend with a morass of lawsuits, these companies can offer cheaper products, and put American manufacturers at a competitive disadvantage.

It is also argued that the fear of being hit with a liability claim keeps many lifesaving drugs and devices off the market, and stifles creativity and innovation. Even the most rigorous conformity to safety regulations doesn't prevent liability. One report found that 39% of the companies surveyed delayed introducing new products or had discontinued products because of product liability suits. The pharmaceutical industry has been hit the hardest. Only one company in the U.S. now manufactures vaccines, a product often targeted in lawsuits. Vaccines for AIDS will certainly not reach the market without protection against lawsuits. Said one spokesperson from the drug industry, "Decisions [are] already being made on [AIDS] research priorities for liability reasons."

The costs to manufacturers and to society will only increase as technologies grow more complex and their applications more varied. Testing products for safety under every possible condition of use will not only impose great testing costs on manufacturers but will result in enormous delays in the introduction of new products that could benefit society.

Manufacturers also maintain that it is morally unjust to hold someone liable for injuries that he or she could not have prevented. Through extensive research and repeated testing, companies do all that they possibly can to ensure product safety. And, to prevent harm, warnings and instructions are plastered over each piece of merchandise.

Finally, some manufacturers point out that in a free market system, businesses have the right to make and sell whatever products they choose and consumers have the right to choose what they buy. But rights carry with them responsibilities. When consumers choose to buy risky products rather than safe ones (both of which businesses may offer in a free market) or when they choose not to inform themselves about products, they must accept the consequences, including the responsibility for any injuries resulting from those choices.

Should Manufacturers Bear More Responsibility?

Those who hold that manufacturers should bear more of the responsibility for product injuries argue that the benefits of holding companies liable for these injuries outweigh the costs. In a recent year, more than 200,000 infants were hospitalized for injuries resulting from the use of toys, or nursery or recreational equipment. About 1,777,000 people required emergency treatment because of injuries involving home furnishings; more than 1,200 of these injuries were fatal. An additional 1,782,000 individuals required treatment for injuries involving home construction materials; 1,300 of them died from the injuries. Society has an obligation to minimize such tragedy and suffering. Without the threat of liability, manufacturers would have little incentive to ensure product safety, and the number of product-related injuries would escalate.

The costs of holding manufacturers responsible for product injuries are not as great as company representatives would have us believe. For example, the so-

called "explosion" in product liability suits, "crippling American business," is a myth. A recent study by the RAND Corporation found that although the number of product liability lawsuits had increased nearly eight-fold during the last decade, more than half of these lawsuits involved only a handful of companies, reflecting mass litigation against a few asbestos and pharmaceutical companies. A report by the Government Accounting Office also concluded that, except for cases involving a few drug or asbestos companies, product liability suits "do not appear to have been rapidly accelerating or explosive."

Furthermore, it cannot be claimed that product litigation makes domestic companies any less competitive internationally. Foreign companies that sell in the U.S. have to abide by the same product liability laws that American companies face. And when American companies compete abroad, they have the same advantages that foreign companies have.

Those who hold manufacturers liable for product-related injuries also claim that justice is on their side. Since the defective product that caused the injury was produced by the manufacturer, it is fair that the manufacturer bear the costs of that injury. Moreover, they argue, justice requires that the party that is most able to pay for an injury be the party that bears most of the financial burden. Manufacturers know in advance that there is always a risk of liability in introducing new products, and can therefore build the cost of potential lawsuits into the price of those products. Manufacturers also have the research expertise and laboratories, the engineering and technical knowledge, and the budgets to assess the risks of product use and to ensure that these products are safe. Consumers lack these. It is just to place greater burdens on those who are better able to bear these burdens.

Consumer activists also challenge the corporate claim that consumers "freely" choose to buy unsafe products. Consumers, they argue, are woefully uninformed about the products they buy because they don't have access to information about the products. Others lack a comprehensive understanding of the seriousness of the printed warning. Still others may be functionally illiterate or too young to make informed choices. It is manufacturers, not consumers, who make the "free" choices to compromise product safety and it is manufacturers who must therefore accept the consequences.

As long as products are produced, product injuries will occur. Who should bear the costs of those injuries? Our answer requires that we weigh the claims of consumers against those of manufacturers--claims which appeal, in different ways, to our desire to minimize harm, our ideal of justice, and our commitment to taking responsibility for the choices we make.

BUSINESS ETHICS

Handout

Lecture No, 35

The Contract View of Business' Duties to Consumers

In the contract view of business' duties to consumers, the relationship between a firm and its customers is essentially contractual. When we purchase an item, we enter voluntarily into a "sales contract" with the firm, who then has a duty to provide a product with the characteristics they have agreed to supply. Consumers therefore have a correlative right to receive the product they have been promised.

This theory rests on the view that such contracts are free agreements that impose on each side the duty of complying with the terms of the agreement. Both Kant's and Rawls' theories offer justification for this view, and traditional moralists also remind us that contracts are subject to three moral constraints (mentioned in Chapter Two): both parties must have full knowledge of the agreement, neither party must misrepresent the facts, and neither party must be forced to enter it. The same sorts of arguments that Kant and Rawls use to justify the basic duty to perform one's contracts can justify these secondary constraints.

Hence, the contractual theory of business' duties to consumers claims that a business has four main moral duties: the basic duty of (a) complying with the terms of the sales contract, and the secondary duties of (b) disclosing the nature of the product, (c) avoiding misrepresentation, and (d) avoiding the use of duress and undue influence. By acting in accordance with these duties, a business respects the right of consumers to be treated as free and equal persons—that is, in accordance with their right to be treated only as they have freely consented to be treated.

First, businesses must provide a product that actually lives up to the express claims that they make about it. In addition, they must also carry through on any implied claims they knowingly make about it. Generally, such claims refer to one of four areas: reliability, service life, maintainability, and product safety. Businesses, therefore, must provide products that are as reliable, long-lasting, easily maintained, and as safe as consumers are led to believe them to be.

Since a contract cannot bind where both parties do not have full knowledge, the seller also has a duty to disclose to the buyer any facts about the product that would affect the consumer's decision to purchase it. Sellers also must not misrepresent their products. Even more than not disclosing information, misrepresentation makes freedom of choice impossible; it is, in reality, coercive. Coercion itself also renders a contract void, because people act irrationally when under the influence of fear. Sellers must not take advantage of gullibility,

immaturity, or ignorance, which reduce the buyer's ability to make a free rational choice.

The main objections to the contractual theory maintain that the assumptions on which the theory is based are unrealistic. Manufacturers do not deal directly with consumers. They do deal indirectly with them through advertisements, however, and promoters of the theory argue that advertisements forge the indirect contractual relationship between seller and the buyer.

BUSINESS ETHICS

Handout

Lecture No, 36

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Another objection to the theory points out that consumers can freely agree to purchase a product without certain qualities. Manufacturers can be released from normal contractual obligations simply by disclaiming that the product is safe and reliable. Disclaimers can, in effect, nullify all of the seller's contractual duties.

Finally, critics of this theory point out that the assumption that buyer and seller meet on equal ground is false. Buyers and sellers are not equally skilled; the seller is in a much stronger position than the buyer. Sellers only have to know their own products, while buyers need to know about every sellers' products for every commodity they purchase.

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6.3 The Due Care Theory

The **due care theory of the manufacturer's duties to consumers** is based on the idea that consumers and sellers do not meet as equals and the consumer's interests are particularly vulnerable to being harmed by the manufacturer, who has a knowledge and an expertise that the consumer lacks. Because manufacturers are in a more advantaged position, they have a duty to take special care to ensure that the products they offer do not harm the consumers' interests. The doctrine of ***caveat emptor*** is here replaced with a weak version of the doctrine of ***caveat vendor***. Let the seller take care. Because consumers must rely on the expertise of the manufacturer, they have a duty not only to deliver a product that lives up to the express and implied claims they make about

it. They have a duty to exercise due care to prevent others from being injured by the product, even if they explicitly disclaim such responsibility.

