

H O N E S T W O R K

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A Business Ethics Reader

Fourth Edition

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PREFACE

FOR THE STUDENT

This reader is for undergraduate, graduate, and executive business ethics courses, as well as for anyone who wants to think about the challenges involved in being good and doing well in business. The readings cover all aspects of business ethics under the overarching theme of the good life—what it means to you as a person, what it means for business, and what it means for society. There is no bright line between business ethics and this most ancient of ethical concerns, the search for the good, happy, and productive life, free of regrets. Hence, ethics is not just a peripheral concern of business or a set of constraints on business enterprise. It stands at the very core of business activity and defines the overall concepts and context in which business plays its role.

The articles and cases in this book consist of classic and recent articles and cases that span a broad spectrum of issues, topics, and problems. We have selected pieces that have both practical import and wide application and have structured the narratives that open the book and each chapter as personal challenges, presenting the reader with real ethical issues and questions. We also tried to select articles that are fun to read. Unlike most textbooks, we have taken the liberty of addressing the reader in the second person—you—in our introductions and narratives. The point of studying ethics is to reflect on how you, not some third party or friend of yours, ought to behave.

The readings, as well as the philosophical email messages, are presented as resources to use as you work your way through the various issues and problems in business ethics. We aim to engage you directly and practically in business ethics, not just to offer up a potpourri of “interesting” debates and proclamations. The chapters, readings, and cases are presented so that every instructor will feel free to organize the course as he or she sees fit. You, the reader, are encouraged to browse and enjoy them in any order you want. Only so much of the book can be covered in class, but you may well find your own interests provoked by some of the other material in the book.

NEW TO THE FOURTH EDITION

We made many changes in this edition in response to the business climate and the comments of our reviewers. We have cut, shortened, rearranged, and added new material. There are twenty new articles and cases, and we have added new questions at the end of each reading and at the end of each chapter. Here's what's new.

- In Chapter 1, on ethics in the workplace, we have added two articles: Jerry Goodstein and Kenneth D. Butterfield, “Restorative Justice and the Aftermath of Unethical Behavior” and from the Jobs with Justice Education Fund, called “The Changing Nature of Work.” There is also a new box on the most common types of unethical behavior at work.
- In Chapter 2, on honesty and trust in business, Niccolò Machiavelli weighs in on keeping promises with “Concerning the Way in which Princes Should Keep Faith.”
- Chapter 3, on money, accounting, and finance, now includes an excerpt from Edward Balleisen’s book “On Fraud,” discussing what makes us easy prey to confidence men.
- Chapter 4, on justice and fairness, now includes Michael Walzer’s article, “Tyranny and Complex Equality.”
- Chapter 5, on social responsibility and stakeholder theory, now includes Paul A. Argenti’s article, “Corporate Ethics in the Era of Millennials.”
- Chapter 6, on innovation and technology, includes Zeynep Tufekci’s article, “Failing the Third Machine Age,” on the moral and economic problems associated with robots caring for the elderly.
- Chapter 7, on marketing and sales, includes an excerpt from Thorstein Veblen’s classic *The Theory of the Leisure Class*, “Conspicuous Consumption.” Also included is a box on the appeal of sustainable products for millennials.
- Chapter 8, on product liability, includes Adam Thierer’s article, “When the Trial Lawyers Come for the Robot Cars.”
- Chapter 9, on whistle-blowing, contains Frederick Bruce Bird’s article, “Moral Muteness, Silence, and Blindness in Business.” Also included is a box on how employers may try to buy loyalty.
- Chapter 10, on international business, now has Denis G. Arnold and Norman E. Bowie’s article, “Sweatshops and Respect for Persons,” with a box that lays out the rational choice argument for why we interfere with sweatshops.
- Chapter 11, on the environment, includes a wide-ranging debate from PBS on the ethics and economics of growing genetically modified crops.
- Chapter 12, on leadership, has an article by Joanne B. Ciulla called “The Moral Pitfalls of Being a Leader,” and a new box tells us what Confucius has to say about the personal behavior of leaders.
- Chapter 13, on corporate governance, now includes Eric Jackson’s article, “Why Corporate Governance Is So Important to China.”
- Chapter 14, on the future of the free market, has an interview with Sheelah Kolhatkar about her investigation into the massive insider trading scandal perpetrated by Steven A. Cohen and the hedge fund culture that made it possible.
- We have moved the chapter on the good life to the end of the book as Chapter 15 because we thought it would be best to consider these issues at the end of a course. Here we added Joanne B. Ciulla’s piece, “Meaningful Work and Meaningful Lives,” along with a box by Viktor Frankl titled “Tragic Optimism.”

FOR THE INSTRUCTOR

Although this book is intended to serve the function of a general-purpose traditional business ethics reader, we have also made a special effort to incorporate readings that are not as traditional and reflect dominant current themes and concerns—for instance, the ever-new technology and the ongoing globalization of the business world. We have also set our focus on what we consider the central and often most neglected theme in business ethics—the nature, the rewards, the costs, the promises, and the betrayals of work as such. Our students will work in a world in which the very meaning of work is in question. Some people even believe that there may not be enough work to go around in the future. Ignoring that question or taking the meaning of work for granted does them an extreme disservice. Although this is not the whole of business ethics, we think it is the necessary starting point. It catches the students where their central concerns are: What do you want to do? Why? And what kind of life do you think you'll achieve by doing it?

What we have not done is what many business ethics writers stubbornly insist on doing, namely, to begin our text with an overview of different ethical theories and then apply the various theories throughout the book. This book is not about a competition between ethical theories. Instead, we offer a brief article on ethical theories at the beginning of the book so that students will be familiar with them when they encounter the theories in other articles. Some of the boxes will also bring in information on ethical theories. Questions about happiness, consequences, moral rules, and character, as well as about the nature of entitlement and contracts (social and otherwise) and the obligations they engender, emerge effortlessly from the students' own stated interests. Although moral reasoning is essential to the skills and the ethical “toolbox” that the students will need, we have found it much more effective when these skills are learned while the students are wrestling with real problems that they care about. This approach allows our text to be accessible to instructors from a variety of academic backgrounds.

Ethics is already on the minds of any student who reads or watches the news. It is not possible to cover all recent and still-unfolding scandals, nor is that necessarily the best way to teach business ethics. We selected these readings and cases as platforms for critical discussion and analysis of the issues that lie behind the headlines.

The premise of this book, and we think the premise of business ethics as a subject, is the idea that every job and every career has its responsibilities and its ethical issues; and for all students who are even thinking of spending part of their lives in the business world, it is necessary to be prepared by being informed and thoughtful. Some of the chapters in this text address the immediate work issues that students will face, but others are more thought-provoking and abstract. As we said earlier, we think that the two feed on one another. Some issues require immediate action, but all require thought and understanding about what goes and what does not go in the peculiar ethics of the business world. So, in addition to the “issues at work” sorts of chapters, there are also the “big issues in the business world” chapters on justice, on social responsibility, and on the nature of the market itself. There are also “how to live” chapters, in which the students are encouraged to think about how their planned careers in business fit into and help satisfy their larger life goals. It is often said that no one dies wishing that he or she had spent more time at the office, but the profundity of that witticism often escapes business students. They underestimate the nature of the commitments that they are about to enter into, and their perspective on the

good life—which many of them sample indulgently as students—is easily lost once they submerge themselves in various corporate and career cultures. So that, too, is the central theme of business ethics—not only work but also work as it fits into and promotes the good life. In this book, we have tried to package some of the best, most prominent, and most lively writings and issues together with some of the most challenging cases and case studies, supplemented with philosophical insights, in a single volume that allows each instructor to design his or her own course, but in a package that we think already presents the materials for an exciting course.

ANCILLARY MATERIAL

A website for *Honest Work* can be found at www.oup.com/us/ciulla. There, you will find ancillary material for instructors and students. Under password protection, instructors will find Sample Syllabi, Chapter Summaries, Lecture Outlines in PowerPoint format, and a Test Bank with essay questions, multiple-choice questions, true/false questions, and fill-in-the-blank questions. Both students and instructors will be able to access Chapter Goals, Suggested Readings, Suggested Weblinks, and Student Self-Quizzes with multiple-choice, true/false, and fill-in-the-blank questions.

ACKNOWLEDGMENTS

Editing the fourth edition of *Honest Work* elicits fond memories of our dear friend and coauthor Bob Solomon. His voice still echoes throughout the book, but resounds especially in Chapter 15 on the good life. The changes to this book are the result of comments by the thoughtful and generous teacher/scholars who reviewed the third edition of the book. We owe our thanks to J. K. Miles, Quincy University; Joseph Andriano, Clarkson University; Joshua Preiss, Minnesota State University–Mankato; Birgit Tregenza, California State University–Northridge; Bruce Rawding, University of Redlands; Jeffrey Lenn, George Washington University; Christopher Pallotti, CSUN/LA Valley College; and Judith Streit, Metropolitan State University of Denver. Last, we are grateful for our wise and patient editors at Oxford University Press, Robert Miller and Sydney Keen.

INTRODUCTION: GETTING TO WORK

You are about to begin a most important part of your business education, the study, discussion, and practice of business ethics. Business ethics comprises a few simple and rarely contested premises. These premises have their exceptions, to be sure, but there is little doubt that they hold up in general. First, ethics is essential to the functioning of the business world and the market. The opposite of ethics is corruption, and we know how badly corrupt countries and systems perform, insofar as they perform at all. Ethics is a fundamental part of business education, not an embellishment. The courses you take are not simply about learning the techniques of marketing, finance, accounting, and so forth, but also about how to practice them in the right way. Second, sound ethical practices are what make a business viable and adaptable to change over time. We do not claim that ethics always pays, but we do know how much ethical failure costs, not just in financial terms but also in terms of productivity, innovation, morale, and goodwill in organizations. The sheer weight of guilt and regret is hard to measure, but anyone who has ever done anything wrong (and that covers just about all of us) knows how much such feelings can take away from a happy life. Third, business ethics is everybody's business. Every business student, every business person, every employee, every manager, and every executive has as his or her primary responsibility, along with learning and doing his or her job, acting ethically and, on occasion, speaking up in the face of unethical behavior. On the down side, not being ethical—or even failing to speak up—can bring a career, no matter how successful, to a sudden, humiliating halt. Ethical failures invite bankruptcy, lawsuits, and even jail time.

We designed this text with the pervasiveness of ethics in business and the personal nature of everyone's responsibility regarding ethics in mind. It is made up of some of the best writing on business ethics along a broad spectrum of issues. But the readings are all directed toward one end, a practical end, and that is to provide you with the material to think about, discuss, and ultimately practice ethics in business. Some readings tackle huge questions about the nature of free enterprise and the new world of business in a globalized economy. Some readings concern the new technologies and the ethical questions they raise. Some readings focus on the details of your job—your rights, duties, and responsibilities as an employee or manager. In every reading, we want you to take it personally. Take each issue as your issue, and grapple with it as if it is up to you to decide, sitting there at or on your desk. These issues demand a decision and a solution. Someday soon, one or more of them may well be yours.

