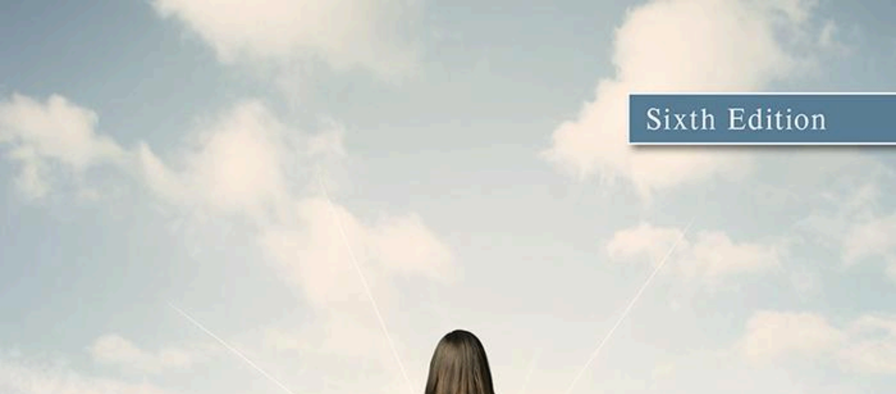

Sixth Edition

An Introduction to Business Ethics

McGraw Hill Education

Joseph DesJardins

AN INTRODUCTION TO BUSINESS ETHICS

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Joseph DesJardins
College of St. Benedict/St. John's University

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AN INTRODUCTION TO BUSINESS ETHICS, SIXTH EDITION

Published by McGraw-Hill Education, 2 Penn Plaza, New York, NY 10121.

This book is printed on acid-free paper.

1 2 3 4 5 6 7 8 9 LCR 21 20 19

ISBN 978-1-259-92266-4 (bound edition)
MHID 1-259-92266-9 (bound edition)

ISBN 978-1-260-68738-5 (loose-leaf edition)
MHID 1-260-68738-4 (loose-leaf edition)

Product Developers: *Alexander Preiss*
Marketing Manager: *Nancy Baudean*
Content Project Managers: *Lisa Bruflodt, Danielle Clement*
Buyer: *Sandy Ludovissy*
Designer: *Beth Blech*
Content Licensing Specialist: *Beth Cray*
Cover Image: *©Rancz Andrei/123RF*
Compositor: *Lumina Datamatics, Inc.*

Library of Congress Cataloging-in-Publication Data
Names: DesJardins, Joseph R. author.
Title: An introduction to business ethics / Joseph DesJardins, College of St. Benedict.
Description: Sixth edition. | New York, NY : McGraw-Hill Education, 2020. |
Includes bibliographical references and index.
Identifiers: LCCN 2018056961| ISBN 9781259922664 (bound edition : acid-free
paper) | ISBN 9781260687385 (loose-leaf edition)
Subjects: LCSH: Business ethics.
Classification: LCC HF5387 .D392 2020 | DDC 174/.4—dc23
LC record available at https://lccn.loc.gov/2018056961

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To Linda

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Preface to the Sixth Edition

My overarching goal in the sixth edition of this text remains what it was for the first edition: "to provide a clear, concise, and reasonably comprehensive introductory survey of the ethical choices available to us in business." This book arose from the challenges encountered in my own teaching of business ethics. Over the years I have taught business ethics in many settings and with many formats. I sometimes relied on an anthology of readings, other times I emphasized case studies. I taught business ethics as a lecture course and in a small seminar. Most recently, I taught business ethics exclusively to undergraduates in a liberal arts setting. It is difficult to imagine another discipline that is as multidisciplinary, taught in as many formats and as many contexts, by faculty with as many different backgrounds and with as many different aims, as business ethics.

Yet, although the students, format, pedagogy, and teaching goals change, the basic philosophical and conceptual structure for the field remains relatively stable. There are a range of stakeholders with whom business interacts: employees, customers, suppliers, governments, society. Each of these relationships creates ethical responsibilities, and every adult unavoidably will interact with business in several of these roles. A course in business ethics, therefore, should ask students to examine this range of responsibilities from the perspective of employee, customer, and citizen as well as from the perspective of business manager or executive. Students should consider such issues in terms of both the type of lives they themselves wish to lead and the type of public policy for governing business they are willing to support.

My hope was that this book could provide a basic framework for examining the range of ethical issues that arise in a business context. With this basic framework provided, individual instructors would then be free to develop their courses in various ways. I have been grateful to learn that this book is being used in a wide variety of settings. Many people have chosen to use it as a supplement to the instructor's own lectures, an anthologized collection of readings, a series of case studies, or some combination of all three. Others have chosen to use this text to cover the ethics component of another course in such business-related disciplines as management, marketing, accounting, human resources. The book also has been used to provide coverage of business-related topics in more general courses in applied or professional ethics. I take this variety of uses as evidence that the first edition was reasonably successful in achieving its goals.

NEW TO THE SIXTH EDITION

The primary goal of this new edition is to update cases with more contemporary examples and to continue to revise the text for the sake of clarity and accessibility for students. To those ends, readers will note the following major changes for the sixth edition:

- Every chapter begins with a new discussion case. Highlights include new cases on such topics as: Social Media and Political Advertising, Digital Marketing, Consumer Privacy, Freedom of Expression in the Workplace, Sexual Harassment and Gender Identity, Life–Work Balance, Global Climate Change, and Obesity and Opioids. The new cases include such well-known companies as: Wells Fargo, Facebook, Google, and Volkswagen.
- Beyond these new case discussions, new coverage has been included on virtue ethics, freedom of expression in the workplace, consumer privacy, a duty of national loyalty, the Ruggie Principles, and critical reflections on sustainability.

As always, a new edition provides an opportunity to not only update material, but to present it in a more accessible style. It has been gratifying to learn that readers have found the book clearly written and accessible to students unfamiliar with the field. In continuing to strive for these goals, I have rewritten some sections, deleted some outdated cases and dated material, and worked to improve the clarity of the more philosophical sections.

Readers of previous editions will find a familiar format. Each chapter begins with a discussion case developed from actual events. The intent of these cases is to raise questions and get students thinking and talking about the ethical issues that will be introduced in the chapter. The text of each chapter then tries to do three things:

- Identify and explain the ethical issues involved;
- Direct students to an examination of these issues from the points of view of various stakeholders; and
- Lead students through some initial steps of a philosophical analysis of these issues.

The emphasis remains on encouraging student thinking, reasoning, and decision making rather than on providing answers or promoting a specific set of conclusions. To this end, a section on ethical decision making at the end of chapter 1 provides one model for decision making that might prove useful throughout the remainder of the text.

ACKNOWLEDGMENTS

As with previous editions, my greatest debt in writing this book is to those scholars engaged in the academic research of business ethics. I tried to acknowledge their work whenever I relied on it in this text, but in case I have missed anyone, I hope this general acknowledgment can serve to repay my debt to the business ethics community. I also acknowledge three members of that community who deserve special mention and thanks. My own work in business ethics has, for over 35 years, benefited from the friendships of John McCall, Ron Duska, and Laura Hartman. They will no doubt find much in this book that sounds familiar. Thirty-five years of friendship and collaboration tends to blur the lines of authorship, but it is fair to say that I have learned much more from John, Ron, and Laura than they from me. Some material on the decision-making model, digital marketing, and the Volkswagen case is developed from sections I wrote for another McGraw-Hill book co-written with Laura Hartman and Chris MacDonald, *Business Ethics: Decision Making for Personal Integrity and Social Responsibility*. I would like to thank Laura and Chris for their kind permission to re-use that material here.

Previous editions have also benefited from the advice of a number of people who read and commented on various chapters. In particular, I would like to thank Norman Bowie, Ernie Diedrich, Al Gini, Patrick Murphy, Denis Arnold, and Christopher Pynes. The normal disclaimers of responsibility apply.

I owe sincere thanks to the following teachers and scholars who were gracious enough to review previous editions of this book for McGraw-Hill: Dr. Edwin A. Coolbaugh—Johnson & Wales University; Jill Dieterlie—Eastern Michigan University; Glenn Moots—Northwood University; Jane Hammang-Buhl—Marygrove College; Ilona Motsif—Trinity College; Bonnie Fremgen—University of Notre Dame; Sheila Bradford—Tulsa Community College; Donald Skubik—California Baptist University; Sandra Powell—Weber State University; Gerald Williams—Seton Hall University; Leslie Connell—University of Central Florida; Brad K. Wilburn—Santa Clara University; Carlo Filice—SUNY, Genesco; Brian Barnes—University of Louisville; Marvin Brown—University of San Francisco; Patrice DiQuinzio—Muhlenberg College; Julian Friedland—Leeds School of Business, University of Colorado at Boulder; Derek S. Jeffreys—The University of Wisconsin, Green Bay; Albert B. Maggio Jr.—bicoastal-law.com; Andy Wible—Muskegon Community College; Christina L. Stamper—Western Michigan University; Charles R. Fenner, Jr.—State University of New York at Canton; Sandra Obilade—Brescia University; Lisa Marie Plantamura—Centenary College; James E. Welch—Kentucky Wesleyan College; Adis M. Vila—Dickinson College; Chester Holloman—Shorter College; Jan Jordan—Paris Junior College; Jon Adam Matthews—Central Carolina Community College; Bruce Alan Kibler—University of Wisconsin-Superior; Carla Johnston—St. Cloud State University; Martha Helland—University of Sioux Falls; Jessica MacManus—Notre Dame; David Levy—State University of New York—Geneseo; Barbara Barresi—Capital University; Kenneth Ferguson—East Carolina University; Michael Shaffer—St. Cloud University; Wake Maki—University of North Carolina-Greenboro; and Richard McGowan—Butler. University

The sixth edition benefited from the thorough and thoughtful reviews by:

- Kapp Johnson, California Lutheran University
- Michael Hartford, Morehead State University
- Aaron Butler, Warner Pacific College ADP
- Paul Disney, Western Oregon University
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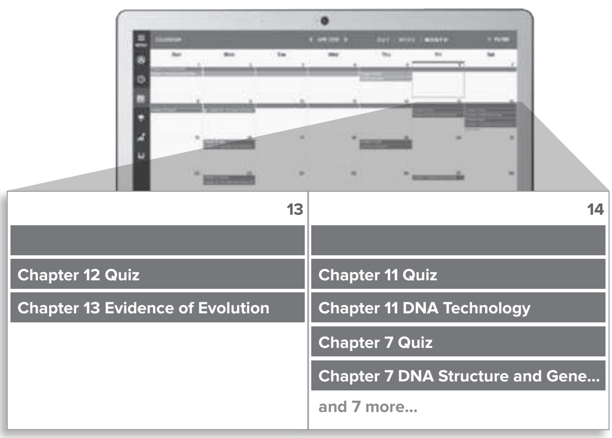

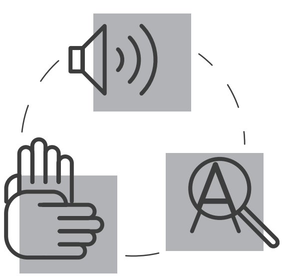

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1 CHAPTER

Why Study Ethics?