Due care must enter into the product's design, choice of materials and construction methods, quality control, and warnings attached to it. Failure to exercise due care in these areas is a breach of the manufacturer's moral duties. This theory rests on the principle that agents have a moral duty not to harm or injure others. The principle can be defended by the ethics of care, of course, but rule utilitarianism, Kant, and Rawls can all also be used as a solid basis for the theory.

Manufacturers' responsibilities to exercise due care extend to the following three areas:

1. **Design** - a product's design should not conceal any dangers, should incorporate all feasible safety devices, and use adequate materials. The design should additionally be well tested to ensure that consumers will use the product properly.
2. **Production** - the manufacturing process must be controlled to eliminate any defective items, identify weaknesses, and ensure that unsafe economizing measures are not taken.
3. **Information** - the firm should fix labels, notices, and instructions on the product warning of all potential dangers involved in using or misusing the item.

Manufacturers must also take into consideration the capacities of the persons who they expect will use the product. If the possible harmful effects of using a product are serious or if they cannot be adequately understood without expert opinion, then sale of the product should be carefully controlled.

There are three difficulties with the due care theory. The basic problem with it is that there is no way to determine when one has exercised enough due care. Every product involves some small risk; if all risks were eliminated, few if any products would be affordable. Secondly, the theory assumes that the manufacturer can indeed discover all the risks attendant upon using a product before it is actually used and this may not be possible. Finally, the theory is to some, paternalistic, assuming that the manufacturer alone should make the important decisions about the level of risk the consumer should bear. Perhaps such decisions should be left up to consumers, who can decide for themselves whether or not they want to pay for additional safety measures.

Key Terms

brand loyalty	the result of effective advertising campaigns on consumers, which gives large corporations control over a major portion of the market.
caveat emptor	"let the buyer beware."
caveat vendor	"let the seller beware."

commercial advertising	communication between a seller and potential buyers that is publicly addressed to a mass audience and is intended to induce several members of this audience to buy the seller's products.
contractual theory (of a seller's duties)	the view that the relationship between a business and its customers is a contractual one; the moral duties to the customer are those created by this contract.
disclaimer	a statement made by a seller explicitly disclaiming that the product is reliable, serviceable, or safe.
due care theory (of a seller's duties)	the theory that, since consumers must depend on the greater expertise of the manufacturer, the manufacturer not only has a duty to deliver a product that lives up to the express and implied claims about it, but also has a duty to exercise due care to prevent others from being injured by the product--even if the manufacturer explicitly disclaims such responsibility.
duty not to coerce	the duty of a seller not to take advantage of gullibility, immaturity, ignorance, or any other factor that might reduce the buyer's ability to make a rational choice.
duty not to misrepresent	the duty of a seller not to deliberately deceive the buyer into thinking something about a product that the seller knows is false.
duty of disclosure	the duty of a seller to inform the buyer of any facts about the product that would affect the decision to purchase it.
duty to comply	according to the contractual theory, the seller has a duty to carry through on any implied claims he knowingly makes about the product.
free riders	individuals who acquire a benefit paid for by others who desire the same benefit.
implied claim	a claim about the quality or character of a product that is knowingly, though not explicitly, made by a seller.
implied warranty	the indirect contractual relationship made between a company and its customers by its advertisements.
maintainability	the ease with which a product can be repaired and kept in operating condition.

market approach to consumer protection	consumer safety is seen as a good that is most efficiently provided through the mechanism of the free market whereby sellers must respond to consumer demands.
physical privacy	privacy with respect to a person's physical activities.
production costs / selling costs	with reference to advertising, production costs are the costs of the resources consumed in producing a product; selling costs are the additional costs of resources that do not go into changing the product but rather are invested in persuading people to buy it.
product safety	implied and express claims that refer to the degree of risk associated with using a product.
psychological privacy	privacy with respect to a person's inner life.
rational utility maximizer	a person who has a well-defined and consistent set of preferences, and who is certain how personal choices will affect those preferences.
reasonable risk	a risk that is known and judged to be acceptable by the buyer.
reliability	the probability that a product will function as the consumer is led to expect.
right to privacy	the right of persons to determine what, to whom, and how much information about themselves will be disclosed to other parties.
selling costs	the additional costs of resources that do not go into changing the product, but are invested instead in persuading people to buy the product.
service life	the period of time during which a product will function as effectively as the consumer is led to expect it to function.
social costs theory (of a seller's duties)	the theory that the duties of the manufacturer extend far beyond those imposed by contractual and due care duties; manufacturers should pay the cost of any injuries sustained through any defects in their products, even when they exercise due care and have taken all reasonable precautions. (Related to the legal doctrine of strict liability.)
strict liability	a legal doctrine that holds that manufacturers must bear the "external" costs of injuries resulting from unavoidable defects in the design of an artifact constitute part of the costs society must pay for

producing and using an artifact.

BUSINESS ETHICS

Handout

Lecture No, 37

The Social Costs View of the Manufacturer's Duties

The third theory of the duties of the manufacturer extends beyond what the other two theories impose. It maintains that a manufacturer must pay the costs of any injuries sustained through any defects in the product, even when the manufacturer exercised due care and took all reasonable precautions to warn users of every foreseen danger.

This theory, which forms the basis of the legal doctrine of **strict liability**, is utilitarian. It says that the external costs of injuries resulting even from unavoidable defects constitute part of the cost society must pay for producing and using a product. Having the manufacturer bear these costs is the most efficient use of society's resources: that way, the price of the good will reflect its real cost and it will not be overproduced. Additionally, manufacturers will take even greater care since they will be responsible for paying for all of the costs of injuries. When they include the cost of injuries in the price of the product, they also will be distributing the real cost of the item among all users, which is more fair than making just the unlucky injured parties bear the entire cost of the injury themselves.

The major criticism of this theory is that it is unfair because it violates the basic canons of compensatory justice: a person should not be forced to compensate an injured party if he or she could not have foreseen and prevented the injury. Critics also contend that the theory will not actually reduce the number of accidents. Instead, it may have the unintended effect of encouraging carelessness in consumers, which would cause even more accidents. Finally, such critics argue that liability suits will increase and impose heavy losses on insurance companies, forcing insurance rates to rise precipitously.

Social cost theorists counter by pointing out that, in reality, the costs of consumer liability suits are not large. Less than 1% of product-related injuries result in suits, and successful suits average only a few thousand dollars in any case. Moreover, the insurance industry has remained quite profitable, despite the warnings of the critics.

Advertising Ethics

Advertising is a huge industry, which imposes great expense on manufacturers and service providers. **Commercial advertising** is sometimes defined as a form of "information" and an advertiser as "one who gives information." The implication is that the defining function of advertising is to provide information to consumers.

In the end, consumers must cover the costs of advertising, but what do they get for this extra expenditure? Most consumers say that they get very little. So is advertising a waste, or a benefit? Does it help or harm consumers

Business Ethics

Handout

Lecture No. 38

Though advertising is sometimes defined as "information," this fails to distinguish it from the type of information found in *Consumer Reports*. Most advertisements contain precious little information in any case: "Got Milk?" and "Just Do It" are nearly empty statements. The primary function of advertisements is to sell products to prospective buyers. It is publicly addressed to a mass audience, so it has a necessarily widespread social effect. It is also intended to create desire and a belief in consumers that the product will satisfy the desire.

Advertising's critics point out that it has several harmful effects on society. First, its psychological effects are damaging in that it debases the tastes of consumers by inculcating materialistic values about how to achieve happiness. Whether or not advertising has such effects is still uncertain. Indeed, the success of advertising may depend on consumers already having the values that the advertisements focus upon.