So, this book is ultimately about you, about you in business, about you as a professional, and about you as a decent human being. Our introductions to the various chapters all begin by presenting you with a situation, sometimes an ethical problem or dilemma of the sort you may face on the job and sometimes a broader ethical issue in the business or economic world. We make no assumptions about whether you are male or female, where or in what industry you work, your precise aspirations or talents, or your race or religion. You know who you are. But ethics isn't just a matter of intuition or gut feelings. It involves thought; information; practice in moral reasoning; and, if possible, knowledge of other, similar case histories. So you need resources—thought-provoking essays, facts, case studies, and philosophical insights.

Philosophy? Isn't that for airheads? What does it have to do with the rough and tumble of business life? But virtually every business and every business person has a philosophy, whether he or she calls it that or not. A philosophy specifies what is most important and what is not. A philosophy in business is a view or a vision of the place of one's business activities in one's life, in the community, and in the larger social world. It is a personal policy concerning the right and wrong ways to go about making money and the right and wrong ways of treating people (and being treated yourself). It is keeping the big picture in mind, the idea that money isn't everything, the idea that not everything is for sale, the importance of family and friends and community. (If you disagree with any of these statements, you really need this course.) We should add the love of one's country and one's culture, a hope for the well-being of all humanity, and some sense of the transcendent or the spiritual. By this we mean not only your religious beliefs and feelings, but also the more worldly aspiration to be more than just a practical person caught up in daily routines. There are larger questions of meaning that business and making money cannot answer, such as, what is the point of all this? (Again, if you really think that the point is just to make money, you really need this course.)

Great philosophers and social thinkers have had many things to say about these questions. Some of them were suspicious or even hostile to business. They saw business and making money as a tempting distraction from the more important things in life. But many philosophers and social thinkers were positive and even enthusiastic about business. The most famous of them, at least as far as business students are concerned, was Adam Smith, a moral philosopher (as well as a classic economist) in eighteenth-century Scotland. Smith thought that business (or, more accurately, the free enterprise system) offered tremendous hope to the world. But he was also clear about the ethical presuppositions of any business culture, some sense of community or "fellow-feeling," a concern for justice and fairness in business dealings, and a natural sense of sympathy for our fellow human beings. He would not have hesitated to embed his philosophy of business in a much larger picture of human happiness and well-being. And that is the philosophy of this book and this course as well. It is not to deny or cast doubt on business, but to situate it in a larger setting.

But you are too busy, no doubt, to read the often-wordy treatises of the philosophers. (Adam Smith's book *The Wealth of Nations* is over 500 pages long; his earlier book, *The Theory of the Moral Sentiments*, is not much shorter.) We have devised a painless and efficient way to offer you these philosophical probes and insights. Perhaps you barely remember the roommate you had in your freshman year who considered a career in business but ultimately decided to study philosophy. For a couple of years, you lost touch. But as you have gotten into business ethics, this roommate (whom you have come to call the Philosopher) has made a point of getting back in touch with you by e-mail. As you read through the chapters on business and ethics, the Philosopher reminds you of some of the great thoughts about business, ethics, and the good life. The Philosopher's responses to

your questions and opinions on various ethical issues and problems in business appear in boxes throughout the text, providing some wise reflections from great thinkers past and present. Think of these boxes and others in the text as those occasional e-mail messages you receive from friends that provide thoughts and an occasional laugh while you study for your courses and your future career.

Three Questions for Thinking about Ethics

The most difficult ethical problems are not black or white. Moral problems tend to have three facets to them that are captured in some of the ethical theories you will run across in this book. We offer these three simple questions to help you organize your thoughts when you make ethical decisions or analyze the ethical behavior of people and organizations. In the first person, they are:

Am I doing the right thing?
Am I doing it the right way?
Am I doing it for the right reasons?

In short, ethical behavior is generally about doing the right thing, the right way, for the right reason. Nonetheless, sometimes people do the right thing the wrong way for the wrong reason; the wrong thing the right way for the right reason, etc. Often the most difficult ethical problems are the ones where people can only answer yes to one or two of the three questions.

Robert Audi

Some Approaches to Determining Ethical Obligations

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UTILITARIANISM

For John Stuart Mill (the greatest nineteenth-century English philosopher), the master utilitarian principle is roughly this: choose that act from among your

options which is best from the twin points of view of increasing human happiness and reducing human suffering:

The creed which accepts as the foundation of morals "utility" . . . holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain.

John Stuart Mill, *Utilitarianism*, Oscar Priest, ed. CNY: Macmillan, 1957, p. 10.

This formula does not tell us when an act is right, period; but the idea is that right acts contribute at least as favorably to the “proportion” of happiness to unhappiness (in the relevant population) as any alternative the agent has. Thus, if one act produces more happiness than another, it is preferable, other things equal. If the first also produces suffering, other things are not equal. We have to weigh good consequences of our projected acts against any bad consequences and, in appraising a prospective act, subtract its negative value from its positive value.

Utilitarianism calls for maximization. To see why producing even a *lot* of good may not be ethically sufficient, consider two points: (1) the more we have of what is good—good in itself, *basically* good—the better; (2) it is a mistake to produce less good than we can or, correspondingly, to reduce what is bad less than we can. Arguably, no good person would act suboptimally if this could be avoided. Ideally, then, we would simultaneously produce pleasure and reduce pain. Often we cannot do both. A situation may be so dire that reducing pain is all we can do. For utilitarianism, although some people are better candidates to be made happy—or less unhappy—everyone matters morally.

On the plausible assumption that total happiness is best served by maintaining minimal well-being for the worst off, utilitarianism supports welfare capitalism. But it does not automatically support any highly specific position on the obligations of business. One might think otherwise if one identifies utilitarianism with the idea that ethics requires our producing the “greatest good for the greatest number.” One reason utilitarianism does *not* imply any such thing is that great benefits (hence much good) to some, say college students, could quantitatively outweigh even the greatest benefits a business or government could provide for a larger number of people, say by tax cuts for the whole population.

How utilitarianism apparently supports welfare capitalism over other economic systems needs explanation. Here is a possible account. Arguably, businesses will contribute most favorably to human happiness (roughly, to the proportion of happiness to unhappiness in the world) by simply making a profit

in a fair system of competition and paying taxes at a level high enough to support effective welfare programs and low enough to preserve incentives to gain wealth. For—given the incentives this arrangement might provide for talented people—it might not only support welfare programs but also lead to miracle drugs, fuel-efficient cars, superior fertilizers, and the like. Utilitarians may also argue that—at least if business leaders are utilitarians—then for both economic and ethical reasons, businesses operating in a welfare capitalist system will also contribute to the overall well-being of society through voluntary contributions, such as support for community projects, education, and the arts.

RIGHTS-BASED ETHICS

A very different ethical approach takes off from the idea that the main ethical demand is that we act within our rights and accord other people theirs. On this view, right action is simply action within one’s rights, whereas wrong action violates rights. Rights may be negative, for instance, rights *not* to be harmed or deprived of free expression, or positive, say rights to be given what is promised you, including such things as emergency medical treatment if the government has guaranteed it. *Roughly speaking*, negative rights coincide with liberties, positive rights with entitlements to benefits.

From this perspective we can see how someone might ask: Why should businesses *have* to contribute to the well-being of society by doing anything positive for society? What right does government have to force taxation for this purpose, as opposed to police and military protection? Granted, our property rights are limited by obligations to support some government programs, most notably policing and defense, but once businesses pay their fair share of taxes for these, why should they do more?

To this view, utilitarians and other *good-based* theorists may reply that even if businesses have a *right* not to do more, in the sense that their freedom not to do more should not be abridged by *compulsion*, they *ought* to do more. The plausible ethical point here is that a rights-based morality is unduly

narrow. It takes what we ought (morally) to do to be only what we have no right not to do—presumably because someone else has a right to demand our doing it, in the sense that our not doing it violates that person's rights. All else is discretionary. In reality, however, we can and do distinguish between what we ought and ought not to do even *within* the sphere of our rights. Take a simple example: relations with coworkers. Our coworkers have a right to some consideration, say to being given at least minimal cooperation, but we *ought* to do more to support them than the minimum they can claim as their right.

It is not just utilitarians who think that ethics calls on us to do things we have a right not to do. This will be apparent from an outline of two other plausible and widely held ethical views: Kantianism and virtue ethics.

KANTIAN ETHICS

The great eighteenth-century German philosopher Immanuel Kant held that we should always act in such a way that we can rationally will the principle we are acting on to be a universal law:

So act as if the maxim of your action [that is, the principle of conduct underlying the action] were to become through your will a universal law of nature.

This “Categorical Imperative” implies that I should not leave someone to bleed to death on the roadside if I could not rationally will the universality of the practice—say, even where *I* am the victim. We would not want to universalize, and thus live by, the callous principle: one should stop for someone bleeding to death provided it requires no self-sacrifice. Similarly, I should not make a lying promise to repay borrowed money if I could not rationally universalize my underlying principle, say that when I can get money only by making a lying promise, I will do this. One way to see why the Imperative apparently disallows this is to note that we *count on* promises from others and cannot rationally endorse the universality of a deceitful promissory practice that would victimize us.

Kant also gave a less abstract formulation of the Categorical Imperative:

Act so that you use humanity, as much in your own person as in the person of every other, always at the same time as an end and never merely as a means.

The idea is roughly that we must treat people as valuable in themselves, never merely as means to some end of ours. We are never to *use* people—including low-level, readily replaceable employees—as in manipulatively lying to them. Treating people as ends clearly requires caring about their good. They matter as persons, and we must at times and to some extent act for *their sake*, whether or not we benefit from it.

VIRTUE ETHICS

Virtue ethics differs from both utilitarianism and Kantianism in not being *rule centered*. Instead of proposing rules of conduct, it demands that we concentrate on being good as persons. Be honest, just, kind, and honorable, for instance. Thus, the ancient Greek philosopher Aristotle described just acts as the kind that a just person would perform. He did not define a just person as one who performs just acts, nor as one who follows certain rules. He apparently considered moral traits of character ethically more basic than moral acts and moral rules. He said, regarding the types of acts that are right: “Actions are called just or temperate when they are the sort that a just or temperate person would do.” Similar virtue-ethical ideas are also found in non-Western traditions, such as Confucian ethics, especially as represented by the ancient Chinese philosopher Mencius.

For a virtue ethics, then, agents and their traits, as opposed to rules of action, are morally basic. Virtue ethics would have us ask both what kind of person we want to be and how we want to be seen by those we care about, say friends and family. Who wants to be (correctly) seen as cheap, insensitive, or even just indifferent to others' suffering? Who does not want to be seen as generous, caring, and fair?

One could say that virtue ethics endorses *be-rules* (be just, be honest, be kind) in contrast with *do-rules* (keep your promises). But, suggestive as it is, this

contrast is misleading since be-rules do not make clear reference to *how* to fulfill their demands. We cannot fulfill be-rules without some prior knowledge of what to *do*. (It is because this point is understood that virtue ethics is often seen to require a good upbringing with definite kinds of acts prescribed for children.) The positive idea underlying virtue ethics is that we are to understand what it is to behave justly through studying the nature and tendencies of the just person, not the other way around. We do not, for instance, define just deeds as those that, say, treat people equally, and then define a just person as one who characteristically does such deeds.