LEARNING OBJECTIVES

After reading this chapter, you should be able to:

- Identify why the study of ethics is important;
- Explain the interdisciplinary nature of business ethics;
- Explain the activity of ethical decision making;
- Clarify the distinction between ethics and law;
- Explain why ethical relativism is unreasonable;
- Distinguish between ethics, morality, and social justice;
- Apply a decision-making model to a case study.

DISCUSSION CASE: Wells Fargo: Who's Responsible?

Wells Fargo is one of the world's largest banking and financial services companies, operating in more than thirty countries with more than one-quarter of a million employees and 70 million customers. With roots in the mid-nineteenth century, it is also one of the oldest continuing operating financial institutions in the United States.

Wells Fargo has long been known for its business strategy of cross-selling, the practice of marketing additional products to existing customers. Traditionally, banks and financial services companies saw themselves as professionals who provided advisory services to clients in much the same way that an attorney or an accountant provides professional services to his or her clients. On this model, success would be measured in terms of achieving the clients' interests in managing risks, return on investment, and so forth. This model, which can be referred to as the fiduciary model, aims to align the interests of the firm with the interests of the client so that when the client succeeds, the firms succeeds. But many banks and financial institutions have moved away from this fiduciary model in recent decades to adopt a more transactional, consumerist model in which clients are viewed simply as customers to whom the company sells products. Here, the firm's success is measured in terms of how many products are sold and how much profit is earned from those sales. Of course, one trade-off of this shift is that client and business interests may not always align in that the business can profit whether or not the customer does. Wells Fargo was among the first banks to move aggressively in this direction.

Exactly how aggressive Wells Fargo had been in cross-selling became clear in September 2016 when the U.S. Consumer Financial Protection Bureau announced that Wells Fargo employees had fraudulently opened millions of unauthorized credit card and deposit accounts in the name of present customers. Wells Fargo admitted to the wrongdoing and agreed to fines of $185 million to state and federal authorities. In paying these fines, Wells Fargo admitted to selling products to customers who neither knew about nor consented to these actions. The resulting scandal plagues Wells Fargo to this day.

At the time of the announcement, Wells Fargo admitted that between 2011 and 2016 employees had opened more than 1.5 million fraudulent accounts and more than 500,000 unauthorized credit card applications in the names of present customers. Further investigations that reviewed activities prior to 2011 discovered that more than half a million additional fraudulent online bill-paying accounts had also been opened and hundreds of thousands of fraudulent insurance policies were sold to unsuspecting customers. As of spring 2018, Wells Fargo had admitted to selling more than 3.5 million unauthorized financial products to customers.

The process involved in committing this fraud was reasonably easy. Employees, mostly in the type of entry-level positions that recent college graduates might fill, had ready access to the information needed for the new accounts: names, addresses, social security numbers, and so forth. Applying for and confirming the sale of a new product for an existing customer could be done with a few clicks of a mouse. Investigations revealed that thousands of employees had taken part in the scheme. Over 5,000 employees lost their jobs when the fraud was discovered.

Of course, such widespread fraud could not have gone unnoticed by the managers who had oversight of these employees. It soon became clear that mid-level management had actively participated in these activities, including providing instructions on how to do it and how to avoid detection by customers. Employees were advised on how to forge signatures and create fake PIN numbers. Managers instructed employees to use some of their own personal information or fake e-mail addresses on the accounts so that the defrauded customers would not receive follow-up information or the new credit and debit cards. It also appears that employees who were reluctant to participate, or who attempted to blow the whistle, got punished by not only losing their jobs but also receiving negative evaluations that effectively prevented them from finding future employment in the banking industry. Less directly, but perhaps much more effectively, management participated in the practice by creating and enforcing demanding sales quotas. Employees who missed targets for cross-selling were required to work nights and weekends and were denied promotions and salary increases.

Initially, senior Wells Fargo executives, including CEO and Board Chair John Stumpf, seemed to claim that the fault rested with "dishonest" individuals who had been fired as a result. In testimony to the U.S. Senate Banking Committee, Stumpf claimed that: "I do want to make it clear that there was no orchestrated effort, or scheme as some have called it, by the company. We never directed or wanted our employees, whom we refer to as team members, to provide products and services to customers they did not want or need." Stumpf explained the widespread nature of the fraud as likely resulting from employees talking to each other.

But closer analysis showed a pattern of decisions, behavior, and tone at the highest executive levels that contributed to a culture in which such widespread fraud flourished. Stumpf himself was known for his mantra, "eight is great," suggesting a target of eight products for each customer in an industry where the average was less than half of that. During every quarterly earnings call when the fraud was prevalent, Stumpf had touted to investors the ever-increasing levels of record cross-selling. Partially as a result, the value of Stumpf's own stock ownership increased by more than $200 million during the five years that the fraud was prevalent.

There was also evidence that senior executives knew of the fraudulent sales well before the practice became public. A 2013 *Los Angeles Times* article, which eventually led to the government investigations that uncovered the fraud, contained allegations of this practice. Wells Fargo's own training manual contained a reminder not to sell products without the explicit consent of customers—a reminder that was highlighted and emphasized in a way to suggest that the practice was known to occur. Wells Fargo executives also had internal reports showing that the steady increase in cross-selling was correlated with a steady increase in accounts that were never used by customers.

Further, the entire culture of Wells Fargo seemed designed to encourage cheating and discourage honest sales practices. For example, the incentive system, ranging from sales targets for hourly workers to executive bonuses, made it clear to everyone that aggressive cross-selling was the expectation for all. The executive who had direct oversight of the sales division received over $125 million when she retired just before the scandal was revealed. (Wells Fargo eventually recovered half that amount in a clawback process.) Employees stated that reports to an internal ethics hotline were ignored. In response to claims that they failed to exercise their oversight function as required by U.S. federal law, board members later claimed they were left in the dark, learning about the scandal from the media. Like many corporations, the Wells Fargo CEO also served as the chair of the board.

Various government agencies were involved in this case. City of Los Angeles and California state investigators played a major role is uncovering the fraud. The federal Consumer Financial Protection Bureau also worked on the investigations and instituted the large fine against Wells Fargo. The U.S. Senate Banking Committee held several hearings in which members very publicly criticized Wells Fargo executives and its board. In February 2018, the U.S. Federal Reserve Bank, the primary regulator of U.S. banks, imposed strong penalties on the bank and its board. In an unprecedented punishment, the Fed restricted Wells Fargo's future growth and required the replacement of several board members for failing their oversight duty. But other government actions, including laws that prohibited fraud, protecting whistle-blowers, and laws that required ethical compliance and oversight by the board, proved ineffective in preventing widespread fraud that went on for many years.

DISCUSSION QUESTIONS

1. A helpful first step in ethical analysis is to look for harms and benefits. What harms were done by this fraud? Can you explain exactly what the ethical wrong was? Who, other than consumers, were harmed? Who benefited? Did the parties who benefitted deserve the benefit? Were any benefits unfair or unethical?
2. Where would you place primary responsibility for this scandal: individual employees who forged customers' accounts, managers who oversaw those employees, senior executives, board members, or the corporation itself?
3. Sometimes when we assign responsibility, we are looking for someone to blame, someone who is at fault. Who do you blame in this case?
4. Sometimes the question of responsibility is asked so that we can identify the cause and, in turn, prevent it from happening again. What recommendations would you make to prevent this from happening again?
5. How do you understand the difference between a fiduciary model and a transactional, consumerist model of business–customer relationship? What reasons exist for the fiduciary model? Is there an ethical difference between the two?

1.1 BUSINESS ETHICS: THE WHAT AND THE WHY

What is business ethics and why should one study it? The short answer is that business ethics is an academic discipline that examines ethical issues that arise within businesses. But the word "ethics" is commonly used to refer to two different but related things. On one hand, *ethics* refers to the beliefs, values, and principles that guide a person's life and decisions. In this sense, we might speak of the Wells Fargo employees as having no ethics, or we might refer to someone else as having high ethical standards. This meaning of ethics is sometimes applied not only to individuals but also to organizations or even entire societies, as when we conclude that Wells Fargo lacked a strong ethical culture. On the other hand, "ethics" is used to identify an academic field that studies the beliefs, values, and principles that do, and should, guide both individuals and organizations.

These two meanings of "ethics" are related because, from the earliest days of philosophy, the major aim of studying ethical beliefs, values, and principles was to try to influence individuals and organizations to become more ethical. A class in business ethics should aim not only to help you learn some information *about* business and ethics but it should also aim to help you *do* ethics and *be* ethical. That is, the goal of business ethics is more than just teaching and learning about the academic field of ethics. The goal is also to help each of us become more ethical, to make more ethically responsible decisions, and to help us create and promote ethical institutions.

But why do we need a class for this? Don't we all know right from wrong? Isn't it enough for business to simply obey the law? Consider the Wells Fargo case as an example. Everyone knows that creating fake accounts and fraudulently selling products to customers without their consent is wrong and illegal. Why do we need a class in ethics to figure that out?

But the world of ethics is more complicated than it might first appear. Sometimes an ethical issue will be as clear-cut as fraudulently opening an unauthorized bank account. But sometimes we need to think carefully in order to simply identify something as ethically wrong. For example, what, if anything, did Wells Fargo board members do that was ethically wrong? A case could be made that the board members were completely left in the dark about the fraudulent activities. Many of the issues we examine in this book involve situations in which the ethical decision and responsibility is not at all obvious. A class in business ethics can help us develop the skills needed to identify ethical issues.

But even when the wrong is obvious and widely understood to be wrong, individuals and businesses still commit unethical acts. Sadly, all too often people who should know better fail to do what is ethical. Literally, thousands of individuals working at Wells Fargo knew about and participated in a massive fraud. All of us, as employees, as managers, as citizens, have an interest in understanding how this happens. A class in business ethics can help us understand how and why people behave unethically. It should also help us think about what type of employee, consumer, or manager we should be. Of course, understanding unethical behavior is not the end of the matter. We want to understand why unethical behavior occurs because we also want to prevent it from happening in the future. A third goal of a class in business ethics, therefore, is to help us think about and create ethical organizations.

This point reminds us that ethical decisions and actions occur on several levels. As the Wells Fargo case demonstrates, business ethics involves decisions and actions of individuals, organizations, and at the level of governments and the wider society. As individuals, each of us will interact with businesses in several ways, most importantly as customers and as employees. A business ethics class can help us think about what we would do if we were the customers defrauded by Wells Fargo, or what we might have done had we been the individual employees who were expected to open fraudulent accounts.

But individuals do not exist in a vacuum. Again, as the Wells Fargo case suggests, it can be difficult for good people to live up to their standards within a corrupt organization. Likewise, it can be difficult for bad people to act unethically within an organization that promotes and lives up to high ethical standards. As we will see later in this book, organizations, corporate culture, and corporate leadership count. Finally, business organizations themselves do not exist in a vacuum. Every business is situated within one or more social, economic, and political structure. Just as individual decisions and behaviors are influenced by the surrounding organization, so too are the decisions of individual businesses and entire industries influenced by social, economic, and political environments. Obviously, the law itself is the major means by which a society imposes standards and expectations upon business. Needless to say, the social, economic, and political environments in which businesses operate are heavily value-laden, and a class on business ethics should help us think through these social, economic, and political values.