Another major criticism of advertising is that it is wasteful. Those who make this type of objection point to the distinction between production costs and selling costs. **Production costs** are the costs of the resources consumed in producing a product. **Selling costs** are the additional costs of resources that do not go into the product itself, but rather are incurred as a result of persuading consumers to purchase it. The resources consumed by advertising, according to this theory, add nothing to the utility of the product.

Advertisers counter that advertisements do add information to the product, but of course, the information could be supplied more directly and inexpensively. They also say, however, that advertising creates desire and thus is responsible for a gradually expanding economy.

There is considerable controversy over whether advertising is responsible for the growing economy, however. Advertising appears to be most successful at shifting consumption from one producer to another, not at expanding consumption generally. Even if it could expand consumption, theorists do not agree that this would be good: increased consumption leads, among other things, to increased pollution and depletion of resources. Though some critics have also blamed advertising for monopolies, there is no conclusive evidence that advertising and monopolistic markets are connected.

John Kenneth Galbraith and other critics have long argued that advertising merely manipulates consumers, creating desires solely to absorb industrial output. Physical desires, such as the desire for food and shelter, are perfectly normal. But the psychological desires that are inspired by advertising are not under the consumer's control in the same way that physical desires are, which

puts the firm (instead of the individual) in control. If Galbraith's view is correct, then advertising violates the individual's right to choose freely for himself or herself. It is not clear, however, that this view is correct, and theorists such as F. A. von Hayek have pointed out that psychic wants have been around longer than advertising in any case.

The most common criticism of advertising concerns its effect on the consumer's beliefs. Because advertising is a form of communication, it can be as truthful or deceptive as any other form of communication. Most criticisms of advertising focus on the deceptive aspects of modern advertising. Nevertheless, even if advertising as a whole is not manipulative, there are clearly some advertisements that are intended to manipulate. Such advertisements do clearly violate the consumer's right to be treated as a free and equal rational being.

Deceptive advertising takes many forms: the "bait and switch," untrue paid testimonials, or simulating brand names are all forms of deception. There is no controversy over whether or not deceptive advertising is immoral: it clearly is. The problem is to understand how advertising becomes deceptive.

All communication involves three things: the author or originator of the message, the medium that carries the message, and the audience who receives it. Deception involves three necessary conditions in the author:

1. The author must intend to have the audience believe something false.
2. The author must know it to be false.
3. The author must knowingly do something to bring about this false belief.

Thus, an advertiser cannot be held responsible for an audience having misinterpreted a message when the misinterpretation is unintended, unforeseen, or the result of carelessness on the part of the audience.

The media carrying the message also has a responsibility to ensure the truth of what it carries to the audience. Both the author and the media must take into account the interpretive skills of the audience as well. To determine the ethical nature of an advertisement, the following points are relevant: the intended and actual social effects of the advertisement; the informing or persuasive character of the advertisement, and whether it creates irrational or injurious desires; and the whether the advertisement's content is truthful or tends to mislead.

THE BENEFITS OF ADVERTISING

4. Enormous human and material resources are devoted to advertising. Advertising is everywhere in today's world, so that, as Pope Paul VI remarked, "No one now can escape the influence of advertising."⁶ Even people who are not themselves exposed to particular forms of advertising confront a society, a culture — other people — affected for good or ill by advertising messages and techniques of every sort.

Some critics view this state of affairs in unrelievedly negative terms. They condemn advertising as a waste of time, talent and money — an essentially parasitic activity. In this view, not only does advertising have no value of its own, but its influence is entirely harmful and corrupting for individuals and society.

We do not agree. There is truth to the criticisms, and we shall make criticisms of our own. But advertising also has significant potential for good, and sometimes it is realized. Here are some of the ways that happens.

a) Economic Benefits of Advertising

5. Advertising can play an important role in the process by which an economic system guided by moral norms and responsive to the common good contributes to human development. It is a necessary part of the functioning of modern market economies, which today either exist or are emerging in many parts of the world and which — provided they conform to moral standards based upon integral human development and the common good — currently seem to be "the most efficient instrument for utilizing resources and effectively responding to needs" of a socio-economic kind.⁷

In such a system, advertising can be a useful tool for sustaining honest and ethically responsible competition that contributes to economic growth in the service of authentic human development. "The Church looks with favor on the growth of man's productive capacity, and also on the ever widening network of relationships and exchanges between persons and social groups....[F]rom this point of view she encourages advertising, which can become a wholesome and efficacious instrument for reciprocal help among men."⁸

Advertising does this, among other ways, by informing people about the availability of rationally desirable new products and services and improvements in existing ones, helping them to make informed, prudent consumer decisions, contributing to efficiency and the lowering of prices, and stimulating economic progress through the expansion of business and trade. All of this can contribute to the creation of new jobs, higher incomes and a more decent and humane way of life for all. It also helps pay for publications, programming and productions — including those of the Church — that bring information, entertainment and inspiration to people around the world.

b) Benefits of Political Advertising

6. "The Church values the democratic system inasmuch as it ensures the participation of citizens in making political choices, guarantees to the governed the possibility both of electing and holding accountable those who govern them, and of replacing them through peaceful means when appropriate."

Political advertising can make a contribution to democracy analogous to its contribution to economic well being in a market system guided by moral norms. As free and responsible media in a democratic system help to counteract tendencies toward the monopolization of power on the part of oligarchies and special interests, so political advertising can make its contribution by informing people about the ideas and policy proposals of parties and candidates, including new candidates not previously known to the public.

c) Cultural Benefits of Advertising

7. Because of the impact advertising has on media that depend on it for revenue, advertisers have an opportunity to exert a positive influence on decisions about media content. This they do by supporting material of excellent intellectual, aesthetic and moral quality presented with the public interest in view, and particularly by encouraging and making possible media presentations which are oriented to minorities whose needs might otherwise go unserved.

Moreover, advertising can itself contribute to the betterment of society by uplifting and inspiring people and motivating them to act in ways that benefit themselves and others. Advertising can brighten lives simply by being witty, tasteful and entertaining. Some advertisements are instances of popular art, with a vivacity and elan all their own.

d) Moral and Religious Benefits of Advertising

8. In many cases, too, benevolent social institutions, including those of a religious nature, use advertising to communicate their messages — messages of faith, of patriotism, of tolerance, compassion and neighborly service, of charity toward the needy, messages concerning health and education, constructive and helpful messages that educate and motivate people in a variety of beneficial ways.

For the Church, involvement in media-related activities, including advertising, is today a necessary part of a comprehensive pastoral strategy.¹⁰ This includes both the Church's own media — Catholic press and publishing, television and radio broadcasting, film and audiovisual production, and the rest — and also her participation in secular media. The media "can and should be instruments in the Church's program of re-evangelization and new evangelization in the contemporary world."¹¹ While much remains to be done, many positive efforts of this kind already are underway. With reference to advertising itself, Pope Paul VI once said that it is desirable that Catholic institutions "follow with constant attention the development of the modern techniques of advertising and... know how to make opportune use of them in order to spread the Gospel message in a manner which answers the expectations and needs of contemporary man."¹²

THE HARM DONE BY ADVERTISING

9. There is nothing intrinsically good or intrinsically evil about advertising. It is a tool, an instrument: it can be used well, and it can be used badly. If it can have, and sometimes does have, beneficial results such as those just described, it also can, and often does, have a negative, harmful impact on individuals and society.

Communio et Progressio contains this summary statement of the problem: "If harmful or utterly useless goods are touted to the public, if false assertions are made about goods for sale, if less than admirable human tendencies are exploited, those responsible for such advertising harm society and forfeit their good name and credibility. More than this, unrelenting pressure to buy articles of luxury can arouse false wants that hurt both individuals and families by making them ignore what they really need. And those forms of advertising which, without shame, exploit the sexual instincts simply to make money or which seek to penetrate into the subconscious recesses of the mind in a way that threatens the freedom of the individual ... must be shunned."¹³

a) Economic Harms of Advertising

10. Advertising can betray its role as a source of information by misrepresentation and by withholding relevant facts. Sometimes, too, the information function of media can be subverted by advertisers' pressure upon publications or programs not to treat of questions that might prove embarrassing or inconvenient.