Thus, for adults as well as for children, and in ordinary life as in business, *role models* are absolutely crucial for moral learning. Virtue ethics is indeed a kind of ethics of role modeling: good role models are *sources*, as well as potential teachers, of ethical standards. Rules of action can be formulated by generalizing from observations of virtuous agents, such as team leaders in a sales division; but the basic ethical standard is character rather than rules of action.

One value of the virtue approach to business ethics is that leadership in business is partly a role-modeling function. To call for conduct of any kind—but especially ethical conduct—when we do not exhibit it ourselves is at best unlikely to succeed and often hypocritical too. Good role modeling, as any major ethical view can stress, is both instructive and motivating.

COMMON-SENSE ETHICAL PLURALISM

Many readers will find something plausible in each of the approaches just sketched. Might a less abstract, more definite view capture much of the best in each? Utilitarianism above all requires good deeds; rights-based views stress respecting freedom, keeping commitments, and protecting property; Kantianism demands respecting others and acting on principles that accord with this respect; and virtue ethics demands such ethical decisions as are made by people who are, say, just, honest, and beneficent. There are many standards here, but they are not too numerous to be reflected in ordinary principles that morally decent people teach their children and generally follow.

These ordinary ethical principles (1) prohibit injustice, harming others, lying, and breaking promises and (2) positively, call for doing good deeds toward others and for efforts toward self-improvement. They do not require *maximizing* good consequences, but do require at least certain good deeds we can do without great self-sacrifice. Thus, fraudulent accounting, as lying, is prohibited; providing for employees' health-care, up to some reasonable point, is, as doing good deeds, an obligation of most companies.

Most people find these principles intuitively plausible, and the view that such principles are directly knowable on the basis of reflection on their content—intuitively knowable—is called *ethical intuitionism*. It is considered a common-sense view because these and a few other principles seem to be a commonsensical core toward which the best ethical theories converge. It must simply be included among the perspectives from which to view the task of determining the ethical responsibilities of business.

Many who reflect on ethics find something of value in all the approaches just described, especially virtue ethics, Kantianism, and utilitarianism. Might a single wide principle include much of their content and encompass much of the common-sense plurality of obligations just indicated? There are apparently at least three conceptually independent factors that a sound ethical view should take into account: happiness, which we may think of as welfare conceived in terms of pleasure, pain, and suffering; justice, conceived largely as requiring equal treatment of persons; and freedom. On this approach—call it *pluralist universalism*—our broadest moral principle would require standards of conduct that optimize happiness as far as possible without producing injustice or curtailing freedom (including one's own). This principle is to be *internalized*—roughly, automatically presupposed and normally also strongly motivating—in a way that yields moral virtue. Right acts would be roughly those that conform to standards—including the ones described in Chapter 4—whose internalization and mutual balancing achieve that end. Each value (happiness, justice, and freedom) becomes, then, a guiding standard, and mature moral agents will develop a sense of how to act (or at least how to

reach a decision to act) when the values pull in different directions.

Pluralist universalism is triple-barreled. It implies that no specific, single standard can be our sole moral guide. This is especially so in the case of principles (like this one) that appeal to different and potentially conflicting elements. How should we balance these in the triple-barreled principle? A priority rule for achieving a balance among the three values—and among the common-sense principles that pluralist universalism helps to unify—is this. Considerations of justice and freedom take priority (at least normally) over considerations of happiness; justice and freedom do not conflict because justice requires the highest level of freedom

possible within the limits of peaceful coexistence, and this is as much freedom as any reasonable ideal of liberty demands. Thus, public sale of a drug that gives people pleasure but reduces their freedom would be prohibited by the triple-barreled principle (apart from, say, special medical uses); a social policy (say, draft exemptions for all who have a high school education) that makes most citizens happy but causes great suffering for a minority (who must go to war) would be rejected as unjust. Moreover, although one may voluntarily devote one's life to enhancing human happiness (if only by reducing human suffering), this is not obligatory. Thus, coercive force may not be used to produce even such highly desirable beneficence.

Plato

Ring of Gyges

Plato was one of the two greatest Greek philosophers of ancient times. This is the infamous “Ring of Gyges” story from his dialogue, *The Republic*, told by one of Socrates's philosophical sparring partners, Glaucon.

GLAUCON (TO SOCRATES): I have never yet heard the superiority of justice to injustice maintained by anyone in a satisfactory way. I want to hear justice praised in respect of itself; then I shall be satisfied, and you are the person from whom I think that I am most likely to hear this; and therefore I will praise the unjust life to the utmost of my power and my manner of speaking will indicate the manner in which I desire to hear you too praising justice and censuring injustice. Will you say whether you approve of my proposal?

SOCRATES: Indeed I do; nor can I imagine any theme about which a man of sense would oftener wish to converse.

GLAUCON: I am delighted to hear you say so, and shall begin by speaking, as I proposed, of the nature and origin of justice.

They say that to do injustice is, by nature, good; to suffer injustice, evil; but that there is more evil in the latter than good in the former. And so when men have both done and suffered injustice and have had experience of both, any who are not able to avoid the one and obtain the other, think that they had better agree among themselves to have neither; hence they began to establish laws and mutual covenants; and that which was ordained by law was termed by them

From *Republic*, Book 2, trans. Benjamin Jowett (Oxford University Press, 1924).

lawful and just. This, it is claimed, is the origin and nature of justice—it is a mean or compromise, between the best of all, which is to do injustice and not be punished, and the worst of all, which is to suffer injustice without the power of retaliation; and justice, being at a middle point between the two, is tolerated not as a good but as the lesser evil, and honoured where men are too feeble to do injustice. For no man who is worthy to be called a man would ever submit to such an agreement with another if he had the power to be unjust; he would be mad if he did. Such is the received account Socrates, of the nature of justice, and the circumstances which bring it into being.

Now that those who practice justice do so involuntarily and because they have not the power to be unjust will best appear if we imagine something of this kind: having given to both the just and the unjust power to do what they will, let us watch and see whither desire will lead them; then we shall discover in the very act the just and unjust man to be proceeding along the same road, following their interest, which all creatures instinctively pursue as their good; the force of law is required to compel them to pay respect to equality. The liberty which we are supposing may be most completely given to them in the form of such a power as is said to have been possessed by Gyges, the ancestor of Croesus the Lydian. According to the tradition, Gyges was a shepherd in the service of the reigning king of Lydia; there was a great storm, and an earthquake made an opening in the earth at the place where he was feeding his flock. Amazed at the sight, he descended into the opening, where, among other marvels which form part of the story, he beheld a hollow brazen horse, having doors, at which he stooping and looking in saw a dead body of stature, as appeared to him, more than human; he took from the corpse a gold ring that was on the hand, but nothing else, and so reascended. Now the shepherds met together, according to custom, that they might send their monthly report about the flocks to the king; into their assembly he came having the ring on his finger, and as he was sitting among them he chanced to turn the collet of the ring to the inside of his hand, when instantly he became invisible to the rest of the company and they began to speak of him

as if he were no longer present. He was astonished at this, and again touching the ring he turned the collet outwards and reappeared; when he perceived this, he made several trials of the ring, and always with the same result—when he turned the collet inwards he became invisible, when outwards he was visible. Whereupon he contrived to be chosen one of the messengers who were sent to the court; where as soon as he arrived he seduced the queen, and with her help conspired against the king and slew him, and took the kingdom. Suppose now that there were two such magic rings, and the just put on one of them and the unjust the other; no man can be imagined to be of such an iron nature that he would stand fast in justice. No man would keep his hands off what was not his own when he could safely take what he liked out of the market, or go into houses and lie with any one at his pleasure, or kill or release from prison whom he would, and in all respects be like a god among men. Then the actions of the just would be as the actions of the unjust; they would both tend to the same goal. And this we may truly affirm to be a great proof that a man is just, not willingly or because he thinks that justice is any good to him individually, but of necessity; for wherever anyone thinks that he can safely be unjust, there he is unjust. For all men believe in their hearts that injustice is far more profitable to the individual than justice and he who argues as I have been supposing will say that they are right. If you could imagine anyone obtaining this power of becoming invisible, and never doing any wrong or touching what was another's, he would be thought by the lookers-on to be an unhappy man and a fool, although they would praise him to one another's faces, and keep up appearances with one another from a fear that they too might suffer injustice. Enough of this.

Now, if we are to form a real judgement of the two lives in these respects, we must set apart the extremes of justice and injustice; there is no other way; and how is the contrast to be effected? I answer: Let the unjust man be entirely unjust, and the just man entirely just; nothing is to be taken away from either of them, and both are to be perfectly furnished for the work of their respective lives.

To: You
From: The Philosopher
Subject: "Would You Rather Earn More or Just More Than the Other Fellow?"

Suppose that you are given a choice between two jobs, one with a salary of \$60,000, but you know that other new hires at the same level have been offered \$64,000, and the other with a salary of \$56,000, and you know that other new hires have only been offered \$50,000. Other things being equal (the job description, the working conditions, the people you will be working with), which would you choose?

First, let the unjust be like other distinguished masters of craft; like the skillful pilot or physician, who knows intuitively what is possible or impossible in his art and keeps within those limits, and who, if he fails at any point, is able to recover himself. So let the unjust man attempt to do the right sort of wrongs, and let him escape detection if he is to be pronounced a master of injustice. To be found out is a sign of incompetence; for the height of injustice is to be deemed just when you are not. Therefore I say that in the perfectly unjust man we must assume the most perfect injustice; there is to be no deduction, but we must allow him, while doing the most unjust acts, to have acquired the greatest reputation for justice. If he has taken a false step he must be able to recover himself; he must be one who can speak with effect, if any of his deeds come to light, and who can force his way where force is required, by his courage and strength and command of wealth and friends. And at his side let us place the just man in his nobleness and simplicity, wishing, as Aeschylus says, to be and not to seem good. There must be no seeming, for if he seems to be just he will be honoured and rewarded, and then we shall not know whether he is just for the sake of justice or for the sake of honours and rewards; therefore, let him be clothed in justice only, and

have no other covering; and he must be imagined in a state of life the opposite of the former. Let him be the best of men, and let him be reputed the worst; then he will have been put to the test and we shall see whether his justice is proof against evil reputation and its consequences. And let him continue thus to the hour of death; being just and seeming to be unjust. When both have reached the uttermost extreme, the one of justice and the other of injustice, let judgement be given which of them is the happier of the two.

SOCRATES: Heavens! my dear Glaucon . . . how energetically you polish them up for the decision, first one and then the other, as if they were two statues.

QUESTIONS

1. What would you do if you had the ring of Gyges? What do you think your best friend would do?
2. The consequences of unjust actions are one kind of constraint against doing unethical things. What are some other constraints? Why might we want to appeal to more than consequences?
3. How does this story relate to transactions in finance and banking?
4. Can you think of a case where a business person did something unethical that was not shrouded in secrecy?