Given this description, it is clear that business ethics is a multidisciplinary field. First, the field of business ethics includes the more general discipline of philosophical ethics. The role of philosophical ethics is to provide the fundamental language and categories of ethics. For thousands of years, philosophers have thought and theorized about such things as rights and duties, virtues and values, social justice, responsibilities, liberty, equality, and the common good. How these various concepts fit together, how they might be justified, what their strengths and weaknesses are, and how and where they apply in life are questions that philosophers have examined for millennia. Learning about philosophical ethics provides a knowledge base for our own study of business ethics so that we won't have to start from scratch.

Business ethics also requires resources from such fields as psychology, business management, organizational behavior, leadership studies, and sociology. How and why people behave as they do, how the organizational environment encourages and discourages behaviors, and how organizations and individuals within them can create a culture in which ethical behavior flourishes are questions that arise from this diverse group of social sciences.

Broader social disciplines such as law, economics, and political science contribute to business ethics as we think about how business organizations fit into a broader social and political context.

To summarize, as a field, business ethics investigates ethical questions that arise at the individual, organizational, and social or political level. As ethically responsible people, each of us should consider how we interact with businesses as individual consumers or employees, as managers and executives, and as citizens. This text is a contribution to the academic field of business ethics. Its aim is to describe, examine, and evaluate ethical issues that arise within business settings and to help each of us become more ethical individuals and help us create more ethical institutions. A business ethics class therefore has many goals, including the following:

1. A class in business ethics can help us develop the knowledge base and skills needed to identify ethical issues.
2. A class in business ethics can help us understand how and why people behave unethically.
3. A class in business ethics can help us decide how we should act, what we should do, and the type of person we should be as individuals.
4. A class in business ethics can help us create ethical organizations.
5. A class in business ethics should help us think through the social, economic, and political policies that we should support as citizens.

1.2 BUSINESS ETHICS AS RESPONSIBLE DECISION MAKING

There is an important philosophical challenge that faces an ethics course. One would think that any ethics course should aim to improve ethical behavior. Why else do we require a class in ethics, as is often the case in business schools, if not to try to reduce the type of unethical behavior that occurred at Wells Fargo? Yet, ethical behavior is notoriously hard to teach. Philosophers have struggled with this issue since Plato himself opened one of his dialogues with this very question: Can ethics be taught? Unlike some academic disciplines, including some business disciplines, there is no single set of answers in ethics, no single body of information, nor is there even a single framework for thinking about ethics.

But this does not mean that there are no common goals, concepts, principles, and frameworks in ethics. The academic study of ethics can be traced back at least 2,500 years to the time of the ancient Greek philosophers Socrates, Plato, and Aristotle. As is true for any academic discipline, studying ethics requires that you become familiar with some of the basic ideas, concepts, and categories. Just as there are Generally Accepted Accounting Principles (GAAP) for accountants and a disciplinary language for fields such as economics and finance, there are a set of principles, standards, concepts, and language that are common within business ethics. Learning about ethics means understanding such concepts as rights, duties, autonomy, and character; such values as honesty, loyalty, integrity, and trustworthiness; and such principles as fairness, treating people with respect, and serving the common good. Chapter 2 will introduce some common ethical theories and principles that have significant impact on business ethics.

There is also a growing body of scholarly literature in business ethics itself, and an important element of a course in business ethics is to become familiar with that scholarly literature. In each of the following chapters, we will rely on some of this scholarship to review various ethical issues so that we may enter the business ethics conversation at a more advanced level than if we were starting from scratch. As the old adage reminds us, there is no reason to try to reinvent the wheel.

But beyond this academic side of learning information, business ethics also has a practical goal in the sense that it aims at judgment, behavior, and actions. We still all hope that a book or a class in business ethics will translate into more ethical decisions and behavior among business practitioners.

Unfortunately, this can be a difficult challenge. First, there is the daunting gap between ethical judgment and ethical behavior. From at least the time of Plato and Aristotle, Western philosophy has acknowledged a real discontinuity between judging some act as right and following through and doing it. (In contemporary vernacular, this is the challenge to "walk the talk.") It is difficult enough to know the difference between good and bad, or right and wrong. But knowing is different from doing, and not everyone has the fortitude, strength of character, or motivation to act in ways that we know are best. It is not at all clear, for example, that an ethics course would have made any difference to the individuals who perpetrated the fraud at Wells Fargo.

A second complication is that while we would all hope to encourage ethical behavior, few teachers would think that it is the role of an ethics course to *tell* students the right answers or *proclaim* what they ought to think and how they ought to live. That seems more like indoctrination than education. The role of an ethics course should not be to convey information to a passive audience, nor to treat students as children to be told what to believe and how to act. The goal is to treat students as active learners and engage them in an active process of thinking and questioning. Taking Socrates as the model, philosophical ethics rejects the view that blind obedience to authority or the simple acceptance of customary norms is an adequate ethical perspective. Teaching ethics must, in this view, involve students *thinking for themselves*. The unexamined life, Socrates claimed, is not worth living.

The problem, of course, is that when people think for themselves they don't always agree with each other, and they certainly don't always act in a way that others would judge as ethical. If the ethics classroom does not teach students the right answers, many students will conclude that there are no right answers. Thus, a major challenge for business ethics is to find a middle ground between preaching dogmatic truths to passive listeners on one hand and encouraging the relativistic conclusion that all opinions are equal to one another.

A common goal for most courses in business ethics navigates this difficulty by emphasizing the *process* of ethical reasoning. Business ethics is concerned more with reasoning than with answers. Responsible reasoning must begin with an accurate and fair account of the facts; one must listen to all sides with an open mind, one must become familiar with all the relevant issues at stake, and one must pursue the logical analysis of each issue fully and with intellectual rigor. One must be familiar with the language and basic concepts of ethics, as well as the thinking that has gone before. Business ethics essentially involves this process of ethical analysis. Without it, one risks turning ethics into dogmatism; with it, one has gone as far as possible to defeat relativism. With this process, we are best prepared to avoid the dilemma of dogmatism and relativism.

This dilemma not only confronts business ethics in an academic setting, it is true for ethics within business settings as well. Even if they could be successful in doing so, few business managers would want to approach ethical issues by making pronouncements of ethical dogma. Like good teachers, good business managers and leaders seek to empower their employees to make their own decisions. But responsible businesses also do not suggest that anything goes or that all values are equal. Value relativism in the workplace will likely lead only to power struggles and conflict.

In summary, a major goal of business ethics is to help people develop skills for responsible decision making. Responsible decisions may not always reach the same conclusions, which itself seems reasonable given the complexity of ethical issues. Yet, there are standards for making responsible decisions. Not every decision is as reasonable or responsible as every other. There are good and bad, reasonable and unreasonable, responsible and irresponsible decisions. This book hopes to aid you in this process of responsible decision making.

1.3 SKEPTICAL CHALLENGE I: ISN'T THE LAW ENOUGH?

Due, perhaps, to the difficulties just described, business ethics sometimes faces some real skepticism among students, teachers, and business practitioners. This skepticism emerges in a variety of forms, but two are worth considering at length.

One skeptical challenge to business ethics is that it is unnecessary. On this view, it is enough that business obeys the law; ethics is unnecessary and it distracts from business's main purpose. A second skeptical challenge, examined in the next section, builds on the relativism mentioned previously. On this view, ethics is little more than personal opinion and it is hopeless to think that we can ever reach agreement on contentious ethical issues. Once again, ethics is thought unnecessary and distracting from the real purpose of business. The conclusion reached from both of these skeptical challenges is that we can forego the study of business ethics.

Some believe that we can disregard ethics and concentrate on legal compliance. For many businesspeople, ethics is identified with obedience to the law. An ethical business, therefore, should have an ethics officer or an ethics department, usually staffed by attorneys, that monitors compliance with the legal and professional standards of conduct.

Unfortunately, compliance with the law alone will prove insufficient for ethically responsible business. From this compliance perspective, it is easy to think of the law as a set of rules that one can obey or violate in an unambiguous way. Traffic laws, for example, require stopping at a red light and prohibit speeds over a certain limit. But this is a very incomplete and misleading understanding of the law for several reasons.

First, even when there are specific regulations that require or prohibit certain actions, ambiguity is always possible in the application of those regulations. For example, consider the following case. At a management training program I recently attended, two corporate attorneys outlined some of the legal responsibilities for managers under the Americans with Disabilities Act. This law requires business to make "reasonable accommodations" for workers with disabilities. This law goes on to specify some, but not all, of the conditions that would count as a disability. During the question period, one manager explained that she had an employee who suffered from asthma and she wondered if asthma was a disability. The two attorneys conferred for a moment and answered simply: "It depends." The law's definition of a disability involves, in part, how serious the impairment is, how much it limits the worker's life activities, and whether or not it is easily corrected by medication. Given this ambiguity, the manager must make a judgment about how to treat this worker. Assume that this manager is committed to doing the ethically correct thing but believes that one's ethical responsibility is to obey the law. What should this manager do? In such a case, the decision is unavoidable because one cannot simply and unambiguously apply a rule of law. The law's phrase of "reasonable accommodation" is ambiguous and the manager therefore cannot avoid making a judgment about what ought to be done.

More generally, much of the civil law governing business is based on the legal precedents of case law rather than on specific statutes or regulations. Case law is fundamentally ambiguous in a way that statutory law is not. In a very real sense, many acts are not illegal until a court rules that they are. For example, both the attorneys and the auditors in the famous Enron corruption case were directed by executives to "push the envelope" of legality. Given that many of Enron's financial practices were quite literally unprecedented, their attorneys and accountants offered advice that they believed could be defended in court. Until and unless these acts were challenged in court, there was a real sense in which they were perfectly legal. While admittedly pushing the envelope on accounting and tax regulations, what they did was not obviously illegal at the time that they did it.

A similar situation occurs in many more recent cases, especially those involving information technology. So, for example, many legal protections concerning consumer privacy developed in a time before computers, the Internet, and digital marketing existed. What do privacy laws written in the time of paper files and records mean in the days of digital files and cloud computing? Should Uber be governed by legal regulations written to regulate taxi companies or by those written to govern independent contractors? Does Facebook have the same ethical duties regarding customer privacy and records as the phone company?

These questions highlight the fact that even the law faces significant challenges in offering clear direction for business. Further, as the Wells Fargo case demonstrates, even when the law is clear, there can be great incentives and opportunities to ignore the law, especially in cases where managers and senior executives seem complicit. These facts demonstrate that one cannot always rely on the law to decide what is right or wrong. The manager whose employee suffers from asthma will need to make a decision and the law won't decide this for her. An employee who believes that opening fraudulent banking accounts is wrong will still need to decide what to do when a manager encourages him or her to do it anyway.