More often, though, advertising is used not simply to inform but to persuade and motivate — to convince people to act in certain ways: buy certain products or services, patronize certain institutions, and the like. This is where particular abuses can occur.

The practice of "brand"-related advertising can raise serious problems. Often there are only negligible differences among similar products of different brands, and advertising may attempt to move people to act on the basis of irrational motives ("brand loyalty," status, fashion, "sex appeal," etc.) instead of presenting differences in product quality and price as bases for rational choice.

Advertising also can be, and often is, a tool of the "phenomenon of consumerism," as Pope John Paul II delineated it when he said: "It is not wrong to want to live better; what is wrong is a style of life which is presumed to be better when it is directed toward 'having' rather than 'being', and which wants to have more, not in order to be more but in order to spend life in enjoyment as an end in itself."¹⁴ Sometimes advertisers speak of it as part of their task to "create" needs for products and services — that is, to cause people to feel and act upon cravings for items and services they do not need. "If ... a direct appeal is made to his instincts — while ignoring in various ways the reality of the person as

intelligent and free — then consumer attitudes and life-styles can be created which are objectively improper and often damaging to his physical and spiritual health."¹⁵

This is a serious abuse, an affront to human dignity and the common good when it occurs in affluent societies. But the abuse is still more grave when consumerist attitudes and values are transmitted by communications media and advertising to developing countries, where they exacerbate socio-economic problems and harm the poor. "It is true that a judicious use of advertising can stimulate developing countries to improve their standard of living. But serious harm can be done them if advertising and commercial pressure become so irresponsible that communities seeking to rise from poverty to a reasonable standard of living are persuaded to seek this progress by satisfying wants that have been artificially created. The result of this is that they waste their resources and neglect their real needs, and genuine development falls behind."¹⁶

Similarly, the task of countries attempting to develop types of market economies that serve human needs and interests after decades under centralized, state-controlled systems is made more difficult by advertising that promotes consumerist attitudes and values offensive to human dignity and the common good. The problem is particularly acute when, as often happens, the dignity and welfare of society's poorer and weaker members are at stake. It is necessary always to bear in mind that there are "goods which by their very nature cannot and must not be bought or sold" and to avoid "an 'idolatry' of the market" that, aided and abetted by advertising, ignores this crucial fact.¹⁷

b) Harms of Political Advertising

11. Political advertising can support and assist the working of the democratic process, but it also can obstruct it. This happens when, for example, the costs of advertising limit political competition to wealthy candidates or groups, or require that office-seekers compromise their integrity and independence by over-dependence on special interests for funds.

Such obstruction of the democratic process also happens when, instead of being a vehicle for honest expositions of candidates' views and records, political advertising seeks to distort the views and records of opponents and unjustly attacks their reputations. It happens when advertising appeals more to people's emotions and base instincts — to selfishness, bias and hostility toward others, to racial and ethnic prejudice and the like — rather than to a reasoned sense of justice and the good of all.

c) Cultural Harms of Advertising

12. Advertising also can have a corrupting influence upon culture and cultural values. We have spoken of the economic harm that can be done to developing

nations by advertising that fosters consumerism and destructive patterns of consumption. Consider also the cultural injury done to these nations and their peoples by advertising whose content and methods, reflecting those prevalent in the first world, are at war with sound traditional values in indigenous cultures. Today this kind of "domination and manipulation" via media rightly is "a concern of developing nations in relation to developed ones," as well as a "concern of minorities within particular nations."¹⁸

The indirect but powerful influence exerted by advertising upon the media of social communications that depend on revenues from this source points to another sort of cultural concern. In the competition to attract ever larger audiences and deliver them to advertisers, communicators can find themselves tempted — in fact pressured, subtly or not so subtly — to set aside high artistic and moral standards and lapse into superficiality, tawdriness and moral squalor.

Communicators also can find themselves tempted to ignore the educational and social needs of certain segments of the audience — the very young, the very old, the poor — who do not match the demographic patterns (age, education, income, habits of buying and consuming, etc.) of the kinds of audiences advertisers want to reach. In this way the tone and indeed the level of moral responsibility of the communications media in general are lowered.

All too often, advertising contributes to the invidious stereotyping of particular groups that places them at a disadvantage in relation to others. This often is true of the way advertising treats women; and the exploitation of women, both in and by advertising, is a frequent, deplorable abuse. "How often are they treated not as persons with an inviolable dignity but as objects whose purpose is to satisfy others' appetite for pleasure or for power? How often is the role of woman as wife and mother undervalued or even ridiculed? How often is the role of women in business or professional life depicted as a masculine caricature, a denial of the specific gifts of feminine insight, compassion, and understanding, which so greatly contribute to the 'civilization of love'?"¹⁹

d) Moral and Religious Harms of Advertising

13. Advertising can be tasteful and in conformity with high moral standards, and occasionally even morally uplifting, but it also can be vulgar and morally degrading. Frequently it deliberately appeals to such motives as envy, status seeking and lust. Today, too, some advertisers consciously seek to shock and titillate by exploiting content of a morbid, perverse, pornographic nature.

What this Pontifical Council said several years ago about pornography and violence in the media is no less true of certain forms of advertising:

"As reflections of the dark side of human nature marred by sin, pornography and the exaltation of violence are age-old realities of the human condition. In the past

quarter century, however, they have taken on new dimensions and have become serious social problems. At a time of widespread and unfortunate confusion about moral norms, the communications media have made pornography and violence accessible to a vastly expanded audience, including young people and even children, and a problem which at one time was confined mainly to wealthy countries has now begun, via the communications media, to corrupt moral values in developing nations."²⁰

We note, too, certain special problems relating to advertising that treats of religion or pertains to specific issues with a moral dimension.

In cases of the first sort, commercial advertisers sometimes include religious themes or use religious images or personages to sell products. It is possible to do this in tasteful, acceptable ways, but the practice is obnoxious and offensive when it involves exploiting religion or treating it flippantly.

In cases of the second sort, advertising sometimes is used to promote products and inculcate attitudes and forms of behavior contrary to moral norms. That is the case, for instance, with the advertising of contraceptives, abortifacients and products harmful to health, and with government-sponsored advertising campaigns for artificial birth control, so-called "safe sex", and similar practices.

Business Ethics

Handout

Lecture No, 43

The self-regulatory system

The self-regulatory system comprises three bodies: the Advertising Standards Authority (ASA), the Advertising Standards Board of Finance (ASBOF) and the Committee of Advertising Practice (CAP). Their work is described below.

60.2 The strength of the system depends on the long-term commitment of all those involved in advertising, sales promotions and direct marketing (marketing). Practitioners in every sphere share an interest in seeing that marketing communications are welcomed and trusted by their audience; unless they are accepted and believed they cannot succeed. If they are offensive or misleading they discredit everyone associated with them and the industry as a whole.

60.3 The Code and all ASA rulings together with ASA and CAP guidance on a wide range of topics are available on www.asa.org.uk and www.cap.org.uk. The ASA and CAP update their websites regularly.

In the UK, the British Code of Advertising, Sales Promotion and Direct Marketing (the Code) is the rule book for non-broadcast advertisements, sales promotions and direct marketing communications (marketing communications). The Code is primarily concerned with the content of marketing communications and not with terms of business or products themselves. Some rules, however, go beyond content, for example those that cover the administration of sales promotions, the suitability of promotional items, the delivery of products ordered through an advertisement and the use of personal information in direct marketing. Editorial content is specifically excluded from the Code, though it might be a factor in determining the context in which marketing communications are judged.