On the Job

Everyday Ethics at Work

Introduction

Most workplaces are like zoos. They are filled with a variety of people, some like you and some exotic. When you go to work, you navigate your way through a complex web of relationships with people who often seem to be of different species. Some of them are dominant, some are docile, some are cooperative, others are contentious, some are kind, and some will bite you. When you think of it, work is basically about the interaction of people toward some common goals, and ethics is about how they treat each other. The work zoo is an emotional place where employees experience anger, pain, fear, joy, satisfaction, and even love, sometimes all at once and in the same building. Not only do these people have different titles and different job descriptions, but also they carry with them different lives shaped by gender, race, ethnicity, religion, health, personal values, experiences, and cultural and personal preferences. Almost everyone you work with lives in another world with other responsibilities at home and at play. Before they go to work, some drop their children off at day care or school, others leave behind an elderly parent or a seriously ill spouse or partner, and still others say goodbye to their faithful dog or an empty apartment. After work, there are those who go off to help their favorite charity, those who go to the health club, and still others who head for the nearest bar. But they are all fellow members of this human zoo that we call work and, as such, deserve to be treated fairly and with respect.

When you think about it, what most upsets you about your job are likely the times when you either don't feel like you are treated with respect or don't think you are treated fairly. Throughout the history of modern work, one hears the same refrain from workers: "We just want to be treated like adults!" In the workplace, respect means treating someone as an autonomous person on the job, but at the same time knowing where to draw the line between the employee's job and the employee's personal life. You may have noticed that this line between work and private life is not easy to draw, especially if you socialize

with coworkers, check your office e-mail from home, or are on call after hours via a pager or cell phone. But as your work life and your personal life converge, the question becomes even more pressing: What is the relation between the two? Is it OK for you to do whatever you want to in your personal life as long as you do your job well? What is the proper realm of privacy? And what are the employer's and employee's rights and responsibilities to each other?

Many great thinkers, such as Immanuel Kant, believe that respect for our common humanity is the most important principle of ethics. This chapter begins with a discussion of how Kant's ideas about respect for persons apply to the workplace. One aspect of respecting people is appreciating that they have feelings. In "Exploring the Managed Heart," Arlie Hochschild describes the emotional labor that flight attendants and others in the service industry perform every day. Her article raises the question, When does the requirement to be nice to customers compromise the dignity and autonomy of a person? Where does one draw the line between politeness and humiliation? This leads us to the issue of an employee's right to express him- or herself at work. Bruce Barry's article, "The Cringing and the Craven: Freedom of Expression in the Workplace," explores the question, Should employees have the same freedom of expression on the job as they have in their personal lives? Do employers have the right to punish employees for expressing their views on things such as politics?

People make mistakes at work that can be harmful and hurtful. Not everyone who makes a mistake gets fired. Jerry Goodstein and Kenneth D. Butterfield discuss the moral importance of restorative justice and forgiveness in the workplace. The issue of forgiveness and restoring trust in organizations almost seems like a moot point when employees are contingent, fissured, on-demand labor. The next article raises ethical questions about the changing nature of work and about the moral responsibilities of both the employers who supply contract workers and the businesses that hire these employees in their companies.

The last article addresses the question of how your physical appearance affects your employment prospects. People come in all shapes, colors, and sizes, and their faces tell us about their race, ethnicity, and gender. The article "Facial Discrimination" offers us a broad way to think about how employers intentionally and unintentionally discriminate against job applicants because of the way they look.

The first case in this chapter is from the classic novel *The Man in the Gray Flannel Suit*. It will give you an opportunity to think about who you are and how you want to present yourself to potential employers. We then go from this case on hiring to John Boatright's case on firing, which allows us to reflect on how to respect the dignity of a person when you fire him or her. The rest of the cases in this chapter are all true stories collected by Joanne Ciulla from participants in corporate seminars and students. They have been disguised for use in this text. These cases illustrate the old adage that truth is stranger than fiction. The first case is about a manager who discovers that a man his company was planning on promoting beats his wife. The next case is about matching clients with employees who share the same interests and gender. This is a controversial issue in businesses that provide client services and sales. Should you pair a salesperson who golfs with a client who likes to golf? Is that different from pairing a male salesman with a client who does not seem to respect women? Since most people do not leave their feelings at home when they go to

work, we explore a case where an employee chooses a supplier in part because she finds the company representative attractive.

Since this chapter is about the everyday ethical problems of working with a variety of personalities and problems in the workplace, it offers cases that examine the big and small ethical problems people face when they work together. All the cases challenge us to think about our moral obligations to each other. Respect for persons and fairness are both moral obligations, but they are more than that. They are at the core of what makes us good people and represent a good part of what motivates us to cooperate with one another. Thus, a solid sense of what is personally fair (and unfair) lies at the heart of personal, social, and professional success. People have known this for a long time. Around the eighth century BC, the poet Hesiod wrote, “Neither famine nor disaster ever haunt men who do true justice; but lightheartedly they tend the fields which are all their care.”

To: You
From: The Philosopher
Subject: “Sloth: The Noonday Demon”

Have you ever noticed how the seventh deadly sin, sloth, seems almost out of place with the first six? I always thought it was worse to be greedy or lustful than to be just plain lazy, but it turns out that sloth isn’t simply about not wanting to work, it’s about being bored, listless, and simply not caring about work. In the fourth century, the Egyptian monk Evagrius called sloth the “Noonday Demon” that attacked monks after lunch and made the day seem as if it lasted 50 hours. He said:

[The Noonday Demon] causes the monk continually to look out the windows and forces him to step out of his cell and to gaze at the sun to see how far it is from the ninth hour and to look around, here and there, whether any of his brethren is near.*

It makes you wonder how many people are attacked by this demon every day at work either because of a mind-numbing job, a big lunch, or sheer exhaustion.

*Siegfried Wenzel. *The Sin of Sloth: Acedia* (Chapel Hill, NC: University of North Carolina Press, 1967), p. 5.

Norman E. Bowie

Respecting the Humanity in a Person

Norman E. Bowie is a professor of management at the University of Minnesota.

Part of the power of Kant's ethics lies in the extent of its ability to answer questions that Kant himself did not consider.

—Barbara Herman

INTRODUCTION

If the average American has a second moral principle to supplement the Golden Rule, it is probably a principle that says we should respect people. Respecting people is thoroughly interwoven into the fabric of American moral life. There is no one in the business community that has challenged the respect for persons principle as a principle in business ethics the way Albert Carr challenged the application of the Golden Rule in business. Yet, ironically, many of the moral criticisms of business practice are directed against policies that do not respect persons, e.g., that business human relations policies often invade privacy or relegate people to dead-end jobs where they cannot grow. In addition, there is considerable controversy, even among ethicists, as to what a respect for persons principle requires. . . .

I want to begin with an example which, although oversimplified, represents a standard discussion of the application of Kant's respect for persons principle to business. After presenting the example, I shall provide Kant's justification of the respect for persons principle and, using contemporary scholarship, explain what Kant means by the principle. With that in hand I will be able to apply the principle to more complex business examples.

I recall from my undergraduate ethics class more than 30 years ago that we struggled with the issue of whether buying a product, like vegetables in the

supermarket, violated the respect for persons requirement of the second formulation of the categorical imperative. In buying our groceries did we merely use the clerk who rang up our purchases on the register? The first issue to be decided was whether we treated the sales person as a thing. Somewhat naively we decided that we did not merely use people in business transactions because we could accomplish our goal—buying carrots or potatoes—but that we could still show respect to those on the other end of the transaction. A casual observer in a supermarket can usually distinguish those patrons who treat the cashiers with respect from those who do not.

Our “solution” in this undergraduate class did not address business exchanges that involve tradeoffs between human and nonhuman sources. Any introductory economics text establishes that the efficient producer is instructed always to rearrange capital, land, machines, and workers so that their proportional marginal productivity is equal. The requirement of equal proportional marginal productivity works as follows: If the price of machines rises with respect to labor, substitute labor for machines. If the price of labor rises with respect to machines, substitute machines for labor. Both substitutions are equivalent.¹

At first glance it looks as if a Kantian would say that the two substitutions are not morally equivalent. The first is morally permissible; the second is not morally permissible. It looks as if the employees are used as a means merely for the enhancement of the profits of the stockholders. It is morally permissible to use machines that way but it is not morally permissible to use people that way. Unlike the grocery-store example, the managers who act on behalf of the stockholders are not in a personal face-to-face relationship with the employees and thus they cannot avoid the charge of merely using the employees by

From Norman E. Bowie, *Business Ethics: A Kantian Perspective* (Oxford: Blackwell Publishers, 1999), 63–78 (edited).

saying that in the transaction they treated the other party to the transaction with respect. It doesn't matter if the manager was nice to the employees when she laid them off—a fact of some importance in contemporary discussions of downsizing because many managers think that when they fire people in a nice way, as opposed to firing them cruelly, they are off the moral hook. It is morally better to be nice than to be cruel, but the real issue is whether the firing can be morally justified. How would a Kantian using the respect for persons principle justify these contentions? To answer that question some explanation of Kant's respect for persons principle is in order.

THE RESPECT FOR PERSONS PRINCIPLE

Kant's second formulation of the categorical imperative says "Act so that you treat humanity whether, in your own person or in that of another, always as an end and never as a means only."² Kant did not simply assert that human beings are entitled to respect; he had an elaborate argument for it. Human beings ought to be respected because human beings have dignity. For Kant, an object that has dignity is beyond price. That's what is wrong with the principle that says a manager should adjust the inputs of production to the point where the marginal productivity of each is equal. And further, the denial of dignity is what makes much downsizing unjust. In these cases, that which is without price, human beings, are treated as exchangeable with that which has a price. Human employees have a dignity that machines and capital do not have. Thus, managers cannot manage their corporate resources in the most efficient manner without violating the respect for persons principle—or so it seems. But why do persons possess a dignity which is beyond all price?

They have dignity because human beings are capable of autonomy and thus are capable of self-governance. As autonomous beings capable of self-governance they are also responsible beings, since autonomy and self-governance are the conditions for responsibility. A person who is not autonomous and who is not capable of self-governance is not responsible. That's why little children or the mentally ill

are not considered responsible beings. Thus, there is a conceptual link between being a human being, being an autonomous being, being capable of self-governance, and being a responsible being.

Autonomous responsible beings are capable of making and following their own laws; they are not simply subject to the causal laws of nature. Anyone who recognizes that he or she is autonomous would recognize that he or she is responsible (that he or she is a moral being). As Kant argues, the fact that one is a moral being enables us to say that such a being possesses dignity.

Morality is the condition under which alone a rational being can be an end in himself because only through it is it possible to be a lawgiving member in the realm of ends. Thus morality, and humanity insofar as it is capable of morality, alone have dignity.³

It is the fact that human beings are moral agents that makes them subjects worthy of respect.

As I read Kant this is his argument for the necessity of including other persons within the scope of the respect for persons principle (treating the humanity in a person as an end and never as a means merely). It is based on consistency. What we say about one case, namely ourselves, we must say about similar cases, namely about other human beings.