But here is still a wide range of ethical issues that lay outside legal concern. Especially in a society that values individual freedom, not everything that is legal is ethically right, and not everything that is ethically wrong is illegal. The law leaves great freedom for individuals and organizations to decide for themselves what to do and how to live. For example, following the tragic school shooting in Parkland, Florida, in February 2018, Dick's Sporting Goods made a corporate decision to stop selling assault-style rifles at its 700 U.S. stores. Dick's Board Chair and CEO Ed Stack announced that the company needed to do the right thing even though it was not required by law. Other retailers followed, including Walmart that unilaterally decided to stop selling such rifles to people below the age of 21. These cases demonstrate that the law alone will never be enough to determine what a business should, or should not, do.

Expressed in these terms, perhaps the major reason to study ethics is because whether we *examine* ethical questions explicitly or not, they are *answered* by each and every one of us every day in the course of living our lives. Presumably, the executives at Wells Fargo did not wake up one morning and choose to defraud their customers and employees, but the actions they took and the decisions they made had the same result. The actions we take and the lives we lead give practical answers to the fundamental ethical question of how we should live. Our only real choice is whether we answer these questions deliberately or unconsciously. Thus, the philosophical answer to why you should study ethics was given by Socrates over 2,000 years ago. "The unexamined life is not worth living."

1.4 SKEPTICAL CHALLENGE II: ETHICAL RELATIVISM

A second skeptical challenge to business ethics is called ethical relativism. This view holds that ethical values are relative to individual opinions or cultural norms and that, therefore, there is no common rational basis for making ethical judgments. Ethics is thought to be too personal, too individualized, too relativistic to provide any objective guidance. Given the wide disagreements about ethics in business that can occur, this view can initially appear plausible, but upon closer analysis it is not.

The day on which I originally wrote this chapter began with a morning class in business ethics. After the class, a student remained to ask some questions about a paper assignment that I had returned during the previous class meeting. This student wanted to know how I had graded her paper, particularly why she had received an unexpectedly low grade. When I pointed out that much of the paper offered little more than her opinions, she asked a question that is familiar to many ethics teachers. "How can you say that my opinions are wrong? Isn't everyone entitled to their own opinions?" I answered that while people may be entitled to hold any opinion they wish, not all opinions are equal. Some are right and some are wrong, some are reasonable and some are unreasonable, some are thoughtful and others are less thoughtful. "But this is ethics," she responded. "Who's to say what's right or wrong?" I suggested that anyone who had *reasons* could say what was right or wrong and asked if she herself didn't have some reasons to support her opinions. Why did she believe what she had written? She responded that she didn't know but that it was "just the way I feel."

This student's response is a perfect example of ethical relativism and I suspect that this skeptical reaction might be familiar to many students. Ethics is not like math, science, or accounting. One cannot look up the right answer or calculate the answer with mathematical precision. One cannot prove the truth of an ethical judgment in the way that one can offer a proof in geometry. One cannot run an experiment that supports, or refutes, an ethical opinion. Unlike these other disciplines, ethics appears to rest on mere opinion. People differ about ethical judgments, and there seems no rational way to decide between competing conclusions. Ethical issues seem based in personal feelings and emotions.

Ethical relativism holds that ethical values and judgments are ultimately dependent upon, or relative to, one's culture or personal feelings. In this sense, ethics truly is simply a matter of opinion, be it the opinion of one's self or one's culture, society, or religion. Ethical relativism presents a serious challenge to any consideration of ethics because it denies that we can make rational or objective ethical judgments. There is no right or wrong, moral or immoral, except in terms of a particular culture or society. The student who remained after class was implicitly assuming a version of ethical relativism. In her view, ethical judgments were a matter of opinion and if two people differed in their opinions, there was no legitimate way to decide between them. Each person is entitled to his or her own opinion, and no one opinion is more legitimate or more correct than another.

Relativism represents a serious challenge to ethics, including business ethics, because if it is correct, then it makes little sense for us to attempt to evaluate ethical judgments in business. If relativism is correct, then at best business ethics can help explicate the cultural or social values that underlie our ethical judgments, but it can do little to evaluate them as right or wrong. Philosophical ethics, from the relativist perspective, becomes little more than a process of values clarification in which we can clarify and elucidate our values but not justify them.

Relativism is especially important as we think about ethical issues involving international business. Consider the issues raised by child labor. Some Western businesses have been criticized for using suppliers who rely on child laborers working under harsh conditions for long hours and very low wages to produce expensive consumer goods like sneakers and designer clothing. A common response to such criticism points out that such working conditions are accepted in the host country and, therefore, critics from economically developed countries have no justification for imposing their own cultural norms on others. This, in a nutshell, is ethical relativism.

Let us use the recent example of sexual harassment to consider how my relativist student might scrutinize it. One form of sexual harassment occurs when submission to sexual favors is made a condition of employment. (This is called *quid pro quo* harassment, and it was the type of harassment alleged by multiple women against the movie producer Harvey Weinstein.) Imagine a male executive telling a female job applicant that she would be hired only if she submitted to his sexual advances. Now imagine that our relativist concludes that the criticism of harassment is simply a matter of opinion, that all opinions are equally valid, and that while the woman may *feel* that harassment is wrong, the manager may *feel* that it is right. (He might answer criticism as did my student, "it's just the way I feel.")

From the relativist perspective, each opinion or feeling is equally valid. Is there any way that the #MeToo movement might defend the claim that such harassment is rationally and objectively unethical? One might argue, among other things, that sexual harassment subjects women to unfair workplace discrimination. The inequality of power in this situation places the woman in the unacceptable position of having to choose between her livelihood and her own sexual integrity. Such a choice is fundamentally coercive and threatening. One might also point out that the male manager would unlikely accept as a general rule the principle that employers are justified in using threats to coerce employees into submitting to such degrading acts. In developing such arguments and appealing to standards and principles, we seem to have moved the discussion from mere opinion to a more reasoned conclusion.

Of course, the relativist could argue that such values as equality, fairness, integrity, self-respect, and freedom from coercion and threats are all themselves a matter of personal or social opinion. From the relativist perspective, all that has been shown is that harassment is wrong as long as you assume that people deserve a workplace that is free from discrimination and threats. But, the committed relativist would reply, who is to say that people do deserve such things? While we may have advanced the debate somewhat, we still haven't proven to the relativist that harassment is wrong.

Let us consider how the debate has advanced. If, like my student, we start with mere opinions and feelings, then this discussion has moved beyond mere opinion by appealing to certain values and principles that justify and legitimize that opinion. This is no longer mere opinion but opinion based on principle. In developing this argument, we would point to certain facts, such as the disproportionate power relationship that exists between job applicant and employer. We would point out the crucial importance that jobs play in our lives and the harms that can occur from the loss of a job. We could explain the psychological good of self-respect, offer a conceptual analysis of integrity and its value to the self, and discuss the importance of personal autonomy. We could take a social perspective and consider the present status of women in the workplace and the social harms that can result from discrimination. And very importantly, we would employ the careful and rigorous rules of logic throughout our reasoning. Conclusions reached after this process surely are more reasonable and justified than mere opinion.

In the face of such reasoning, the relativist could continue to insist on proof, and this demand could go on indefinitely. (Although, as I would point out to my student, a paper that argues against harassment by reasoning along the lines suggested above would be more reasonable, and therefore receive a higher grade, than one that simply asserts the opinion that harassment is wrong because "that's just the way I feel.") But note that at this point the relativist would have to reject not only the original conclusion (sexual harassment is wrong) but also a wide variety of other beliefs and values (everyone should be treated with equal respect, people should be free from coercion and threats, self-respect is good, loss of dignity is harmful, and so forth). The costs of relativism—what you would need to give up to maintain it—just got much higher. If the relativist is determined enough, and if his or her standards of proof are high enough, then perhaps we could never satisfy the demand for proof.

However, we'll set more modest goals for this text. Throughout this book, we will treat ethics more as a process for thinking and reasoning than a set of specific beliefs or conclusions. I will assume that we can reason about ethical matters and that it is possible to rationally defend some views against others. I will assume that a conclusion defended by appeal to such values as equality, fairness, freedom from coercion, integrity, freedom from harm, and honesty (among others) is a conclusion that is more reasonable than the one that is simply asserted as a matter of personal feeling or opinion. A conclusion that is reached through careful logical analysis and reasoning is rationally better than the one that is simply asserted as a personal opinion. An argument that goes on to elucidate such values as equality, fairness, and freedom from coercion is more rational still.

We may discover that the most interesting and challenging ethical controversies involve a clash between two or more such values. Thus, for example, after the decisions made by Dick's Sporting Goods and Walmart, a 19-year-old filed a lawsuit against the companies on the grounds that his rights of equal treatment were violated by their free choice to stop selling guns to people under 21. In this case, we seem to have a conflict between two claims of freedom of choice. I will also assume that it is exactly at such points that more, rather than less, rigorous and careful reasoning is required. For example, some might argue that as long as the young man could buy a gun elsewhere, his rights were not violated by the decisions made by Dick's Sporting Goods and Walmart. Others might argue that his freedom was violated when private companies seek to restrict his choices on the basis of their own personal values. Disputes about the meaning and scope of such fundamental values provide a greater justification for the need of ethics as a process of reasoning.

Perhaps, then, we can learn from ethical relativism and take it as a challenge to our own complacency and laziness. Whenever we are ready to give up and simply assume that our own opinions are adequate, let us call to mind the relativist question as a challenge: "Who is to say what's right?" It will be a challenge worth answering.

Providing answers to the relativist has long occupied philosophical ethics. The ethical theories that we examine in the following chapter can be thought of as philosophical attempts to provide more fundamental answers to the relativist. But before we turn to these theories, and before we leave this consideration of ethical relativism, let me call your attention to several confusions that often lead students into the relativist trap. In my own teaching experience, many students who do not avoid these traps end up reaching relativist conclusions by default.

The first trap has already been mentioned. We should be careful not to hold ethics to too high a standard of proof. If we start with the assumption that an ethical judgment must be proven as absolutely certain and beyond doubt, then ethics assuredly will fail to meet this standard. Mathematics and the more theoretical side of physics, engineering, and chemistry may meet this standard, but very few other intellectual fields would pass such a test. Reasoning in all of the humanities, the social sciences (including economics), the biological sciences, medicine, meteorology, and the applied sides of physics, chemistry, and engineering would fail to meet this standard in most of their conclusions. The business-related disciplines of management, marketing, finance, and accounting never establish their conclusions as certain beyond doubt. So, before rejecting ethics as little more than mere opinion, we should be careful that we are not using a standard that would commit us to similar conclusions about most other areas of human knowledge.