The Committee of Advertising Practice (CAP) is the self-regulatory body that creates, revises and enforces the Code. CAP's members include organizations that represent the advertising, sales promotion, direct marketing and media businesses. Through their membership of CAP member organizations, or through contractual agreements with media publishers and carriers, those businesses agree to comply with the Code so that marketing communications are legal, decent, honest and truthful and consumer confidence is maintained.

Some CAP member organizations, for example the Direct Marketing Association and the Proprietary Association of Great Britain, also require their members to observe their own codes of practice. Those codes may cover some practices that are not covered in this Code. The Code supplements the law, fills gaps where the law does not reach and often provides an easier way of resolving disputes than by civil litigation or criminal prosecution. In many cases, self-regulation ensures

that legislation is not necessary. Although advertisers, promoters and direct marketers (marketers), agencies and media may still wish to consult lawyers, compliance with the Code should go a long way to ensuring compliance with the law in areas covered by both the Code and the law. By creating and following self-imposed rules, the marketing community produces marketing communications that are welcomed and trusted. By practicing self-regulation, it ensures the integrity of advertising, promotions and direct marketing.

The value of self-regulation as an alternative to statutory control is recognized in EC Directives, including those on misleading and comparative advertising (Directives 84/450 and 97/55 EC), and self-regulation is accepted by the Department of Trade and Industry and the Office of Fair Trading as a first line of control in protecting consumers.

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the Code, ensuring that the self-regulatory system works in the public interest. The ASA's activities include investigating and adjudicating on complaints and conducting research. A leaflet describing the ASA's complaints procedure is available on request and full information is available on www.asa.org.uk.

The vast majority of advertisers, promoters and direct marketers comply with the Code. Those that do not may be subject to sanctions. Adverse publicity may result from the rulings published by the ASA weekly on its website. The media, contractors and service providers may withhold their services or deny access to space. Trading privileges (including direct mail discounts) and recognition may be revoked, withdrawn or temporarily withheld. Pre-vetting may be imposed and, in some cases, non-complying parties can be referred to the Office of Fair Trading for action, where appropriate, under the Control of Misleading Advertisements Regulations. The system is structured so that it does not operate in an unfair or anti-competitive manner or restrict free speech unjustifiably. ASA decisions are subject to independent review, including in exceptional cases by the Administrative Division of the High Court. The full text of the Code is available on www.cap.org.uk. Copyright The Committee of Advertising Practice 2005.

MEMBERS OF THE COMMITTEE OF ADVERTISING PRACTICE

- Advertising Association
- Broadcast Advertising Clearance Centre
- Cinema Advertising Association
- Direct Marketing Association
- Direct Selling Association
- Incorporated Society of British Advertisers
- Institute of Practitioners in Advertising
- Institute of Sales Promotion
- Interactive Advertising Bureau
- Mail Order Traders Association

- Newspaper Publishers Association
- Newspaper Society
- Outdoor Advertising Association
- Periodical Publishers Association
- Proprietary Association of Great Britain
- Radio Advertising Clearance Centre
- Royal Mail
- Scottish Daily Newspaper Society
- Scottish Newspaper Publishers Association

INTRODUCTION

This eleventh edition of the Code comes into force on 4 March 2003. It replaces all previous editions.

The Code applies to:

Advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions, fax transmissions, catalogues, follow-up literature and other electronic and printed material posters and other promotional media in public places, including moving images

- Cinema and video commercials
- Advertisements in non-broadcast electronic media, including online advertisements in paid-for space (e.g. banner and pop-up advertisements)
- View data services
- Marketing databases containing consumers' personal information
- Sales promotions
- Advertisement promotions

The Code does not apply to:

- a. Broadcast commercials. (The BCAP Advertising Standards Codes set out the rules that govern broadcast advertisements on any television channel and radio station licensed by Ofcom.)
- b. The contents of premium rate services, which are the responsibility of the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS); marketing communications that promote these services are subject to ICSTIS regulation and to the Code
- c. Marketing communications in foreign media. Direct marketing that originates outside the UK but is targeted at UK consumers will be subject to the jurisdiction of the relevant authority in the country where it originates so long as that authority operates a suitable cross-border complaint system. If it does not, the ASA will take what action it can. All members of the European Union, and many non-European countries, have self-regulatory organisations that are members of the European Advertising Standards Alliance (EASA). EASA co-ordinates the cross-border complaints system for its members (which include the ASA).

- d. Health-related claims in marketing communications addressed only to the medical, dental, veterinary and allied professions
- e. Classified private advertisements, including those appearing online
- f. Statutory, public, police and other official notices/information, as opposed to marketing communications, produced by public authorities and the like
- g. Works of art exhibited in public or private
- h. Private correspondence, including correspondence between companies and their customers about existing relationships or past purchases
- i. Live oral communications, including telephone calls
- j. Press releases and other public relations material, so long as they do not fall under 1.1 above
- k. Editorial content, for example of the media and of books
- l. Regular competitions such as crosswords
- m. Fly posting (most of which is illegal)
- n. Packages, wrappers, labels, tickets, timetables and price lists unless they advertise another product, a sales promotion or are visible in a marketing communication
- o. Point of sale displays, except those covered by the sales promotion rules and the rolling paper and filter rules
- p. Election advertisements as defined in clause 12.1
- q. Website content, except sales promotions and advertisements in paid-for space
- r. Sponsorship; marketing communications that refer to sponsorship are covered by the Code
- s. Customer charters and codes of practice.

These definitions apply to the Code:

- a. A *product* encompasses goods, services, ideas, causes, opportunities, prizes or gifts
- b. A *consumer* is anyone who is likely to see a given marketing communication, whether in the course of business or not
- c. The *United Kingdom* rules cover the Isle of Man and the Channel Islands
- d. A *claim* can be implied or direct, written, spoken or visual
- e. The Code is divided into numbered *clauses*
- f. A *marketing communication* includes all forms of communication listed in 1.1
- g. A *marketer* includes an advertiser, promoter or direct marketer
- h. A *supplier* is anyone who supplies products that are sold by distance selling
- i. marketing communications (and may also be the marketer)
- j. A *child* is anyone under 16.
- k. A *corporate subscriber* includes corporate bodies such as limited companies in the UK, limited liability partnerships in England, Wales and N. Ireland or any partnerships in Scotland. It also includes schools, hospitals, Government departments or agencies and other public bodies. It does not include sole traders or non-limited liability partnerships in England, Wales and N. Ireland.

These criteria apply to the Code:

- a. The ASA Council's interpretation of the Code is final
- b. Conformity with the Code is assessed according to the marketing communication's probable impact when taken as a whole and in context. This will depend on the medium in which the marketing communication appeared, the audience and its likely response, the nature of the product and any additional material distributed to consumers
- c. The Code is indivisible; marketers must conform with all appropriate rules
- d. The Code does not have the force of law and its interpretation will reflect its flexibility. The Code operates alongside the law; the Courts may also make rulings on matters covered by the Code
- e. An indication of the statutory rules governing marketing is given on www.cap.org.uk; professional advice should be taken if there is any doubt about their application
- f. No spoken or written communications with the ASA or CAP should be understood as containing legal advice
- g. The Code is primarily concerned with the content of advertisements, promotions and direct marketing communications and not with terms of business or products themselves. Some rules, however, go beyond the content, for example those that cover the administration of sales promotions, the suitability of promotional items, the delivery of products ordered through an advertisement and the use of personal information in direct marketing. Editorial content is specifically excluded from the remit of the Code (see 1.2k), although it might be a factor in determining the context in which marketing communications are judged.
- h. The rules make due allowance for public sensitivities but will not be used by the ASA to diminish freedom of speech unjustifiably
- i. The ASA does not arbitrate between conflicting ideologies.