Kant begins the third section of the *Foundations* as follows:

What else, then, can freedom of the will be but autonomy (the property of the will to be a law to itself)? The proposition that the will is a law to itself in all its actions, however, only expresses the principle that we should act according to no other maxim than that which can also have itself as a universal law for its object. And this is just the formula of the categorical imperative and the principle of morality. Therefore a free will and a will under moral laws are identical.⁴

Freedom and the ability to make laws are necessary and sufficient for moral agency. Moral agency is what gives people dignity. The importance of rationality comes when one explicates the meaning of freedom. Freedom is more than independence from causal laws. This is negative-freedom. Freedom is also the ability to make laws that are universal and to act on those laws in the world. As Kant says:

The sole principle of morality consists in independence from all material of the law (i.e., a desired object) and in the accompanying determination of choice by the mere form of giving universal law which a maxim must be capable of having. That independence, however, is freedom in the negative sense, while this intrinsic legislation of pure and thus practical reason is freedom in the positive sense.⁵

Thus, we have shown why Kant believes persons have dignity and in this world are the only beings who have dignity. Kant has thus grounded our obligation to treat humanity in a person as an end and never as a means merely.

NOTES

1. Richard Parker has correctly pointed out that if the substitution of the machines made the jobs of the remaining workers more meaningful, then Kant would not oppose the substitution of machines for people just because the cost of machines went down relative to the costs of people.

2. Immanuel Kant, *Foundations of the Metaphysics of Morals* (New York: Macmillan, 1990), p. 46.

3. Ibid., p. 52.

4. Ibid., p. 64.

5. Immanuel Kant, *Critique of Practical Reason* (Upper Saddle River, NJ: Prentice Hall, 1993), pp. 33–34.

QUESTIONS

1. What does the “respect for persons” principle mean in terms of the policies and practices of an organization?

2. If you simply are a means to your employer’s ends and you understand that this is the case when you are hired, would you care if you were treated as a means?

3. Do you agree with the idea that because humans are moral agents they are worthy of respect? What about people who are morally despicable?

4. What do employers have to do to treat employees as autonomous wills?

To: You

From: The Philosopher

Subject: “W. D. Ross on Prima Facie Duties”

I like my work but I hate my job because of my boss. He treats most of the people in the office like they are garbage. We work like dogs and he never even bothers to say thank you. The other day he started yelling at the cleaning lady for making too much noise when she was emptying the trash in his office. The poor woman was almost in tears. My friend Sarah asked him if she could take a training seminar, so that she could get a promotion and he laughed and said, “you can hardly do your current job, let alone a job in management.” He then promised Sarah that he would let her take the course in a year if her performance improved. It did improve, but then he told her he changed his mind.

My boss needs a good lesson on how to treat people. Sometimes I fantasize about tattooing the British philosopher W. D. Ross’s list of prima facie duties on his chest—backwards

so that he could read it in the mirror every day. “Prima facie” means “on the face of it” or “on first view.” A prima facie duty or obligation is one that you should exercise all the time unless there is a very good moral reason not to do so. Ross’s list of duties offers a simple guide to how you should treat people. It goes like this*:

- | | |
|---------------------|--|
| 1. Justice | Be just, prevent injustice and future injustice, and rectify existing injustices. |
| 2. Non-injury | Avoid harming people. |
| 3. Fidelity | Keep promises. |
| 4. Veracity | Tell the truth. |
| 5. Reparation | Apologize or make amends when you do something wrong. |
| 6. Beneficence | Do good deeds for others and contribute to the development of their virtue, knowledge, or happiness. |
| 7. Self-improvement | Better yourself. |
| 8. Gratitude | Express appreciation for good deeds. |

* W. D. Ross, *The Right and the Good* (Oxford University Press, 1930).

Arlie Hochschild

Exploring the Managed Heart

Arlie Hochschild is a professor of sociology at the University of California at Berkeley.

The one area of her occupational life in which she might be “free to act,” the area of her own personality, must now also be managed, must become the alert yet obsequious instrument by which goods are distributed.

—C. Wright Mills

In a section in *Das Kapital* entitled “The Working Day,” Karl Marx examines depositions submitted in 1863 to the Children’s Employment Commission in England. One deposition was given by the mother of a child laborer in a wallpaper factory: “When he

was seven years old I used to carry him [to work] on my back to and fro through the snow, and he used to work 16 hours a day. . . . I have often knelt down to feed him, as he stood by the machine, for he could not leave it or stop.” Fed meals as he worked, as a steam engine is fed coal and water, this child was “an instrument of labor.”¹ Marx questioned how many hours a day it was fair to use a human being as an instrument, and how much pay for being an instrument was fair, considering the profits that factory owners made. But he was also concerned with something he thought more fundamental: the human cost of becoming an “instrument of labor” at all.

From Arlie Hochschild, *The Managed Heart* (Berkeley: University of California Press, 1983), pp. 3–9.

On another continent 117 years later, a twenty-year-old flight attendant trainee sat with 122 others listening to a pilot speak in the auditorium of the Delta Airlines Stewardess Training Center. Even by modern American standards, and certainly by standards for women's work, she had landed an excellent job. The 1980 pay scale began at \$850 a month for the first six months and would increase within seven years to about \$20,000 a year. Health and accident insurance was provided, and the hours were good.²

The young trainee sitting next to me wrote on her notepad, "Important to smile. Don't forget smile." The admonition came from the speaker in the front of the room, a crewcut pilot in his early fifties, speaking in a Southern drawl: "Now girls, I want you to go out there and really *smile*. Your smile is your biggest *asset*. I want you to go out there and use it. Smile. *Really* smile. *Really lay it on.*"

The pilot spoke of the smile as the *flight attendant's* asset. But as novices like the one next to me move through training, the value of a personal smile is groomed to reflect the company's disposition—its confidence that its planes will not crash, its reassurance that departures and arrivals will be on time, its

welcome and its invitation to return. Trainers take it as their job to attach to the trainee's smile an attitude, a viewpoint, a rhythm of feeling that is, as they often say, "professional." This deeper extension of the professional smile is not always easy to retract at the end of the workday, as one worker in her first year at World Airways noted: "Sometimes I come off a long trip in a state of utter exhaustion, but I find I can't relax. I giggle a lot, I chatter, I call friends. It's as if I can't release myself from an artificially created elation that kept me 'up' on the trip. I hope to be able to come down from it better as I get better at the job."

As the PSA jingle says, "Our smiles are not just painted on." Our flight attendants' smiles, the company emphasizes, will be more human than the phony smiles you're resigned to seeing on people who are paid to smile. There is a smile-like strip of paint on the nose of each PSA plane. Indeed, the plane and the flight attendant advertise each other. The radio advertisement goes on to promise not just smiles and service but a travel experience of real happiness and calm. Seen in one way, this is no more than delivering a service. Seen in another, it estranges workers from their own smiles and convinces customers that

To: You
From: The Philosopher
Subject: "Robert C. Solomon on the Passions"

I have a British friend who is always amazed by how service employees act in America. The first time she went to a bank here, she said, "the teller acted as if she just happened to be there and was delighted that I had dropped by to see her." Emotions are a part of your job and your life. You shouldn't abuse them or fail to cultivate the right ones. As philosopher Robert C. Solomon noted,

Emotions are the meanings of life. It is because we are moved, because we feel, that life has a meaning. The passionate life is the meaningful life. Of course, it all depend on *which* passions. There are the grand passions, the driving forces of life, a life well-lived. And then there are the petty passions, defensive and self-undermining, "which drag us down with their stupidity," as Nietzsche says. Some meanings, in other words, are de-meaning.

on-the-job behavior is calculated. Now that advertisements, training, notions of professionalism, and dollar bills have intervened between the smiler and the smiled upon, it takes an extra effort to imagine that spontaneous warmth can exist in uniform—because companies now advertise spontaneous warmth, too.

At first glance, it might seem that the circumstances of the nineteenth-century factory child and the twentieth-century flight attendant could not be more different. To the boy's mother, to Marx, to the members of the Children's Employment Commission, perhaps to the manager of the wallpaper factory, and almost certainly to the contemporary reader, the boy was a victim, even a symbol, of the brutalizing conditions of his time. We might imagine that he had an emotional half-life, conscious of little more than fatigue, hunger, and boredom. On the other hand, the flight attendant enjoys the upper-class freedom to travel, and she participates in the glamour she creates for others. She is the envy of clerks in duller, less well-paid jobs.

But a close examination of the differences between the two can lead us to some unexpected common ground. On the surface there is a difference in how we know what labor actually produces. How could the worker in the wallpaper factory tell when his job was done? Count the rolls of wallpaper; a good has been produced. How can the flight attendant tell when her job is done? A service has been produced; the customer seems content. In the case of the flight attendant, the *emotional style of offering the service is part of the service itself*, in a way that loving or hating wallpaper is not a part of producing wallpaper. Seeming to "love the job" becomes part of the job; and actually trying to love it, and to enjoy the customers, helps the worker in this effort.

In processing people, the product is a state of mind. Like firms in other industries, airline companies are ranked according to the quality of service their personnel offer. Egon Ronay's yearly *Lucas Guide* offers such a ranking; besides being sold in airports and drugstores and reported in newspapers, it is cited in management memoranda and passed down to those who train and supervise flight attendants. Because it influences consumers,

airline companies use it in setting their criteria for successful job performance by a flight attendant. In 1980 the *Lucas Guide* ranked Delta Airlines first in service out of fourteen airlines that fly regularly between the United States and both Canada and the British Isles. Its report on Delta included passages like this:

[Drinks were served] not only with a smile but with concerned enquiry such as, "Anything else I can get you, madam?" The atmosphere was that of a civilized party—with the passengers, in response, behaving like civilized guests. . . . Once or twice our inspectors tested stewardesses by being deliberately exacting, but they were never roused, and at the end of the flight they lined up to say farewell with undiminished brightness. . . .

[Passengers are] quick to detect strained or forced smiles, and they come aboard wanting to *enjoy* the flight. One of us looked forward to his next trip on Delta "because it's fun." Surely that is how passengers ought to feel.³

The work done by the boy in the wallpaper factory called for a coordination of mind and arm, mind and finger, and mind and shoulder. We refer to it simply as physical labor. The flight attendant does physical labor when she pushes heavy meal carts through the aisles, and she does mental work when she prepares for and actually organizes emergency landings and evacuations. But in the course of doing this physical and mental labor, she is also doing something more, something I define as *emotional labor*.⁴ This labor requires one to induce or suppress feeling in order to sustain the outward countenance that produces the proper state of mind in others—in this case, the sense of being cared for in a convivial and safe place. This kind of labor calls for a coordination of mind and feeling, and it sometimes draws on a source of self that we honor as deep and integral to our individuality.

Beneath the difference between physical and emotional labor there lies a similarity in the possible cost of doing the work: the worker can become estranged or alienated from an aspect of self—either the body or the margins of the soul—that is *used* to do the work. The factory boy's arm functioned like a piece of machinery used to produce wallpaper.