The second trap involves confusing the fact that there is wide disagreement about values, with the conclusion that no agreement is possible. The first view, often called *cultural relativism*, offers a factual description of different cultures and societies. People do not always agree about ethical matters. Some cultures may believe, in fact, that children are little more than slave labor. However, in itself, the fact of disagreement provides no reason for concluding that all of these diverse opinions are equally valid. To understand this point, consider the wide disagreement about scientific matters. We could find people who believe that increased CO_2 emissions do not increase global temperatures. But just because someone believes something, it does not mean that his or her belief is true, reasonable, or valid. Indeed, we can find many examples of widespread beliefs in such things as the Earth is flat, that the Earth is only a few thousand years old, that evolution has never occurred, that aliens visit regularly, or that people can foresee the future by charting the course of the planets and stars. Of course, believing that the world is flat does not make it flat and believing that aliens exist does not mean that they do. So, too, with ethics. The fact that people hold different opinions does not, in itself, mean that each of these opinions is equally valid.

We should also be careful not to assume too quickly that there is a wide disagreement about fundamental ethical values. Certainly, there is a wide variety of cultural beliefs, customs, values, and practices. But there is also wide agreement about many values as well. Child abuse, torture, genocide, and slavery are just some practices that are universally condemned on ethical grounds. No doubt, we can find cases where individuals and even societies engage in such atrocities, but we would find very few who would seriously defend these practices as justified or merely a matter of personal opinion. While it may appear that some cultures legitimize child labor, it is more likely the case that such circumstances are seen as an unfortunate but necessary alternative to starvation. Accepting a deplorable situation as the least harmful of the alternatives is not the same as accepting it as ethically valid.

A third trap involves confusing values such as respect, tolerance, and impartiality with relativism. Respect for other people is a fundamental ethical value. Part of what it means to respect someone is to listen to his or her opinions and to show tolerance for opinions that differ from our own. But tolerating diverse opinions and values is not the same as ethical relativism. Let us turn the relativist challenge back on to the value of tolerance. Is tolerance (and respect and impartiality) merely a matter of opinion? If it is, then intolerant people have no reason to change their views. Condemning intolerance is simply your opinion. If, on the other hand, tolerance is not merely a matter of opinion, if in other words, it is put forward as a legitimate social value, then we have at least one value—tolerance—that has escaped the relativist critique.

1.5 ETHICS, MORALITY, AND SOCIAL JUSTICE

Ethics is a vast field of study that really addresses one simple question: How should we live our lives? This might be reduced to the question that each of us asks every morning when we wake up: What am I going to do today? But while this is a simple question, it is perhaps the most fundamental question any human can ask: How should I live? What should I do? What type of person should I be?

For many people, these questions are implicitly answered by conforming to the ethos and customs of their culture. We act the way we do, we become the type of person we are, because that is what is expected of us by our family, our culture, and our religion. In a tradition that stretches back to the ancient Greeks, questions of *ethics*, what we should do, can be answered by appeal to *ethos*, what we are expected to do. But philosophical ethics denies that conformity and obedience are the best guides to how we should live, as the Wells Fargo fraud case seems to demonstrate. From the time of Socrates, philosophy rejects conformity to authority as the source of ethics; it rejects conformity to an ethos as the basis of ethics. Instead, philosophical ethics defends the use of reason as the foundation of ethics, seeking a reasoned analysis of ethos and a reasoned defense of how we ought to live.

As a branch of philosophy, ethics asks us to step back and rationally evaluate the customary beliefs and values that people do hold. Philosophical ethics requires us to abstract ourselves from what is normally or typically done and reflect upon whether or not what *is* done *should* be done and whether what *is* valued *should* be valued. The difference between what *is* valued and what *ought* to be valued is the difference between ethos and ethics.

Perhaps this observation also helps to explain some of the skepticism surrounding business ethics. Any philosophical focus on business ethics seems to suggest some dissatisfaction with, or misgivings about, what is normally or customarily done in business. Why step back from what is normally done unless you have reason to doubt that what is being done should be done? But while philosophical ethics is *critical* in the sense of demanding reasons for each decision, it need not be *critical* in the sense of rejecting or disagreeing with the customary norms and standards.

As a branch of philosophical ethics, business ethics asks us to step back from our daily decisions, step back from the ethos of business, and reflect upon how business decisions affect our lives. In what ways do the practices and decisions made within business promote or undermine human well-being? Raising these questions does not imply that what is normally being done is unethical. After examining ethical issues in business, we may end up defending the same values and making the same decisions that we would have originally. But what philosophical ethics does require is a conscious reflection and analysis of those beliefs and values upon which we act. Again, to rely on Socratic wisdom, philosophical ethics assumes that "the unexamined life is not worth living." As we proceed through an examination of business ethics, we are really doing little more than reflecting upon daily events and echoing Socrates' question: How ought we to live?

So, how ought we to live? The "we" in this question means both each of us individually and all of us together. In the first individual sense, this is a question about how I should live my life, how I should act, what I should do, what kind of person I should be. In the collective sense, this is a question about how a society ought to be structured, about how we ought to live together in community.

This first sense of ethics, the concern with how each of us should live our lives, is sometimes referred to as *morality*. One part of morality involves examining principles and rules that might help us decide what we should do. Another important part of morality involves an examination of those character traits, or *virtues*, that would constitute a life worth living. This distinction is sometimes made in terms of deciding how we should *act*, and deciding the type of person we should *be*. The second, more collective, area of ethics is sometimes referred to as *social ethics*, and it raises questions of public policy, law, civic virtue, and political philosophy.

Business ethics addresses both kinds of questions. Questions of individual morality will be a major theme throughout this text. One of the most fundamental goals of business ethics is to provide opportunities for students to step back from the immediate concerns of day-to-day life and ask: "What kind of person should I be?" "What should I do?" "What kind of life will I live?" "What would I have done if I worked at Wells Fargo and was responsible for managing the sales department?"

No doubt, most of us at most times of our lives are too concerned with more immediate issues, such as completing an assigned task, paying our bills, and having fun, to consciously step back and ask about the meaning and value of what we do. But this is what philosophical ethics demands. Morality takes the larger perspective. Imagine late in your life looking back to reflect on the kind of life you have led and asking: "Has this life been worth living? Am I proud of my life? Am I proud or ashamed of the person I have been? Has this been a full and meaningful life?" These are among the fundamental questions of morality.

Business ethics also addresses issues of social ethics and public policy. Understanding this viewpoint can start with the recognition that business institutions are human creations and this fact means that humans cannot avoid responsibility for them. As the discussion case indicates, business institutions have a tremendous influence on many lives. We depend on business for our jobs, our food, our health care, our homes, our livelihoods, and so on. The public policy perspective invites us to step back from the actual practice of business to ask: "How *should* business be structured?" If we had it all to do over again, how would we arrange business institutions in our society? In this sense, public policy questions ask us to take the point of view of the citizen who is deciding how society—and business institutions as a part of society—ought to be organized and conducted. Many observers would point out that the Wells Fargo scandal is much more an ethical failure of institutions than of individuals. When we ask these questions, we can see that important ethical questions remain even when the particular decision facing an individual appears clear-cut. As an executive at a banking firm, you may choose to pursue a strategy of aggressive cross-selling, but citizens get to decide whether or not to regulate such banking practices and whether or not to bail out banks that fail as a result.

In summary, philosophical ethics developed out of the recognition that reliance on *ethos*, the cultural expectations for how we should live, is an incomplete and inadequate answer to the fundamental question of how we ought to live our lives. We cannot escape responsibility for our choices. But the ethical question of how we should live occurs at two levels: at the level of personal morality, ethics asks about how I should live, what I should do, what type of person I should be; at the level of social justice, ethics asks about the type of society, community, and organization in which we ought to live.

1.6 A MODEL FOR ETHICAL DECISION MAKING

This chapter introduced ethics as a process of reasoning rather than as set of answers. The opening pages of this chapter spoke of the goal of business ethics not as offering strict rules and moralizing sermons but as a process of responsible decision making. Deciding how to act, how to live, and who to be are the fundamental challenges of living an ethical life. The following decision-making model can help this process.[1]

Making a responsible decision requires that we begin with a fair and accurate understanding of the situation. We need to know the *facts*. Because ethical issues often involve complicated and emotionally charged situations, uncovering the facts and attaining an unbiased and complete understanding can be more difficult than it sounds. In the Wells Fargo case, for example, we would want to know the facts about how employees were incentivized to cross-sell, what, in fact, happened to those who refused, what the board knew and when, and what managers told individual employees.

A second step in responsible decision making is to identify the ethical issues at stake. It is not uncommon for people to disagree over whether or not a particular case is an ethical case at all. Oftentimes what one person sees simply as an economic or legal issue will be viewed by others as a major ethical issue. For example, someone might think of the Wells Fargo's actions as involving nothing more than aggressive sales techniques; others might see this as a case of unethical fraud. Explaining what makes an issue an ethical issue is a vital step in ethical decision making.

Once the ethical issues have been identified, the next steps are to identify the people who are affected by the situation and understand how they might be affected. Who are the stakeholders in a decision? How will they be harmed or benefited? What will the likely consequences be? What is owed to the various stakeholders?

A next step is to consider alternative courses of action. What choices are available? A useful stimulus to this step is to put yourself in another person's position and imagine how the situation would appear, how it would feel, from his or her perspective. Use what has been called "moral imagination" to explore a wide range of alternative choices and values. Consider how your decision will be interpreted from another perspective. As you approach a decision, step back and employ what we might call the "*New York Times* test." What would the public reaction be if your decision was presented in full detail on the front page of the *New York Times*? This is a way to ask oneself how a decision will stand up to public scrutiny. Is your decision one that you would be willing to explain and defend openly, or is it a decision that you would just as soon have kept quiet? Transparency is often a good test for responsible decision making.

Ultimately, one must make a decision. After understanding the facts, considering all stakeholders, and thinking about alternatives, choose a course of action. But even after the decision has been made, responsible decision making requires us to monitor the results and learn from them. Responsible decision making is an iterative process: think–choose–act–think.

To review, a responsible ethical decision involves the following:

- Understanding the facts;
- Identifying the ethical issues involved;
- Identifying all stakeholders;
- Understanding how those stakeholders will be affected;
- Employing moral imagination to understand alternatives;
- Considering how others will judge your decision;
- Making a decision and monitoring and learning from the results.

REFLECTIONS ON THE CHAPTER DISCUSSION CASE

Reflecting on the discussion case that opened this chapter can be useful to reinforce each point. What are the facts of the Wells Fargo scandal? This chapter provided only a very brief case description. Are there any facts that you would need to know before making a judgment about this case? Are you missing any information?

Next, consider the range of ethical issues involved in the case. Wells Fargo cheated and defrauded millions of people. They hurt many innocent people. Managers and executives encouraged such fraud, if not actively participated in it. Board members failed to exercise their oversight responsibility. Government regulators failed in their duties to promote honesty in financial markets and to protect consumers from fraud. Fraudulent financial markets failed to achieve the common, overall good for society.

Philosophical ethics of the type introduced in the next chapter would examine each of these highlighted concepts in turn. What do we mean by, and why do we value, “fairness”? Why is it important to trust others? What is wrong with fraud? When is punishment deserved, and what justifies punishment? What duties does government have toward its citizens?