GENERAL RULES

Principles

- 2.1 All marketing communications should be legal, decent, honest and truthful.
- 2.2 All marketing communications should be prepared with a sense of responsibility to consumers and to society.
- 2.3 All marketing communications should respect the principles of fair competition generally accepted in business.
- 2.4 No marketing communication should bring advertising into disrepute.
- 2.5 Marketing communications must conform with the Code. Primary responsibility for observing the Code falls on marketers. Others involved in preparing and publishing marketing communications such as agencies, publishers and other service suppliers also accept an obligation to abide by the Code.
- 2.6 Any unreasonable delay in responding to the ASA's enquiries may be considered a breach of the Code.

2.7 The ASA and CAP will on request treat in confidence any genuinely private or secret material supplied unless the Courts or officials acting within their statutory powers compel its disclosure.

2.8 The Code is applied in the spirit as well as in the letter.

Substantiation

3.1 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation. Relevant evidence should be sent without delay if requested by the ASA or CAP. The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication. The full name and geographical business address of marketers should be provided without delay if requested by the ASA or CAP.

3.2 If there is a significant division of informed opinion about any claims made in a marketing communication they should not be portrayed as generally agreed.

3.3 Claims for the content of non-fiction books, tapes, videos and the like that have not been independently substantiated should not exaggerate the value, accuracy, scientific validity or practical usefulness of the product.

3.4 Obvious untruths or exaggerations that are unlikely to mislead and incidental minor errors and unorthodox spellings are all allowed provided they do not affect the accuracy or perception of the marketing communication in any material way.

Legality

4.1 Marketers have primary responsibility for ensuring that their marketing communications are legal. Marketing communications should comply with the law and should not incite anyone to break it.

Decency (i.e. avoiding serious or widespread offence)

5.1 Marketing communications should contain nothing that is likely to cause serious or widespread offence. Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or disability. Compliance with the Code will be judged on the context, medium, audience, product and prevailing standards of decency.

5.2 Marketing communications may be distasteful without necessarily conflicting with 5.1 above. Marketers are urged to consider public sensitivities before using potentially offensive material.

5.3 The fact that a particular product is offensive to some people is not sufficient grounds for objecting to a marketing communication for it.

Honesty

6.1 Marketers should not exploit the credulity, lack of knowledge or inexperience of consumers.

Truthfulness

7.1 No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Matters of opinion

8.1 Marketers may give a view about any matter, including the qualities or desirability of their products, provided it is clear that they are expressing their own opinion rather than stating a fact. Assertions that go beyond subjective opinions.

Fear and distress

9.1 No marketing communication should cause fear or distress without good reason. Marketers should not use shocking claims or images merely to attract attention.

9.2 Marketers may use an appeal to fear to encourage prudent behavior or to discourage dangerous or ill-advised actions; the fear likely to be aroused should not be disproportionate to the risk.

Safety

10.1 Marketing communications should not condone or encourage unsafe practices. Particular care should be taken with marketing communications addressed to or depicting children (see section 47).

10.2 Consumers should not be encouraged to drink and drive. Marketing communications should, where appropriate, include a prominent warning on the dangers of drinking and driving and should not suggest that the effects of drinking alcohol can be masked.

Violence and anti-social behavior

11.1 Marketing communications should contain nothing that condones or is likely to provoke violence or anti-social behavior.

Political advertising

12.1 Any advertisement or direct marketing communication, whenever published or distributed, whose principal function is to influence voters in local, regional, national or international elections or referendums is exempt from the Code.

12.2 There is a formal distinction between Government policy and that of political parties. Marketing communications (see clauses 1.1 and 1.2) by central or local government, as distinct from those concerning party policy, are subject to the Code.

Protection of privacy

13.1 Marketers should not unfairly portray or refer to people in an adverse or offensive way. Marketers are urged to obtain written permission before:

- a. Referring to or portraying members of the public or their identifiable possessions; the use of crowd scenes or general public locations may be acceptable without permission
- b. Referring to people with a public profile; references that accurately reflect the contents of books, articles or films may be acceptable without permission
- c. Implying any personal approval of the advertised product; marketers should recognize that those who do not wish to be associated with the product may have a legal claim.

13.2 Prior permission may not be needed when the marketing communication contains nothing that is inconsistent with the position or views of the person featured.

13.3 References to anyone who is deceased should be handled with particular care to avoid causing offence or distress.

13.4 Members of the Royal Family should not normally be shown or mentioned in marketing communications without their prior permission. Incidental references unconnected with the advertised product, or references to material such as books, articles or films about members of the Royal Family, may be acceptable.

13.5 The Royal Arms and Emblems should be used only with the prior permission of the Lord Chamberlain's office. References to Royal Warrants should be checked with the Royal Warrant Holders' Association.

Testimonials and endorsements

14.1 Marketers should hold signed and dated proof, including a contact address, for any testimonial they use. Unless they are genuine opinions taken from a published source, testimonials should be used only with the written permission of those giving them.

14.2 Testimonials should relate to the product being advertised.

14.3 Testimonials alone do not constitute substantiation and the opinions expressed in them must be supported, where necessary, with independent evidence of their accuracy. Any claims based on a testimonial must conform with the Code.

14.4 Fictitious testimonials should not be presented as though they are genuine.

14.5 Unless they are genuine statements taken from a published source, references to tests, trials, professional endorsements, research facilities and

professional journals should be used only with the permission of those concerned.

14.6 Marketers should not refer in marketing communications to advice received from CAP or imply any endorsement by the ASA or CAP.

Prices

(see CAP Help Notes on Lowest Price Claims and Price Promises and on Retailers' Price Comparisons)

15.1 Any stated price should be clear and should relate to the product advertised. Marketers should ensure that prices match the products illustrated (see 48.7).

15.2 Prices quoted in marketing communications addressed to the public should include VAT and other non-optional taxes and duties imposed on all buyers. In some circumstances, for example where marketing communications are likely to be read mainly by businesses able to recover VAT, prices may be quoted exclusive of VAT or other taxes and duties, provided prominence is given to the amount or rate of any additional costs.

15.3 If the price of one product is dependent on the purchase of another, the extent of any commitment by consumers must be made clear.

15.4 Price claims such as 'up to' and 'from' should not exaggerate the availability of benefits likely to be obtained by consumers.

15.5 A recommended retail price (RRP), or similar, used as a basis of comparison should be genuine; it should not differ significantly from the price at which the product is generally sold.

Availability of products

16.1 Marketers must make it clear if stocks are limited. Products must not be advertised unless marketers can demonstrate that they have reasonable grounds for believing that they can satisfy demand. If a product becomes unavailable, marketers will be required to show evidence of stock monitoring, communications with outlets and swift withdrawal of marketing communications whenever possible.

16.2 Products which cannot be supplied should not normally be advertised as a way of assessing potential demand unless it is clear that this is the purpose of the marketing communication.

16.3 Marketers must not use the technique of switch selling, where their sales staff criticizes the advertised product or suggest that it is not available and recommend the purchase of a more expensive alternative. They should not place obstacles in the way of purchasing the product or delivering it promptly.

Business Ethics

Handout Lecture No. 44

Going online and taking advantage of what the Internet has to offer may require that you disclose personal information. Whether you're new to the Net, or consider yourself savvy in the ways of the Web, you may have concerns about how personal information is collected, what choices you have about how it is used and shared, and under what circumstances you can access it.

Many of the creators of Consumer Privacy Guide believe that to assure the privacy of their personal information, consumers must have the protection provided by basic law. Law would provide Internet users with basic expectations about Web sites' responsibilities for protecting the privacy of the personal information they collect. We continue to work toward this goal. But whether information in the online world is protected by law or not, consumers need information and tools to take charge of their privacy.

Privacy Guide gives you useful tips for protecting your privacy and helps you take control of the way your information is used. It attempts to answer your questions, in consumer friendly, practical terms, about what you can do to assure that information that you choose to share with companies is used in ways you believe are appropriate. This site will explain terms used on the Internet that may be unfamiliar to you, provide "how-to" guides to understanding privacy resources and technologies, and point you toward other helpful resources.