His employer, regarding that arm as an instrument, claimed control over its speed and motions. In this situation, what was the relation between the boy's arm and his mind? Was his arm in any meaningful sense his *own*?⁵

This is an old issue, but as the comparison with airline attendants suggests, it is still very much alive. If we can become alienated from goods in a goods-producing society, we can become alienated from service in a service-producing society. This is what C. Wright Mills, one of our keenest social observers, meant when he wrote in 1956, "We need to characterize American society of the mid-twentieth century in more psychological terms, for now the problems that concern us most border on the psychiatric."⁶

When she came off the job, what relation had the flight attendant to the "artificial elation" she had induced on the job? In what sense was it her *own* elation on the job? The company lays claim not simply to her physical motions—how she handles food trays—but to her emotional actions and the way they show in the ease of a smile. The workers I talked to often spoke of their smiles as being *on* them but not *of* them. They were seen as an extension of the makeup, the uniform, the recorded music, the soothing pastel colors of the airplane decor, and the daytime drinks, which taken together orchestrate the mood of the passengers. The final commodity is not a certain number of smiles to be counted like rolls of wallpaper. For the flight attendant, the smiles are a *part of her work*, a part that requires her to coordinate self and feeling so that the work seems to be effortless. To show that the enjoyment takes effort is to do the job poorly. Similarly, part of the job is to disguise fatigue and irritation, for otherwise the labor would show in an unseemly way, and the product—passenger contentment—would be damaged.⁷ Because it is easier to disguise fatigue and irritation if they can be banished altogether, at least for brief periods, this feat calls for emotional labor.

The reason for comparing these dissimilar jobs is that the modem assembly-line worker has for some time been an outmoded symbol of modern industrial labor; fewer than 6 percent of workers now work on assembly lines. Another kind of labor has now come into symbolic prominence—the voice-to-voice or

face-to-face delivery of service—and the flight attendant is an appropriate model for it. There have always been public-service jobs, of course; what is new is that they are now socially engineered and thoroughly organized from the top. Though the flight attendant's job is no worse and in many ways better than other service jobs, it makes the worker more vulnerable to the social engineering of her emotional labor and reduces her control over that labor. Her problems, therefore, may be a sign of what is to come in other such jobs.

Emotional labor is potentially good. No customer wants to deal with a surly waitress, a crabby bank clerk, or a flight attendant who avoids eye contact in order to avoid getting a request. Lapses in courtesy by those paid to be courteous are very real and fairly common. What they show us is how fragile public civility really is. We are brought back to the question of what the social carpet actually consists of and what it requires of those who are supposed to keep it beautiful. The laggards and sluff-offs of emotional labor return us to the basic questions. What is emotional labor? What do we do when we manage emotion? What, in fact, is emotion? What are the costs and benefits of managing emotion, in private life and at work?

NOTES

1. Karl Marx, (1977) *Capital*, Vol. 1. "Intro". by Ernest Mandel tr. Ben Fowkes. New York: Vintage, pp. 356–357, 358.

2. For stylistic convenience, I shall use the pronoun "she" when referring to a flight attendant, except when a specific male flight attendant is being discussed. Otherwise I shall try to avoid verbally excluding either gender.

3. *Lucas Guide* 1980, p. 66.

4. I use the term *emotional labor* to mean the management of feeling to create a publicly observable facial and bodily display; emotional labor is sold for a wage and therefore has *exchange value*. I use the synonymous terms *emotion work* or *emotion management* to refer to these same acts done in a private context where they have *use value*.

5. *Lucas Guide* 1980, pp. 66, 76. Fourteen aspects of air travel at the stages of departure, arrival, and the flight itself are ranked. Each aspect is given one of sixteen

differently weighted marks. For example, “The friendliness or efficiency of the staff is more important than the quality of the pilot’s flight announcement or the selection of newspapers and magazines offered.”

6. C. Wright Mills (1956), *White Collar*. New York: Oxford University Press.

7. Like a commodity, service that calls for emotional labor is subject to the laws of supply and demand. Recently the demand for this labor has increased and the supply of it drastically decreased. The airline industry speed-up since the 1970s has been followed by a worker slowdown. The slowdown reveals how much emotional labor the job required all along. It suggests what costs even happy workers under normal conditions pay for this labor without a name. The speed-up has sharpened the ambivalence many

workers feel about how much of oneself to give over to the role and how much of oneself to protect from it.

QUESTIONS

1. What types of emotional labor are found in the workplace today?

2. What kinds of emotional labor are acceptable, and what kinds are unacceptable in the workplace? What ethical principles would you use to draw the line between them?

3. Does emotional labor violate your freedom of expression?

4. When do employees have a right to express their emotions to customers?

Bruce Barry

The Cringing and the Craven: Freedom of Expression in the Workplace

Bruce Barry is the Brownlee O. Currey, Jr., Professor of Management at the Owen Graduate School of Management and a professor of sociology at Vanderbilt.

In September 2004, Lynne Gobbell was fired from her job as a factory machine operator in Decatur, Alabama, because her automobile in the company’s parking lot displayed a bumper sticker supporting John Kerry for president. In 2001, Clayton Vernon was fired by the Enron Corporation after posting on an Internet message board his opinion that Enron CEO Kenneth Lay is “a truly evil and satanic figure.” In 1998, Edward Blum resigned his position as a stockbroker in Houston after (as he alleged) the firm pressured him to curtail his off-work political activities in support of a municipal ballot initiative on affirmative action. In August 2004, a web developer named Joyce Park was fired from her job

at an online social network website company for mentions of her employer in writings posted to her blog. Gonzalo Cotto, an aircraft factory worker in Connecticut, sued his employer after he was fired for refusing to display an American flag at his workstation during a Gulf War celebration. After several appeals, Connecticut’s highest court rejected Cotto’s claim that his dismissal violated a state law protecting constitutional rights in the workplace.

These incidents share a common theme: punishment or retaliation by an employer for employee actions that involve expressive behavior—verbal or symbolic actions that would, in other domains of social life and in many countries, be regarded as protected speech. Freedom of speech and expression are bedrock tenets of liberty found in the legal frameworks of most nations having systems of civil democracy or republican government. Yet as these examples indicate, the scope of free expression in

and around the workplace can be quite limited (especially in the United States compared to many other “Western” democracies). Work is a place where many adults devote significant portions of their waking lives, but it is also a place where civil liberties, including but not limited to freedom of speech, are significantly constrained.

DEFINING WORKPLACE FREEDOM OF EXPRESSION

Workplace speech as a liberty having roots in law, policy, custom, or ethics has received limited scholarly attention, but when it has, the focus has typically been constrained to speech at work or about work. For example, Campbell, a philosopher, defined *workplace freedom of expression* as “the capacity of employees to have and express opinions in their workplace about their workplace and the organisation that employs them.” Estlund, a legal scholar, defined *freedom of speech in the workplace* as “the freedom to speak out at or about the workplace free from the threat of discharge or serious discipline.” Lippke defined *work-related speech* as “speech that occurs within the workplace, but also speech which is sufficiently about work so that though it occurs outside the workplace, it is subject to employer sanction.”

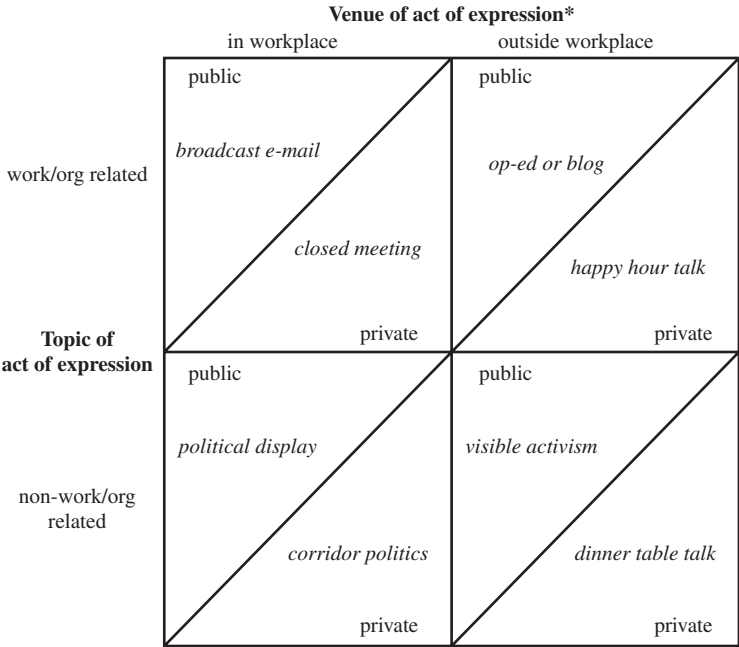
The incident mentioned at the outset involving a worker discharged for a political message affixed to an automobile in a factory parking lot moves beyond these cited definitions in two ways: by involving content that is plainly unrelated to work or workplace and by taking the form of expression that is not spoken (not literally “speech”). Accordingly, I define expression broadly here. Free speech theorist Scanlon defined an act of expression as “any action that is intended . . . to communicate to one or more persons some proposition or attitude” including acts of speech, publication, displays, failures to display, and artistic performances. Baker criticized Scanlon’s definition as too narrow, noting that it excludes self-expressive and creative forms of communication. Siding with Baker, I encompass within

“expression” actions that convey a proposition or attitude, or that involve a personal display of self-expression or creativity. The construct of interest in this article, then, is *workplace freedom of expression*, which I define as *the ability to engage in legally protected acts of expression at or away from the workplace, on subjects related or unrelated to the workplace, free from the threat of formal or informal workplace retribution, discipline, or discharge*.

This definition is expansive, incorporating the wide canvas of expression that might be legally protected in a constitutional democracy, but is delimited by its focus on expression that is discouraged, proscribed, or regulated by an employer. To illustrate the breadth of acts potentially within its purview, I show in Figure 1-1 a simplified taxonomy of expression in three dimensions. Acts of expression of potential interest for this analysis vary by *venue* (occurring at the workplace or away from it), by *topic* (addressing matters related to work or organization, or not), and by *publicness* (occurring through channels and contexts that make the conveyance one-to-one/few vs. one-to-many). Of the eight types implied within the figure, the two comprising the upper-left quadrant have garnered the most attention from researchers studying interaction processes in organizations, and understandably so. One can assume that the octant in the lower right—expression that occurs away from the workplace, on off-work topics, in private settings—is the expressive form of least interest presumably to employers, and by extension to this analysis (although by no means wholly irrelevant).

A renewed interest in and analysis of free expression in the workplace is warranted for several reasons. First, the legal climate regarding free speech in the workplace has evolved in significant ways since Ewing and Werhane were writing about employment rights.

Second, the workplace itself is changing in ways that render rights to expression both more threatened and more important. Yamada developed this argument, describing several factors that raise concerns about employers’ inclination to limit workplace



*Entries in italics are examples (not modal types)

FIGURE 1-1 Taxonomy of acts of expression.

expression: individual economic insecurity that breeds self-censorship at work, a rise in electronic surveillance of workers, a decline in unionization, an expansion in corporate political partisanship (which ostensibly chills employee expression that might deviate from the preferred point of view), and the simple fact that people work longer hours than in the past.

The notion that people spend more time at work bridges into a third rationale for more attention to workplace expression: the role of the workplace, given that many individuals spend the bulk of their waking hours there, as a building block for community engagement and a critical site for exchanges of views and public debate around political and social issues. Moreover, if individuals are spending more time on the job, then opportunities to engage in expression outside the workplace inevitably diminish. The relevance of speech rights to broader notions of

citizenship and community in a free society is a subject to which I will return later.