We should also reflect on the wide range of people who were adversely affected by fraudulent sales: banking clients, consumers, employees, competitors, governments, and the financial markets themselves. Are there any parties that unfairly benefited from their actions? More generally, we should understand that the decisions made within business affects the lives and well-being of millions of people every day who depend on the decisions made in business as diverse as small family-run firms to the world’s largest corporations.

The Wells Fargo scandal and the widespread harms caused by that fraud surely can be traced to the ethical corruption of specific individuals who reported fraudulent rates. Arrogant and greedy individuals willing to violate legal and ethical standards can be faulted for many problems in business ethics. Unfortunately, such people are all too common. But we should also recognize the failure of the many “gatekeepers,” those people and institutions whose role it is to provide checks on such behavior. Auditors, accountants, attorneys, financial analysts, compliance officers, board members, and government regulators have roles to play within the economic system to ensure the integrity of that system and to prevent fraud and abuse.

CHAPTER REVIEW QUESTIONS

1. How would you answer someone who asked: “Why should I study ethics if I want to be an accountant?”
2. What is the difference between *ethics* and *ethos*?
3. Why is obedience to the law not enough to be an ethical person, or an ethical business?

4. This chapter introduced a distinction between morality, virtues, and social ethics. How would you describe each?
5. What reasons would you offer to convince someone that ethical relativism is unreasonable?
6. Other than business managers and owners, which other constituencies might have a stake in business decisions?

ENDNOTE

[1]This decision-making model is adapted from a more detailed version offered in *Business Ethics: Decision Making for Personal Integrity and Social Justice,* by Laura Hartman, Joseph DesJardins and Chris MacDonald (McGraw-Hill, 4th ed., 2017).

2 CHAPTER

Ethical Theory and Business

LEARNING OBJECTIVES

After reading this chapter, you should be able to:

- Understand the basic concepts and categories of ethics;
- Explain ethical virtues;
- Identify a number of virtues and vices;
- Explain the ethical theory of utilitarianism;
- Explain how utilitarian ethics can provide support for market economics and business policy;
- Explain several challenges to utilitarian ethics;
- Explain an ethics based on principles, rights, and duties.

DISCUSSION CASE: Mylan Pharmaceuticals and the EpiPen

Mylan, Inc. is a U.S. pharmaceutical company that manufactures the EpiPen, an easy-to-use auto-injection medical device. EpiPen delivers the proper dosage of epinephrine, a drug that safely and effectively counteracts anaphylaxis, a severe allergic reaction that can close a person's breathing passages and cause death. EpiPen is especially effective because the proper dosage can be quickly delivered by anyone—the persons themselves, co-workers, teachers, by standers—by simply placing the device against the skin and pushing a button. Because of the ease of use, EpiPens are especially popular for treating severe allergies in children.

The device itself is simple and inexpensive, costing at most a few dollars to manufacture. The drug epinephrine is also inexpensive, costing less than $1 per dose. But, epinephrine degrades over time, so medical professionals recommend that unused devices be replaced at least once a year. It is not uncommon for someone susceptible to anaphylaxis to keep several on hand at work, school, or home. Because the EpiPen has been in use and proven its effectiveness for over forty years, the initial investment required to develop the product has long since been recovered.

Mylan purchased rights to the EpiPen in 2007. At the time, EpiPens sold for under $60 each, and annual sales approached $200 million. Mylan invested to improve the design and manufacturing process, but the overall product did not change significantly. Mylan also invested heavily in marketing the product, including an advertising campaign aimed at increasing public awareness of anaphylaxis and lobbying governments to require institutions like schools to keep EpiPens on hand for emergencies and to protect those institutions from liability for using EpiPens in emergencies. By 2016, it was estimated that EpiPen accounted for over $1.5 billion in revenues for Mylan.

In the following years, a number of public and private decisions lead to major increases in the costs to consumers. Because a portion of anaphylaxis cases require a second dose of epinephrine, medical guidelines were changed in 2010 to recommend that patients always have access to two doses. Soon after this recommendation, Mylan began selling EpiPens only in packages of two, effectively doubling the price to consumers. For a variety of reasons, including regulatory roadblocks, business decisions, and patent protections, competitors have had a difficult time entering and remaining on the market. By 2016, when few competitors remained and Mylan had a 90 percent share of the market, the price for a two-pack of EpiPens had risen to over $600. It was estimated that in 2016, sales of EpiPen produced close to $1.5 billion in revenues. During this same period, Mylan's CEO's pay rose from $2.3 to $19 million annually. In 2016, former CEO Robert Coury was reported to have received over $90 million in compensation from Mylan.

In 2016, Mylan came under serious public criticism for increasing the price of EpiPen. Some critics pointed out that Mylan's CEO, Heather Bresch, was the daughter of former West Virginia governor and present U.S. Senator Joe Manchin. These critics claimed that her political connections helped pave the way for governmental regulations, including increased risk warnings for anaphylaxis, encouragement to schools to stock EpiPens, and regulations to make EpiPens as publicly available as defibrillators. In October 2016, Bresch was called to testify before the U.S. Congress to defend Mylan's actions.

The criticisms of Mylan can be grouped into three general categories. First, some critics saw the massive profits and excessive executive compensation as another example of out of control corporate and personal greed. Second, others saw Mylan as an example of systemic failures in health care policy and economics that prevent society from providing adequate health care. Finally, some critics charged that Mylan's actions violate a number of basic ethical principles.

The Mylan hearings took place during a period when affordable health care was at the center of a national political debate. This also occurred at the time when another pharmaceutical company executive, Martin Shkreli of Turning Pharmaceuticals, was in the news for raising the price of one of its drugs from $13 to $750 per pill. Shkreli, who the press had named "Pharma-Bro" for his condescending attitude toward public criticism, had also been called to testify before Congress, but he refused on the grounds of self-incrimination. During Bresch's testimony to the U.S. House Oversight and Government Reform Committee, Congressman John Duncan told her that "The greed is astounding, it's sickening and disgusting. I'm a very conservative, pro-business Republican, but I am really sickened by what I heard today and by what I've read before about this situation. In my opinion, no one can really earn or deserve $19 million a year."

The national debate about affordable health care provided the context for much of the broader, systemic criticism of Mylan. The national debate on affordable health care focused on the relative strengths and weaknesses of free markets and government regulation in providing adequate health care. Those who argued for a greater role for free markets, most often Republicans, saw Mylan as a case study for what happens when there is a lack of competition and the market gets controlled by a near monopoly. Mylan was able to exploit this unfair competitive advantage and raise prices almost without consequences. These critics also pointed out that government regulation of the market contributed much to the problem. Governmental actions, such as requiring institutions and schools to stock EpiPens and creating regulatory standards that created a barrier for competitors to enter the market, created an economic environment in which Mylan's exploitation could flourish. As a result, the public was denied access to the important good of affordable health care.

Those who supported greater governmental involvement in the health care system, most often Democrats, saw Mylan as a case study of what happens when important public goods such as health care are left to the decisions of profit-seeking corporations. These critics argued that Mylan used its political influence, lobbing activities, and marketing campaign to create artificial markets, eliminate competition, and deny the poorest citizens access to needed health care. From this perspective, a managed health care system in which private businesses are regulated by public bodies would provide better overall health care. In particular, they argued that only government regulation could prevent companies from price gouging on prescription drugs and other health care products that consumers need.

Finally, many criticisms of Mylan appealed to fundamental ethical principles and values. These critics pointed out that citizens should have a basic right to health care and that this need should not be sacrificed for the profit of private businesses. Other critics pointed out that the burden of high drug prices fell disproportionately on the poor, and that a basic principle of fairness and equality is violated by a system in which health care is distributed according to the ability to pay. Still other critics raised questions about the justice of a system in which executives earned tens of millions of dollars a year, while poor, sick people were denied access to the product that generated this wealth. These critics argued that Mylan had a duty to provide the EpiPens at an affordable price.

DISCUSSION QUESTIONS

1. What judgment would you make about Mylan? Did they do anything ethically wrong in their pricing of the EpiPen?
2. Do you think that a pharmaceutical company should be allowed to charge whatever price the market will pay for prescription drugs? Should prescription drugs be treated differently than any other consumer product?
3. Congressman Duncan used the word "greed" when describing Mylan's actions. What is the difference between greed and simply the desire for more money? Is greed always bad? Why or why not?

4. As a citizen, would you support more, or less, government oversight and regulation for the pharmaceutical industry? Why?
5. What duties do pharmaceutical companies have toward customers?
6. When, if at all, is it unfair that a consumer cannot afford a product that he or she wants or needs?
7. Do you agree that "no one can really earn or deserve $19 million a year"? How about $90 million?

2.1 INTRODUCTION

The Mylan EpiPen case demonstrates how business activities can raise fundamental questions of fairness, justice, rights, duties, and virtues. It would be impossible to talk about the Mylan case without using the language of ethics. Because the language of ethics is inextricably a part of business, it makes sense to begin our examination of business ethics with a short introduction to some of the basic concepts, terms, and categories of philosophical ethics. Just as you need to have a familiarity with the language and concepts of economics and management to make responsible business decisions so, too, you need a basic familiarity with ethics. This chapter will show how some of the key concepts of ethics are both relevant and necessary for any study of business.

Chapter 1 introduced ethics as a process of reasoning about what is perhaps the most significant question any human being can ask: How should I live my life? But, of course, this question is not new; every major philosophical, cultural, political, and religious tradition in human history has grappled with it. In light of this, it would be a mistake to ignore these traditions as we examine ethical issues in business. Nevertheless, discussion of ethical "theories" and philosophy can seem too abstract to be of much relevance to business. In this chapter, I hope to suggest a more accessible understanding of ethics, one that will shed some light on the practical and pragmatic application to actual problems faced by businesspeople.

An ethical theory, or ethical framework, is nothing more than an attempt to provide a systematic answer to the fundamental ethical question: How should human beings live their lives? Ethical theories attempt to answer the question of how we should live, but they also give reasons to support their answer. Ethics seeks to provide a reasonable justification for why we should act and decide in a particular prescribed way. Anyone can offer advice for what you should do and how you should act, but a philosophical and reasoned ethics must answer the "Why?" question as well.

As a first step, let us reflect upon the reasoning that was offered to support and criticize the actions of Mylan. As described in the discussion case, these reasons fall into three general categories. Some reasons appeal to the personal character of the people involved. Executives were described as "greedy" or uncaring. Other reasons appealed to the consequences of EpiPen pricing and to failures within the political and economic system to serve the public good. Other reasons appealed to certain principles: fairness, justice, rights.

As it turns out, the three major traditions of ethics that we shall rely on in this text are reflected in these three categories. This should be no surprise, since ethical traditions in philosophy reflect common ways to think and reason about how we should live and what we should do. Ethics of personal character, of overall social consequences, and of principles, are the traditions that we will rely on for much of this text.