Consumer Privacy

Advances in technology have created the potential for serious harm to consumers' privacy. Financial institutions, credit bureaus, etc., maintain detailed files on consumers, including information about their economic activity and personal information (such as marriage, employment, addresses, and other information). Though these files are used as an important deciding factor in granting loans, credit cards, and jobs, a recent study found errors in 43% of credit reports.

The individual's obvious right to privacy, both physical and psychological, is important. **Psychological privacy** is privacy with respect to a person's inner life. This includes the person's thoughts and plans, personal beliefs and values, feelings, and wants. These inner aspects of a person are so intimately connected with the person that to invade them is almost an invasion of the very person. **Physical privacy** is privacy with respect to a person's physical activities.

It must be balanced, however, with the rights and needs of others. Banks must know something about the credit history of those to whom they are lending money, for example. Since consumers benefit from the banking system, they also benefit from their right to privacy being balanced against the banks' right to know their personal information.

To balance these two factors, the following factors are crucial:

1. **Relevance** - Databases should contain only information directly relevant to the purpose for which it is collected.
2. **Informing** - Consumers should be informed that information is being collected and told what the purpose of its collection is.
3. **Consent** - Businesses should collect information only if consumers consent to provide it.
4. **Accuracy** - Agencies must ensure that the information is up to date and otherwise accurate, quickly correcting any errors.
5. **Purpose** - The purpose for which the information is collected must be legitimate, resulting in benefits generally enjoyed by those who are having the information gathered from them.
6. **Recipients and Security** - Agencies must ensure that the information is secure and not available to unintended users or sold to others without the individual's consent.

Privacy is the number one concern of Internet users; it is also the top reason why non-users still avoid the Internet. Survey after survey indicates mounting concern. While privacy faces threats from both private and government intrusions, the existing motley patchwork of privacy laws and practices fails to provide comprehensive protection. Instead, it causes confusion that fuels a sense of distrust and skepticism, limiting realization of the Internet's potential.

A unique combination of tools -- legal, technical, and self-regulatory -- is being designed to address the privacy concerns of Internet users. Top-priority objectives include setting limits on government access to personal information, ensuring that new information and communication technologies are designed in ways that protect rather than diminish privacy, and developing appropriate federal legislation to set baseline standards for consumer privacy. This guide is intended to educate Internet users about online privacy, and offer practical suggestions and policy recommendations.

Business Ethics

Handout
Lecture No. 45

The Ethics of Job Discrimination

This lecture discusses one of the internal conflicts that arise in business, namely the issue of job discrimination. It begins by quoting two long passages illustrating the current state of the debate in the U.S.—one by former President Bill Clinton, one by former California Governor Pete Wilson.

Clinton calls for the U.S. to preserve its affirmative action programs. He outlines many inequities that still remain in American business, and argues that affirmative action is still necessary to "give our nation a way to finally address the systematic exclusion of individuals of talent on the basis of their gender or race." As long as there are no specific quotas, he maintains, then the affirmative action's critics are wrong.

Wilson, on the other hand, cites Thomas Jefferson in his criticism of affirmative action. He argues that it is unfair to award jobs based on any criteria other than merit. He sees affirmative action as preferential treatment, "special privileges" for a select minority—in effect, a type of reverse discrimination.

Because discrimination based on gender and race have been around for so long in business, its consequences in this area have been substantial and persistent. This chapter examines the nature of discrimination, discusses the ethical aspects of such behavior, and concludes by considering affirmative action programs in particular.

Job Discrimination: Its Nature

Though more women and minorities are entering formerly white male-dominated jobs, they still face discrimination. The experiment conducted by ABC shows that women and minorities were systematically given less consideration in hiring: they received fewer job offers and less desirable jobs than white males. Other research suggests that blacks and Hispanics were offered jobs 50% fewer times than white males.

Discrimination in its root meaning is not at all wrong. It simply refers to the act of distinguishing one object from another. However, in modern usage, the term refers to "wrongful discrimination," or distinguishing among people on the basis of prejudice instead of individual merit.

Discrimination in employment involves three basic elements:

1. It must be a decision not based on individual merit.
2. The decision must derive from racial or sexual prejudice.

3. The decision must have a harmful impact on the interest of employees.

Discriminatory acts themselves can be categorized according to the extent to which they are intentional and institutionalized. An act may be part of the isolated behavior of a single individual who:

1. Intentionally discriminates based on personal prejudice.
2. An act may be part of the routine, institutionalized behavior of a group.
3. The act must intentionally discriminate out of personal prejudice.
4. An act may be part of the isolated behavior of a single individual who unintentionally discriminates because he or she uncritically adopts the practices and stereotypes of his or her society.

An act may be part of the systematic routine of a group that unintentionally discriminates because group members uncritically incorporate the discriminatory practices of society.

Whereas in the early 1960s discrimination was generally seen as intentional and individual, by the 1970s a shift had occurred to emphasize the effects of unintentional forms of discrimination. A group would be guilty of discrimination if minority group representation were not proportionate to the minority group's local availability.

Subsequently, people came to criticize this view. They argued that discrimination was the act of individuals, and that individual minorities and women were its victims. The problem with this criticism is that it is often difficult to know whether a specific individual was discriminated against. The only way of telling whether a process is fair or discriminatory is to see what happens to minorities as a group. American society has gone back and forth on this issue ever since. Many even believe that though businesses in the U.S. used to be discriminatory, they are no longer so.

Discrimination: Its Extent

An indication of discrimination exists when a disproportionate number of a certain group's members hold less desirable positions despite their preferences and abilities. We can make three types of comparisons to provide evidence of this type: comparisons of average benefits given to various groups, comparisons of the proportion of a group found in the lowest levels of the institution, and comparisons of the proportion of a group found in the most advantageous positions in the institution. When we make these three comparisons, it seems clear that some form of discrimination is still present in the U.S., though for some groups it is not as intense as it used to be.

Income comparisons are the most suggestive indicators of discrimination. The income gap between whites and blacks, counter to what many think, has not

decreased (black average family income remains about 65% that of whites). There are similar inequalities found based on gender as well. Though the ratio between male and female earnings is getting more equal, this is largely due not to a rise in female earnings but to a drop in, male earnings. Disparities begin immediately after graduation; in fact, female college graduates earn about as much as male high school graduates. In every occupational group, women earn less than men. Blacks fare a bit better than females, but not much. For black male college graduates, the picture is better: they now earn about what white male college graduates do.

For most other blacks, however, the picture remains grim. Lowest income group comparisons and desirable occupation comparisons give similar results. Statistically, larger proportions of minorities and women are poor, and larger proportions of white males have the most desirable occupations. In fact, the more women who work in an occupation, the lower the average pay for that job. Though perhaps some of the disparities between white males and women or minorities can be accounted for by the preferences of the latter (who voluntarily choose to work in the lower paying jobs), the disparities are so large that it cannot entirely be accounted for in this way.

The difficulties for minorities seem to be getting worse. Though they will soon be a majority of the labor force, studies indicate that many of the new jobs that will be created will require education beyond high school, and most minorities are falling behind in their educational attainment. For women, another obstacle exists: unwanted sexual attention.

Finding that our economic institutions generally seem to embody discrimination, as this section proves it, does not in itself prove that any particular business is discriminatory, however.

Discrimination: Utility, Rights, and Justice

Given the inequalities found in U.S. businesses, we must address the issue of whether these inequalities are wrong and, if they are, how they should be changed. Arguments against discrimination fall into three groups: utilitarian arguments, rights arguments, and justice arguments. The utilitarian argument against discrimination maintains that society's productivity will be highest when jobs are awarded based on competence or merit. Discrimination based on anything else is inefficient and, therefore, counter to utility.