Fourth, advances in information technology, and individuals’ ability to use technology for expressive purposes, change the landscape of free expression in and around the workplace (and everywhere else). A currently prominent illustration is found in cases where individuals are sanctioned or dismissed for comments about the workplace that appear in online web sites such as blogs; these in a sense are technology-enabled “publication” outlets that were previously unavailable. Workplace freedom of expression has occupied new terrain in an era of web sites, email, instant messaging, blogs, vlogs, wikis, and podcasts, compared to what existed before.

Lastly, renewed attention to free speech at work is warranted by the abundance (noted earlier) of research on related topics within the fields

of organizational behavior and labor relations. As a consequence of this progress, researchers and managers are more attuned than they were twenty years ago to the role of workplace expression and participation in organizational processes and outcomes.

A generation ago there was optimism that employee rights were expanding not only as a matter of evolving practice, but as a veritable movement building toward radical change in corporate life. In 1974 an editor at the *Harvard Business Review* wrote:

Within the management castle, as well as out in the woods and fields, there is growing support for employee rights. . . . [T]he notion of a “bill of rights” for corporate employees has been advocated in the *Harvard Business Review* and will doubtless find its way soon into other management journals.¹

Ewing predicted a “sea change” in the social and intellectual environment of organizations. Thirty years later, it would be delusional to suggest that Ewing’s predictions have come to fruition. The law in the United States (from an employment law perspective) has not significantly expanded its accommodation of employee expression, even as exceptions to employment-at-will have grown wider. Outside of academic writing, connections between speech, other civil liberties at work, and the state and health of larger civil society remain elusive. As Balkin wrote in an essay chronicling the evolution of free speech doctrine in the twentieth century, “speech in the workplace is not considered speech in the same sense as political or expressive speech generally, but is thought to be utilitarian, pedestrian, and incidental to the performance of work.”

The proposition that people at work deserve greater rights to expression than the law,

management practice, or conventional wisdom allow is not a utopian call for a fundamental transformation of economic relations in employment, or even for a broadly democratized workplace. It is merely an assertion that a market economy can still flourish when adults sell their time and their labor but not all of their liberties. Where suppression of one’s power to think, speak, and dissent is conventionally accepted in workplaces, the ideology of management is given license to run free, not just at work, but everywhere. This places at risk the liberty interests of individuals, but also jeopardizes the health of civil democracy in community and society. Justice Hugo Black put it this way over a half-century ago: “Our own free society should never forget that laws which stigmatize and penalize thought and speech of the unorthodox have a way of reaching, ensnaring and silencing many more people than at first intended. We must have freedom of speech for all or we will in the long run have it for none but the cringing and the craven.”

NOTE

1. David W. Ewing, “Free Speech from Nine to Five.” *The Nation* 218:755–56, 1974.

QUESTIONS

1. What kinds of speech can be justifiably prohibited in the workplace?
2. Does freedom of speech protect an employee’s right to say what he or she knows is true at any time?
3. To what extent do managers have the right to tell employees what they can say and not say in regard to their work?
4. Does political correctness interfere with a person’s right to free speech?

Jerry Goodstein
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Butterfield

Restorative Justice and the Aftermath of Unethical Behavior

Restorative justice is “a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future” (Braithwaite, 1999: 5). Restorative justice is both instrumental in nature, focused on deterring wrongdoing, repairing harm, and improving relationships, as well as normative, being grounded, for example, in Aristotelian virtue ethics, the ethics of care, and philosophical discussions related to forgiveness and making amends. The notion of restorative justice is not new. Restorative justice draws on ancient concepts and practices abandoned in the late Middle Ages as formal justice systems began to define the obligation of offenders as a debt to the king or lord (and later, to the state) rather than to victims. These concepts and practices also have strong roots in indigenous cultures. . . .

Restorative justice has three basic objectives: restoring victims, reintegrating offenders back into the community, and facilitating community healing. Each objective reflects a set of core principles and values. With regard to restoring victims, these include receiving atonement (material reparations such as financial compensation or symbolic reparations such as an apology), forgiving the offender, and finding closure. Principles and values pertaining to reintegrating offenders include having offenders (a) accept responsibility and accountability, (b) engage in respectful dialogue with those affected by the wrongdoing, (c) feel remorse, and (d) offer apologies and/or other restitution. With regard to community healing, principles and values include building trust, offering forgiveness to offenders, and collective education and learning. Active participation is another core principle that links all three parties—the victim, the offender, and the community. . . .

Restorative justice does depart from the traditional orientation toward punishment (particularly retribution) by being “forward looking” and emphasizing mechanisms by which the offender, as well as the victim, can be restored in the aftermath of unethical behavior. A prominent role is also played by forgiveness, which may provide a superior alternative to retaliation in terms of providing satisfaction and psychological benefits to victims as well as restoring a sense of justice in the workplace. Attention also is directed toward more collaborative ways in which punishment is determined. In a traditional restorative justice process, the offender, victim, and community/organizational representatives meet and determine the appropriate punishment. This differs from more formalized retributive punishment systems where wrongdoing is categorized and penalties are imposed in a manner consistent with the nature of the act. . . .

Moral philosophers have also devoted important attention to significant areas of relevance for restorative justice, particularly as noted above, with respect to forgiveness. Margaret Urban Walker (2006) brings together core practices of restorative justice—making amends, forgiveness, and reintegration—in her rich discussion of moral repair. Walker uses the term “moral repair” in reference to the responses of individuals, organizations, and the state—whether offender, victim, or other—to wrongdoing and harm. She underscores the importance of a focus on moral repair, noting, “Moral philosophers following Immanuel Kant have often described ethics as answering the question, ‘What ought I to do?’ This seems to imply a set of choices on a fresh page. One of the recurrent ethical tasks, however, is better suggested by the question ‘What ought *I—or, better, we—to do now?*’ after someone has blotted or torn the page by doing something wrong.” . . .

Walker's discussion of moral repair emphasizes the importance of "restoring or stabilizing—and in some cases creating—the basic elements that sustain human beings in a recognizably moral relationship" (Walker, 2006: 23), in particular trust and accountability. Walker suggests that when moral relationships have been violated, moral repair (among offender, victim, and community stakeholders) is needed to sustain confidence and hope in shared ethical standards within a community and restore trust that individuals and institutions will honor these standards and reproach those who undermine them. . . .

According to Walker, moral repair is a responsibility that involves multiple parties affected by wrongdoing including offenders, victims, and communities. For offenders, moral repair primarily involves making amends, for victims it is forgiveness, and for the community moral repair is achieved through supporting the victim while providing the opportunity to reintegrate the offender back into the community. These concerns are at the heart of discussions of how offenders (making amends), victims (forgiveness), and community interests (reintegration of offenders and community healing) work together to repair harm and damaged relationships. Offenders, victims, and community interests all play a vital role in the dynamics of moral repair and restorative justice. . . .

WORKPLACE COMMUNITY: FACILITATING OFFENDER REINTEGRATION

From the perspective of the broader workplace, restorative justice aims at offering those responsible for wrong and harm the opportunity through accountability and repair, to earn self-respect and to be reintegrated into their communities. Karp and Conrad (2005) provide one example of how an emphasis on reintegration has influenced organizational practices in a college setting. They highlight the operations of the Integrity Board at Skidmore College. They point to one case in which a college student was suspended for a year for using cocaine and then was re-admitted with the understanding that the student would be involved in leading

conferences/workshops on campus related to drug abuse. Karp and Conrad (2005) also describe how violators of academic integrity may be asked to participate in orientations to share with new students the importance of not cheating. Each of these examples reinforces a critical focus for reintegration—providing the wrongdoer with an opportunity to make reparations to the community whose norms he or she has violated. . . .

Restorative justice helps shift the way we think about *when* ethics matters—in the aftermath of unethical activity. Restorative justice also redirects thinking about *who* matters in ethics—those who have committed transgressions, their victims, and those who may play a significant role in fostering the reintegration of these individuals back into their departments and organizations. Finally, restorative justice draws attention to underemphasized areas in ethics about *what* matters, in particular how we define moral responsibilities in the context of repairing and rebuilding relationships damaged through unethical behavior, and the significance of ideas such as moral repair, making amends, forgiveness, reintegration, and earned redemption.

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QUESTIONS

1. Are there some behaviors in the workplace that cannot be forgiven? Are there some that should not be forgiven?
2. What does a person have to do to be forgiven by others in the organization?
3. What would restorative injustice look like? Give some examples.
4. What makes some people incapable of forgiving others?

The Most Common Types of Unethical Behavior at Work

1. Misusing company time (e.g., texting, talking to friends on the phone, doing things related to personal life at the office)
2. Abusive behavior (i.e., managers that bully, mistreat, or disrespect employees)
3. Employee theft (e.g., taking home office supplies to misrepresenting expense reimbursements to not recording sales)
4. Lying to employees (e.g., managers frequently lie to employees about a variety of issues)
5. Violating company Internet policies (e.g., on-line shopping, surfing the Web, playing games, texting, checking Facebook)

From: “The Five Most Common Unethical Behaviors in the Workplace” by Arthur Schwartz, *Philadelphia Business Journal*, July 26, 2015 <http://www.bizjournals.com/philadelphia/blog/guest-comment/2015/01/most-common-unethical-behaviors-in-the.html>

Jobs with Justice
Education Fund

The Changing Nature of Work

Businesses aren’t just changing the way work is done; they’re increasingly altering the very foundation of work. More women and men are finding themselves in contingent and fissured work arrangements that often make it difficult to sustain their families because of lower pay, weak benefits, fewer rights, unpredictable hours and an indirect relationship with their “real boss.” This issue brief sheds more light on the growth of these less stable, insecure work arrangements, which corporations are using to replace the traditional employer–employee relationship in many industries.

CONTINGENT WORK

The phrase “contingent work” encompasses arrangements that are temporary and can lack the basic protections that workplace and civil rights laws typically afford only people employed in traditional,

direct employer/employee work arrangements. This kind of arrangement is sometimes also referred to as “precarious work” to signify the insecure nature of contingent work.

The lack of a standard definition makes identifying and precisely measuring the contingent workforce difficult. At its essence, contingent work includes women and men in temporary work relationships. A more expansive definition of contingent work also includes those in nonstandard work arrangements or without consistent, full-time hours, even if the work assignment has an indefinite duration.

Regardless of the definition used, it’s clear from recent reports that the contingent workforce continues to expand in the United States¹ and across the world.²

The U.S. Government Accountability Office (GAO) recently estimated the core U.S. contingent workforce accounts for eight percent of the total employed

workforce, using a definition that incorporates those “who lack job security and those with work schedules that are variable, unpredictable, or both. . . .”³ Americans working as temporary agency employees, direct-hire temporary employees, on-call employees and day laborers exemplify this definition of contingent work.

Contingent work arrangements aren’t limited to just lower skilled jobs. For instance, a majority of today’s college faculty are adjunct instructors who lack the guarantee of continued employment from one semester to the next.⁴ That’s a dramatic shift in the employment model for professors from 1969, when nearly 80 percent of college instructors were tenured or on a tenure track.