This chapter will introduce three ethical traditions that have proven influential in the development of business ethics and that have a very practical relevance in evaluating ethical issues in contemporary business. *Virtue ethics* directs us to consider the moral character of individuals and how various character traits can contribute to, or obstruct, a worthy and good human life. Reasoning that criticizes excessive executive pay or price gouging as greedy, or as motivated by selfishness, is language that comes from a virtue-based perspective on ethics. The implication is that a greedy person who does distasteful and selfish things will not lead a fulfilling and good human life. The other pharmaceutical executive described in the opening case, Martin Shkreli, or the "pharm-bro," was described as arrogant, condescending, disdainful and lacking the virtues of modest, compassion, and humility.

Virtue ethics is especially focused on the ethics of personal morality and individual character: Is this a good person? Is this person honorable? What type of person am I? What type of person do I wish for my children to be? Virtue ethics speaks a language of personal character. The virtues, or character traits, are such qualities as honesty, integrity, trustworthiness, compassion, humility, friendliness, kindness, and loyalty. The opposite of virtues, identified as vices, include describing someone as greedy, selfish, arrogant, condescending, deceitful, a hypocrite.

A second ethical tradition is *utilitarianism,* which holds that ethical decisions are determined on the overall social consequences of an act. Utilitarianism judges an act that produces greatest beneficial consequences as the ethically right thing to do. While utilitarianism can apply to personal morality and individual decisions (I should do whatever produces the greatest overall benefits), it most appropriately applies to social and policy decisions. Thus, in the Mylan case, utilitarians might debate whether more rather than fewer government regulations, more rather than less reliance on the free market, would produce the greatest overall social benefit.

Finally, an ethical tradition based on the importance of *ethical principles and rights* directs us to decide on the basis of moral principles such as every person should have a right to an equal and fair chance at living a healthy life, that some individuals should not benefit excessively at the expense of vulnerable other, and that we all have a duty to meet human needs before pursuing business profits. Principles, promises, justice, fairness, rights, and duties are concepts that are at the heart of principle-based ethics.

We will examine these arguments in more depth later in this chapter. For now, the crucial thing to recognize is the inescapability of the language of ethics. Debates surrounding the Mylan case were fundamentally debates about ethics: What do people deserve? What produces beneficial overall consequences? What is one's duty? What is fair or unfair, just or unjust? What is wrong with being greedy?

2.2 VIRTUE ETHICS

As already described, virtue ethics focuses on the ethics of personal character. Virtue ethics is a tradition within philosophical ethics that seeks a full and detailed description of those character traits, or “virtues,” that would make a human life, a good, meaningful, well-lived life. When we describe someone as an honest person, a loyal friend, a helpful neighbor, a caring and generous citizen, or when we say that someone is a person of integrity, or that an employee is reliable, trustworthy, diligent and disciplined, we are speaking the language of virtues. When someone is described as greedy, as happened in the discussion case that opened this chapter, we are also speaking language of virtues or, in the case the opposite of virtues, the vices. A person described as selfish, mean-spirited, arrogant, narcissistic, untrustworthy, dishonest, or immodest is lacking virtue and living an unethical life.

We’ll find the language of virtue ethics at several points in this book, most notably in discussions of leadership and corporate culture. Consider how you would answer the question: What makes a good leader? Words like decisive, transparent, honest, integrity, visionary, fair, empowering, respectful, inspirational, and courageous come to mind. Each of the words describes a human virtue, traits that others can rely on because they are deeply ingrained within the person’s character. Virtues are not characteristics that a person adopts one day, but forgets about and drops the next. They are enduring because they describe who that person truly is. Bad leaders not only lack such characteristics, they might also be described by such vices as self-centered, egoistic, mean-spirited, timid, unreliable, and undisciplined.

Similarly, consider how you might describe a good, ethical employee. Again, virtue words come to mind, characteristics such as trustworthy, loyal, creative, hard-working, motivated, reliable, honest. Bad employees might be characterized as lazy, dishonest, unreliable, or easily distracted.

From its earliest days, virtue ethics has grappled with two fundamental challenges: one practical and one critical. The practical challenge, one that Plato himself asked, is “Can virtue be taught?” How do people become honest, trustworthy, reliable, kind? Why do some people become mean-spirited and others kind, some self-centered and others altruistic? Is this something that can be taught and, if so, how? These questions have arisen in business ethics as businesses seek ways to encourage ethical behavior and discourage unethical behavior. As mentioned in the discussion case from chapter 1, many critics charge that Wells Fargo’s corporate culture created an environment in which the virtue of honesty was discouraged and the vice of greed was the norm. The question of how virtuous and ethical behavior can be encouraged within business will be examined in chapter 4’s focus on the idea of a corporate culture, the social environment that establishes corporate expectations, behaviors, and norms.

The critical challenge asks why be virtuous? Why should one be honest, kind, hard-working, rather than selfish, unreliable, lazy? This is a philosophical challenge that seeks a rational justification of the virtues. According to critics, without a rational justification that provides reasons for being virtuous, virtue ethics amounts to little more than name calling or what logicians would call an *ad hominem* attack.

Both of these challenges have found a sympathetic audience among some in business. These challenges often arise from a particular view of human nature, a view that is as much at home in economics than it is in philosophy. That view, identified as *psychological egoism*, posits that human beings are, by nature, selfish. If this is true and all humans always act out of self-interest, then there would be a significant challenge for anyone hoping to teach people to be otherwise. How can one teach someone to be altruistic, kind, generous, and helpful if those behaviors go against human nature? Further, how can you provide a reason for someone to act against their own self-interest if, in fact, that would be to go against human nature?

Long traditions in both philosophical ethics and economics have developed out of this perspective. In ethics, the social contract tradition holds that ethical responsibilities and duties to others must be based on a social contract, an agreement that essentially says that I will be ethical toward you—help you and not hurt you—as long as you agree to do the same to me. Thus, ethical duties are based upon self-interest and what may appear to be acting for the interests of another actually is acting for your own self-interest. In economic theory, defenders of free markets argue that because human nature is self-interested, economic systems should be arranged to channel that self-interest toward the overall social interest. In a tradition that reaches as far back as Adam Smith, some economists argue that competitive markets, freedom from coercion and fraud, and freedom from governmental control will, "as if lead by an invisible hand," turn self-interested behavior toward social good. Both the social contract tradition and the free market view in economics will be in the background of many of the debates we examine throughout this text. In particular, the free market economic view is deeply embedded in one of the major theories of corporate social responsibility that we examine at length in the next chapter.

But the virtue ethics tradition has experienced something of a revival in recent years and it is perhaps no coincidence that this has occurred as psychological egoism has gone out of favor. As philosophers and psychologist have always known, human motivation is more complex than is portrayed by psychological egoism. The entire field of behavioral economics grew out of this recognition that human beings seldom behave in ways that conform to the narrow self-interest predicted by abstract, mathematical model of economics. Certainly, some people are motivated only by selfish reasons, but many others are not. Some people are motivated by a deep care for others, by compassion, sympathy, and respect. Most of us behave both selfishly and charitably at different times. Importantly, as every parent would recognize, such motivational factors can be taught and learned. Human beings are no more naturally selfish and greedy than they are naturally kind and compassionate. Human beings have the capability of being both selfish and kind.

Once we recognize this fact (and philosophers from at least the time of Plato and Aristotle have recognized this), we can begin to separate those motivations that are likely to lead us to a good and happy life from those motivations that are likely to lead us to a life of unhappiness. The first set of motivation or character traits are called virtues, the latter are vices. An ethics of virtue seeks to develop the character traits and habits that will lead us to live a meaningful and happy human life.

By connecting the virtues to a happy, good human life, virtue ethicists answer the critical question of justification as that raised earlier. You should be honest, kind, friendly, and so on because by doing so you will live a better, happier, more fulfilled human life.

For virtue ethics, how these traits are acquired, which would be an answer the practical challenge described above, becomes an important task for ethics. Can we teach people to be honest, trustworthy, loyal, courteous, moderate, respectful, and compassionate? While this might be difficult, it is not, as the psychological egoist would claim, impossible. Virtue ethicists turn to such fields as psychology, education, organizational behavior, and sociology to gain insight about how to teach virtue.

Parents confront this question every day. I know my children will lead happier and more meaningful lives if they are honest, respectful, cheerful, moderate and not greedy, envious, gloomy, arrogant, and selfish. Yet, simply *telling* my children to be honest and to avoid greed is insufficient. I cannot remain passive and assume that these traits will develop naturally. Instilling these character traits and habits is a long-term process that develops over time.

Business institutions also have come to recognize that character formation is both difficult and unavoidable. Employees come to business with certain character traits and habits, and these can get shaped and reinforced in the workplace. Hire a person with the wrong character traits, and there will be trouble ahead. Designing a workplace, creating a corporate culture, to reinforce virtues and discourage vice is one of the greatest challenges for an ethical business.

An ethics of virtue shifts the focus from questions about what a person should do to a focus on what type of person one is. This shift requires not only a different view of ethics but, at least as important, also a different view of ourselves. Implicit in this distinction is the recognition that our identity as a person is constituted in part by our wants, beliefs, motivations, values, and attitudes. A person's character—those dispositions, relationships, attitudes, values, and beliefs that popularly might be called a "personality"—is not some feature that remains independent of that person's identity. Character is not like a suit of clothes that you step into and out of at will. Rather, the self is identical to a person's most fundamental and enduring dispositions, attitudes, values, and beliefs.

As an example, consider the issue of executive compensation paid by Mylan that was discussed in this chapter's discussion case. It is important to remember that not every CEO demands an exorbitant salary. The language of virtues and vices would seem very relevant as we think about the motivations involved. Why do some people expect and demand tens of millions of dollars a year from selling a medically necessary medical device, while others would be happy with much less? Virtues such as modesty, moderation, self-control, unselfishness, and humility come to mind when we think about a CEO who could, but does not, take an excessive salary. Self-indulgence, greed, callousness, competitiveness, and selfishness come to mind about the others. To a person with moderate and constrained desires, an exorbitant salary is simply not an option. It would be out of character.

Virtue ethics can offer us a more fully textured understanding of life within business. Rather than simply describing people as good or bad, right or wrong, an ethics of virtue encourages a fuller description. For example, we might describe a business leader as visionary and courageous, a person of integrity, who sympathizes with employees and cares about their well-being. Other executives might be described as greedy or ruthless, proud or competitive. Faced with a difficult dilemma, we might ask what would a person with integrity do?

For each of us, working in business will provide opportunities for behavior that is generous or greedy, ruthless or compassionate, fair or manipulative. Given these opportunities, each one of us must ask which character traits are likely to help us live a good life and which are likely to frustrate this. What type of person are we to be? Presumably such questions arose for those entry-level Wells Fargo employees who were faced with the expectation to commit fraud. What would an honest person say and do? Do I have the courage of my convictions?

By the time we are adults, much of our character is formed by such factors as our parents, schools, church, friends, and society. But powerful social institutions such as business and especially our own places of employment and our particular social roles within them (e.g., manager, professional, and trainee) have a profound influence on shaping our character. An accounting firm that hires a group of trainees fully expecting that fewer than half will be retained and only a very small group will make partner, encourages motivations and behavior very different from a firm that hires fewer people but gives them all a greater chance at long-term success. A company like Wells Fargo that sets unrealistic sales goals will find that it creates a different sales force than one that understands sales more as customer service. Virtue ethics reminds us to look to the actual practices we find in the business world and ask what type of people are being created by these practices. Many individual moral dilemmas that arise within business ethics can best be understood as arising from a tension between the type of person we seek to be and the type of person business expects us to be.