Utilitarian arguments have been attacked on two fronts. First, if jobs should be assigned on the basis of job-related qualifications only so long as such assignments will advance the public welfare, then if public welfare would be advanced to a greater degree by assigning jobs on the basis of some factor not related to job performance, then the utilitarian would have to hold that in those situations jobs should not be assigned on the basis of job related qualifications,

but on the basis of that other factor. Second, it might be true that society as a whole would benefit by having some group discriminated against.

Other, non-utilitarian arguments against discrimination maintain that it is wrong because it violates people's basic human rights. Kant, for example, says that humans should be treated as ends in themselves and never as a means to an end. Therefore, discrimination is wrong because it violates people's rights to be treated as equals. In addition, some Kantian thinkers argue that discrimination is wrong because the person who discriminates would not want to see his or her behavior universalized (at least they would not want to change places with the victim of their own discrimination).

A third group of arguments against discrimination views it as unjust. Rawls argues that it is unjust arbitrarily to give some people more opportunity than others. Another related argument sees it as a form of injustice because individuals who are equal in all relevant respects cannot be treated differently just because they differ in other, non-relevant respects. The problem with this argument is that it is difficult to define precisely what counts as relevant and to explain why sex and race are not relevant, but intelligence is.

Despite the difficulties with these arguments against discrimination, there are five widely recognized categories of discriminatory practices:

1. Recruitment practices that rely on the word-of-mouth referrals of present employees will tend to recruit only from the groups already represented.
2. Screening practices that include qualifications not relevant to a job (such as requiring a certain level of education for very low-level jobs).
3. Promotion practices that place groups on separate tracks or that rely solely on seniority when past discrimination has kept women or minorities out of senior positions.
4. Conditions of employment that do not award equal wages and salaries to people doing essentially the same work.
5. Discharging an employee based on race or gender, or layoff policies that rely solely on seniority.

Women are victims of a different and troublesome type of discrimination: sexual harassment. Generally, the guidelines against sexual harassment are clearly morally justified. However, there are some aspects of the guidelines that must be examined. They prohibit more than just particular acts of harassment, they also prohibit creating an intimidating, hostile, or offensive working environment.

This raises some difficult questions. Are mechanics who hang pin-up calendars guilty of sexual harassment? Though most people now say yes, there are a number of critics who say that these kinds of environments were not intended to degrade women, and besides, women have the power to take care of themselves. In addition, the guidelines say that verbal or physical contact is

harassment if it has the effect of unreasonably interfering with the victim's work performance. This means, claim some critics, that sexual harassment depends on the purely subjective judgments of the victim; what is unreasonable to one person may seem perfectly acceptable to another.

A more serious objection to such guidelines is that they violate people's right to free speech. However, though these objections may be valid on college campuses, they are not at all relevant to businesses, where free discussion and examination of ideas are not the focus.

A firm can be guilty of sexual harassment even if it did not know and could not have known that the harassment was going on—indeed, even if the firm had expressly forbidden the offensive act. Supporters of the guidelines point out that the harms caused by sexual harassment should be considered a cost of doing business, which it is proper to internalize.

Groups other than women and racial minorities can be the victims of discrimination. The disabled, victims of AIDS, homosexuals, and the overweight are all discriminated against. Currently, there are no federal laws prohibiting discrimination against many of these groups.

Affirmative Action

So far, the policies discussed in this chapter are all negative, aimed at preventing further discrimination. Affirmative action programs, in contrast, call for positive steps designed to eliminate the effects of past discrimination. Such programs are now legally required of all firms holding government contracts.

Affirmative action programs begin with a detailed study, a "utilization analysis" of the major job classifications in an organization. The analysis is designed to discover whether there are fewer minorities or women in a particular job classification than could reasonably be expected. If the analysis shows that women or minorities are underutilized, then the firm must establish practices to correct these deficiencies.

The U.S. Supreme Court has not been clear about the legality of affirmative action programs. Rulings suggest significant vacillation on the issue. The main grounds for attacking them is that, in attempting to correct the effects of past injustice, affirmative action may actually be racially or sexually discriminatory itself.

In the face of this objection, supporters of affirmative action make two main counterarguments. One of these is to interpret affirmative action as a form of compensation for past injuries. The other interprets preferential treatment as an instrument for achieving social goals. The former arguments are backward

looking, focusing on the wrongness of the past; the latter are forward looking, instrumentalist arguments focusing on what the future ought to be.

Those who see affirmative action as a form of compensation maintain that white males must pay reparations for unjustly injuring others by discrimination in the past. The difficulty with such arguments is that the principle of compensatory justice requires that compensation should come only from those specific individuals who intentionally inflicted a wrong, and should be paid only to those specific individuals who suffered that wrong. It does not require that compensation should come from all members of a group containing some wrongdoers, nor that compensation should go to all members of a group containing some injured parties. Many have attempted to counter this argument by claiming that every minority living today has been injured by discrimination and that every white male has benefited from those injuries. Whether these arguments are successful or not is unclear.

The second way of justifying affirmative action sees it as an instrument for social change. Based on the statistics such as those at the beginning of this chapter, such arguments maintain that race and gender provide an indicator of need. Since reducing this need is consistent with utilitarian principles (as it will increase total utility), affirmative action is justified.

Objections made to this argument question whether the social costs of affirmative action outweigh their benefits. However, even more elaborate and convincing arguments for affirmative action are made. They argue that the goal of affirmative action is social justice, and that affirmative action is a morally legitimate means for achieving this goal.

Presently, women and minorities do not have the equal opportunity that justice demands statistics prove this. The conscious and unconscious bias that brings this injustice about must be neutralized, along with the competitive disadvantages with which women and minorities are burdened. The basic end, therefore, is a more just society, and preferential treatment is a morally legitimate means to attain this end.

However, three reasons have been advanced to show that affirmative action is not, in fact, morally legitimate. First, it is claimed that affirmative action discriminates against white males. However, given the definition of discrimination, because the preferential treatment is not based on contempt of white males, it cannot be said to be the same thing as discrimination against minorities or women.

Second, some claim that preferential treatment violates the principle of equality because it takes into consideration race, which is an irrelevant characteristic. Defenders of affirmative action counter by saying that sexual and racial differences are actually relevant characteristics. Third, critics claim that affirmative action actually harms minorities by implying that they are so inferior to

white males that they need special help to succeed. This claim is countered by saying that, though affirmative action undoubtedly has some costs, the benefits of such programs outweigh them. Moreover, they point out that affirmative action is not based on an assumption of white male superiority but on recognition of bias in favor of white males. Finally, they point out that though some minorities may feel inferior because of affirmative action, many more are made to feel inferior because of racism—and besides, showing preference towards them does not make them feel inferior. The arguments on both sides are powerful, and the debate continues.

Because of concerns raised by opponents of affirmative action, guidelines have been suggested to ensure that its more harmful effects will be lessened. Of course, the problems encountered by minorities differ markedly from those encountered by women. Recently, some proposals that are more radical than affirmative action have been made to deal with sexual discrimination. Since the jobs women have historically taken pay low wages and salaries, proponents of *comparable worth programs* attempt not to place women into higher paying jobs, but to increase the salaries of those jobs where women currently are employed.

In a comparable worth program, each job in a firm is assigned a certain number of points for difficulty, skill requirements, experience, and other factors. Then, jobs are assumed to deserve equal pay if they score similarly. The fundamental argument in favor of comparative worth is the principle of justice. Opponents counter that the market is the most appropriate determining factor of wages. If the market pays a certain job a low salary, they claim, it is because there is a large supply of workers in that category.

In the near future, only a small proportion of new workers will be white males. Because of this demographic trend, firms' enlightened self-interest will prompt them to give women and minorities special consideration. If they do not accommodate themselves to these workers, they may not be able to find the workers they need to compete in the world market.