Contingent Work and Immigration

While not necessarily identified in the various national surveys used to measure contingent employment, the women and men hired through the U.S. temporary guestworker visa programs are perhaps the quintessential contingent workforce.⁵ These individuals are hired to work only for a set period of months or years, depending on the employer and the visa program. Employers have recognized that they can use the guestworker visa programs to their advantage by hiring a crop of employees who are essentially never in a position to demand higher pay or better benefits, since the employer/employee relationship ends with the conclusion of the work assignment. The experience of guestworkers, from H-2B seafood processors to H-1B systems analysts, demonstrates the insecure nature of contingent employment.⁶ Corporations from Southern Cal Edison to Disney use guestworker programs to replace U.S. employees with a contracted, contingent workforce.⁷ And in doing so, these companies exemplify how many businesses have moved beyond the original intent of the guestworker visa programs, which was to provide employers with access to employees when U.S. workers are not available.⁸

FISSURED WORK

Some jobs fall between traditional and contingent employment. Dr. David Weil, the director of the U.S. Department of Labor’s Wage and Hour division, coined the term “fissured work” to identify and group such work arrangements that may have a traditional

employee/employer structure, but exhibit much of the insecurity associated with contingent work.⁹ Women and men in fissured work arrangements may not be counted as part of the contingent workforce despite having similar characteristics, including greater job insecurity, lower pay and less access to benefits.

For example, the individuals who move products in warehouses along Walmart’s supply chain do not receive a paycheck from the retail behemoth, yet Walmart dictates the standards and practices that establish the warehouse workers’ pay and working conditions.¹⁰ The same is true for employees of McDonald’s franchisees. McDonald’s does not issue paychecks to these employees, but the way the employees are compensated and the way they do their work is inherently influenced and, for aspects of the job, nearly fully directed by McDonald’s Corporation. Likewise, third-party housekeepers clean the rooms of Hyatt hotels for guests. Despite performing an essential hospitality operation, the housekeepers are not legally employed by the hotel giant—even though the work is done to Hyatt’s standards and specifications.

The growth of fissured work comes as more and more companies rearrange their organizations to focus only on “core competencies,” the unique services and operations believed to distinguish a company in the marketplace and, therefore, drive profits. Technological advances have facilitated the ability of corporations to dictate standards and closely monitor their implementation across locations. In turn, this ability to more closely control and track the activity of outside firms has allowed companies to broaden the scope of work deemed not to be a core competency. Companies are increasingly outsourcing more and more work through a variety of contractual arrangements with subordinate firms, including subcontracting, franchising and multitiered supply chains. These arrangements allow companies to divest themselves of employment responsibility for workers carrying out tasks for which the corporations primarily benefit. At the same time, the subordinate firms are in constant competition for these contracts, driving down costs for the primary companies, as well as wages for the subordinate firms’ employees.

Fissured work arrangements are not inherently bad. Industries from construction to manufacturing rely on the coordination of different firms with unique areas of specialization to create sophisticated

products. However, high-stakes competition among businesses to win and maintain outsourcing contracts creates an incentive to push down labor costs and cut corners with employer responsibilities, such as misclassifying employees as independent contractors and violating wage and hour laws.¹¹ That is especially true when the only “specialization” subordinate firms can offer is a lower cost. And with little to no legal responsibility for what goes on in these fissured workplaces, the primary businesses—often large, profitable corporations—have a reason to look the other way. For instance, researchers found that fast food establishments that are directly owned by a brand have higher Fair Labor Standards Act (FLSA) compliance rates than franchisee-owned stores.¹² A typical franchised fast food store owed more than \$4,000 in back wages compared to a company-owned restaurant. And in the hospitality industry, hotels managed by brand-name chains are more likely to have higher FLSA compliance rates than franchisee counterparts.

WORK IN THE ON-DEMAND ECONOMY

The on-demand economy refers to the recent rise of startups that provide services like chauffeuring and cleaning in immediate or near-immediate response to consumer demand.¹³ Most of these companies claim they simply connect consumers with service providers and, thus, are not employers. Yet many of the employment practices found in the on-demand economy are tried-and-true attempts to shift work from traditional to contingent employment relationships in an effort to shed employment responsibility. When Uber says its drivers are independent contractors, it is using a similar rationale as FedEx does when it labels—and arguably misclassifies—its FedEx Ground drivers as independent contractors.¹⁴

The on-demand economy’s current predominant employment model enables corporations to maintain control of the operations happening under their brands, reap the profits from those operations, while also fully divesting themselves of the responsibilities of employing those women and men needed for their businesses to succeed. These more precarious work arrangements also can leave companies exposed to significant liability under employment and tax laws.

However, fissured and contingent work arrangements are not a prerequisite for business success in the on-demand economy. Perhaps because of these factors, Instacart and a growing number of on-demand companies have reversed course, reclassifying its independent contractor workforce as employees.¹⁵

CONCLUSION

The protections of our current labor and employment laws should carry forward to protect those hired into modern work arrangements. That means more firms should be liable for the working conditions of the temporary, franchise and subcontracted employees whose labor they ultimately control. More people should be considered employees and benefit from the rights and protection that come with that designation. Our labor and employment laws should have a broader definition of employee and joint employment. This not only benefits employees, but benefits all taxpayers who are not left to foot the bill for the social safety net, including Medicare and Social Security, which becomes necessary when employers skirt their responsibilities.

Just because the nature of work is changing from its more traditional form, working Americans should not have to accept that their job standards must subside. While work changes, the need for a fair return on work endures.

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QUESTIONS

1. Do employees have a right to know in advance when they will be called in to work and how much work they will have in a given week?

2. If a contract employee is required to provide work that meets the standards of Hyatt, does Hyatt have an obligation to provide the same standards of compensation and benefits to that employee?

3. If Uber drivers are not independent contractors, what kinds of obligations would Uber have to its workers?

4. If a business hires contract labor from a company that exploits its workers, is the business ethically responsible for how the workers are treated?

Harvard Law Review

Facial Discrimination

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

—Charles Dickens, *Nicholas Nickleby*

THE PHENOMENON OF APPEARANCE DISCRIMINATION

To be human is to discriminate. Humans constantly evaluate people, places, and things and choose some over others. The premise of antidiscrimination law

is that in some areas, such as employment and housing, certain criteria are not permissible bases of selection. Antidiscrimination law has yet to state a general model of discrimination that describes precisely which criteria are "illegitimate." Despite the difficulty of developing such criteria, some inner and outer bounds are clear. In the domain of employment, for example, members of racial and religious minority groups are legally protected from discrimination. Those who score poorly on employment

aptitude tests found to bear a legitimate relation to the job generally are not.

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

Appearance Discrimination Generally

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

Social science studies have shown that people attribute a wide range of positive characteristics to

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

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

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

held constant; another found that obese adults were discriminated against in the renting of apartments.

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

Appearance Discrimination in Employee Selection

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

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

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

Restructuring Employment Selection to Reduce Appearance Discrimination

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

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

appearance handicaps. To conform with the ban on preemployment inquiries, employers should reevaluate their commitment to the standard employment interview.

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

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

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

Moving from "Efficiency" to Equality

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

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

CONCLUSION

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

Appearance discrimination is sometimes closely connected to related kinds of discrimination. One significant aspect of prejudice against blacks, old people, or people in wheelchairs is a negative reaction to the way they look. Conversely, people may well dislike certain appearance characteristics—such as broad noses or wrinkled skin—because they associate them with groups they disfavor. Decreasing

appearance discrimination would help to unravel this entire web of stereotypes. As we expand our conception of what people in certain jobs can look like, we open these jobs up further to once excluded groups.

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

The need for stereotypes runs so deep that I do not think it will ever be thwarted; nor do I think that it will ever be converted to purely harmless expression. But I believe that education and study can expose the ideologies with which we structure

our world, and perhaps help put us in the habit of self-reflection.

QUESTIONS

1. Is discrimination based on gender, race, ethnicity, and sexual orientation also facial discrimination?
2. Are there cases when it is ethical to hire people based on the way that they look?
3. Is an employer ever justified in not hiring someone who is qualified for a job because he or she is overweight, ugly, or disfigured or has some other unattractive physical abnormality?
4. Do you think you would benefit or be harmed by putting your picture on your résumé?

To: You

From: The Philosopher

Subject: "John Stuart Mill on the Greatest Good and Expediency"

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

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

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

But Mill also made a distinction between utility and expedience:

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

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

** Ibid., p. 283.

CASES

CASE 1.1

The Job Interview

Sloan Wilson

“Why do you want to work for the United Broadcasting Corporation?” Walker asked abruptly.

“It’s a good company . . .,” Tom began hesitantly, and was suddenly impatient at the need for hypocrisy. The sole reason he wanted to work for United Broadcasting was that he thought he might be able to make a lot of money there fast, but he felt he couldn’t say that. It was sometimes considered fashionable for the employees of foundations to say that they were in it for the money, but people were supposed to work at advertising agencies and broadcasting companies for spiritual reasons.

“I believe,” Tom said, “that television is developing into the greatest medium for mass education and entertainment. It has always fascinated me, and I would like to work with it . . .”

“What kind of salary do you have in mind?” Walker asked. Tom hadn’t expected the question that soon. Walker was still smiling.

“The salary isn’t the primary consideration with me,” Tom said, trying desperately to come up with stock answers to stock questions. “I’m mainly interested in finding something useful and worth while to do. I have personal responsibilities, however, and I would hope that something could be worked out to enable me to meet them . . .”

“Of course,” Walker said, beaming more cheerily than ever. “I understand you applied for a position in the public-relations department. Why did you choose that?”

Because I heard there was an opening, Tom wanted to say, but quickly thought better of it and

substituted a halting avowal of lifelong interest in public relations. “I think my experience in working with *people* at the Schanenhauser Foundation would be helpful,” he concluded lamely.

“I see,” Walker said kindly. There was a short silence before he added, “Can you write?”

“I do most of the writing at the Schanenhauser Foundation,” Tom said. “The annual report to the trustees is my job, and so are most of the reports on individual projects. I used to be editor of my college paper.”

“That sounds fine,” Walker said casually. “I have a little favor I want to ask of you. I want you to write me your autobiography.”

“What?” Tom asked in astonishment.

“Nothing very long,” Walker said. “Just as much as you can manage to type out in an hour. One of my girls will give you a room with a typewriter.”

“Is there anything in particular you want me to tell you about?”

“Yourself,” Walker said, looking hugely pleased. “Explain yourself to me. Tell me what kind of person you are. Explain why we should hire you.”

“I’ll try,” Tom said weakly.

“You’ll have precisely an hour,” Walker said. “You see, this is a device I use in employing people—I find it most helpful. For this particular job, I have twenty or thirty applicants. It’s hard to tell from a brief interview whom to choose, so I ask them all to write about themselves for an hour. You’d be surprised how revealing the results are . . .”

He paused, still smiling. Tom said nothing.

From Sloan Wilson, *The Man in the Gray Flannel Suit* (Simon & Schuster, 1955), pp. 13–14.