Consider an example described to me by someone who is conducting empirical studies of the values found within marketing firms and advertising agencies. This person reported that on several occasions advertising agents told her that they would never allow their own children to watch the very television shows and advertisements that their own firm was producing. By their own admission, the ads for such shows aim to manipulate children into buying, or getting their parents to buy, products that had little or no real value. In some cases the ads promoted beer drinking and the advertisers themselves admitted, as their "dirty little secret," that they were targeted for the teenage market. Further, their own research showed them how successful their ads were in increasing sales.

Independent of the ethical questions we might ask about advertising aimed at children, a virtue ethics approach would look at the type of person who is so able to disassociate oneself and one's own values from one's work, and the social institutions and practices that encourage it. What kind of person is willing to subject children to marketing practices that they are unwilling to accept for their own children? Such a person seems to lack even the most elementary form of personal integrity. What kind of institution encourages people to treat children in ways that they willingly admit are indecent? What kind of person do you become by working in such an institution?

Virtues ethics provides us with the language and framework for talking about and examining a wide range of human values in business. It helps us understand good people, in all their diversity, and bad people, in all their diversity as well. It helps us evaluate organizations and how they can encourage and discourage ethical behavior, and how they might be changed so that we get more of the former and less of the latter.

2.3 UTILITARIAN ETHICS

Utilitarianism is a second ethical tradition that is very relevant for understanding business ethics. Utilitarianism has had a significant impact on the modern world and has been especially influential in shaping politics, economics, and public policy. It therefore has had, and continues to have, an enormous influence on business. Because of its influence on contemporary politics and economics, it will be helpful to start our consideration by locating utilitarianism within its historical context. Roots of utilitarian thinking can be found in works by Thomas Hobbes (1588–1679), David Hume (1711–1776), and Adam Smith (1723–1790), but the classic formulations are found in the works of Jeremy Bentham (1748–1832) and John Stuart Mill (1806–1873). Each of these social philosophers was writing against a background of the great democratic revolutions of the seventeenth and eighteenth centuries.

Utilitarianism tells us that we can determine the ethical significance of any action by looking to the consequences of that act. Utilitarianism is typically identified with the policy of "maximizing the overall good" or, in a slightly different version, of producing "the greatest good for the greatest number." Acts that accomplish this aim are good; those that do not are bad. Thus, utilitarianism can be thought of in terms of means and ends. An act or a decision is judged as ethical depending on whether or not it is an effective means for attaining the ethically good end of overall, maximum happiness.

As utilitarianism emerged in the eighteenth and nineteenth centuries, this emphasis on the overall good, and upon producing the greatest good for the greatest number, directly opposed authoritarian policies that aimed to benefit the political elite. Thus, utilitarianism provided strong support for democratic institutions and policies. Government and all social institutions exist for the well-being of all, not to further the interests of the monarch, the nobility, or some small minority. Likewise, the economy exists to provide this highest standard of living for the greatest number of people, not to create wealth for a privileged few.

These early utilitarians also believed that, apart from exceptional circumstances, the best judges of happiness are individuals themselves. Each person, rather than a king or priest, should be free to judge for himself or herself what is good for him or her. Thus, utilitarianism also provided strong support for civil liberties and civil rights. This combined view, that social policy should aim for the greatest overall good and that individuals should have the freedom to decide for themselves what their own good is, provided strong philosophical support for the type of liberal democratic forms of governments that developed in Western Europe and the United States, including support for free markets and free economies.

Thus, utilitarianism is a consequentialist ethics. Decisions and acts are determined by their consequences. (How else might we judge acts? Well, sometimes we determine that we should or should not do something as a matter of principle, regardless of consequences. We'll look at this approach in more detail in the next section.) In this way, utilitarians tend to be pragmatic thinkers. No act is ever right or wrong in all cases in every situation. It will all depend on the consequences. For example, lying is neither right nor wrong at all times in all situations. There might be situations in which lying will produce greater overall good than telling the truth. In such a situation, it would be ethically right to tell a lie.

Consider a question that might arise out of the discussion case from the start of this chapter. Should the U.S. government pass a law that limits the amount of profit Mylan can earn from the EpiPen? A utilitarian approach to this question will consider the likely consequences of either alternative. Limiting the price of a product would tend to make it more readily available to people who need it, especially those with limited resources. In general, this could save lives and promote health. On the other hand, lower prices might make it more difficult to attract research and development among pharmaceutical companies. This would result in harm to everyone, including consumers. Utilitarianism would suspend judgment until the consequences, or expected consequences, became known. Either way, the ethical judgment made about the decision is a function of what happens after the fact.

If we judge our actions in terms of consequences, in terms of means and ends, then we must have some standard for deciding between good and bad consequences, between good and bad ends. How do we know that these consequences are good but others are bad? In very general terms, all utilitarian thinkers agree that we should maximize the overall good, but among utilitarians there are different interpretations of what this "good" involves.

In general, the utilitarian position is that the goal of ethics, both individually and as a matter of public policy, should be to maximize the overall happiness. But, what exactly is happiness? Jeremy Bentham argued that only pleasure, or at least the absence of pain, was intrinsically good. Happiness, according to Bentham, must be understood in terms of pleasure and the absence of pain; unhappiness is understood as pain or the deprivation of pleasure. On Bentham's view, pleasure and pain are the two fundamental motivational factors of human nature. In his words,

> Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. . . . They govern us in all we do, in all we say, in all we think.[1]

Consider, then, Bentham's utilitarian reasoning. Only pleasure and the absence of pain are valued for its own sake. Only pleasure and the absence of pain, therefore, are intrinsically, objectively, and indisputably good. If pleasure and the absence of pain are good, more pleasure (or less pain) is better and maximum pleasure (or minimum pain) is best. Therefore, maximizing pleasure (the utilitarian principle) is the fundamental, objective, and indisputable ethical principle.

While the imperative to maximize pleasure sounds like a return to egoism, utilitarianism differs from egoism in important ways. Egoism focuses on the happiness of individuals. Utilitarian acts are judged by their consequences for the general and overall good. Consistent with their commitment to democratic equality, however, the general good includes the well-being of each individual affected by the action.

While agreeing with the general framework of Bentham's utilitarianism, John Stuart Mill defended a different understanding of happiness. Mill believed that there is a qualitative dimension to happiness that is missed by Bentham's focus on pleasure. Human happiness is not mere hedonism. According to Mill, humans are capable of enjoying a variety of experiences that produce happiness. Besides the pleasures of sensation that Bentham mentions, humans also experience social and intellectual pleasures that are qualitatively different from, and superior to, mere feelings. In a famous passage, Mill claims that "it is better to be a human being dissatisfied than a pig satisfied; better to be a Socrates dissatisfied than a fool satisfied."[2]

But the claim that there is a form of happiness that is qualitatively better than sensations of pleasure is controversial. How do we know, or how can we prove, that it is better to be Socrates dissatisfied than a fool satisfied? Mill's answer has significant ethical and social implications. To decide which pleasures and what type of happiness is better, according to Mill, we should consult with someone with the experience of both. Such experienced and competent judges are the best test for determining the highest happiness.

> Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, . . . that is the more desirable pleasure.[3]

And if disagreement continues beyond this, Mill next suggests that

> From the verdict of the only competent judges, I apprehend there can be no appeal. On a question which is the best worth having of two pleasures . . . the judgment of those who are qualified by knowledge of both, of if they differ, that of the majority among them, must be admitted as final.[4]

Thus, Mill acknowledges that not all opinions are equal. Some people are more competent and more qualified than others in judging what is good. Mill's utilitarianism does not support an uncritical majority rule in which every opinion of what is good is treated as equally valid. However, we shouldn't abandon democracy because of this. The way to develop competent judges is through experience and education. People need to be educated and experienced in a variety of pleasures before they are competent to judge. Once they are experienced, then majority-rule democracy is the best way to make decisions.

Thus, in John Stuart Mill's writings we find one of the classic defenses of liberal democracy and liberal education. The most fundamental ethical principle commits us to arranging society in such a way that we maximize the happiness for the greatest number of people. The best means for attaining this goal is an educated citizenry making decisions through a majority-rule democracy. The best method for securing an educated citizenry is to allow individuals the freedom of choice to pursue their own ends. Even when those choices are unwise, individuals are gaining the experience needed to distinguish between good and bad, higher and lower, pleasures.

These views have significant implications for business and economics. In classical free market economics, consumer demand is sovereign. Economic transactions occur when individuals seek their own happiness, understood as getting what they demand. If individuals make mistakes and buy products that fail to bring them satisfaction, they learn from their mistakes, no longer buy the product, and according to supply and demand, market forces eventually eliminate unsatisfactory products.

Perhaps utilitarianism's greatest contribution to social and political thought has come through its influence in economics. With roots in the works of Adam Smith as well as those of Bentham and Mill, the ethics of twentieth-century neoclassical economics—essentially what we think of as free market capitalism—is decidedly utilitarian. It is in this way that utilitarianism has had an overwhelming impact on business and business ethics.

Under free market economies, economic activity aims to satisfy consumer demand. The law of supply and demand tells us that economies should, and healthy economies do, produce (supply) those goods and services that consumers want (demand). Since scarcity and competition prevent everyone from getting all that they want, the goal of free market economics is to optimally satisfy wants. Free markets accomplish this goal by allowing individuals to decide for themselves what they most want and then bargain for these goods in a free and competitive marketplace. This process of allowing individuals to set their own preferences and bid for them in the marketplace will, over time and under the right conditions, guarantee the optimal satisfaction of wants.

This brief description suggests how free market economics fits the utilitarian framework. The end or goal of economic activity, what economists often refer to as utility or welfare, is the maximum satisfaction of consumer demand. We do the most good for the greatest number when we get as many people as possible as much of what they want as possible. The "good" is defined in terms of satisfying one's wants. But since scarcity and competition prevent us from getting all that we want, individuals are left to rank-order their wants or, in other terms, to establish their own preferences. Thus, free market economics can be thought of as a version of preference utilitarianism, where the utilitarian goal is the maximum satisfaction of preferences.

Given this goal, free market economics advises us that the most efficient means to attain that goal is to structure our economy according to the principles of free market capitalism. We should allow individuals the freedom to bargain for themselves in an open, free, and competitive marketplace. Self-interested individuals (and mainstream economics assumes that this is at least a strong tendency among human motivations) will always be seeking ways to improve their own position. Agreements (contracts) will occur only in those situations where both parties believe that a transaction will improve their own position. In such a situation, the competition among rational and self-interested individuals will continuously work to promote the greatest overall good. Whenever a situation occurs in which one or more individuals can attain an improvement in their own happiness without a net loss in others' happiness, market forces will guarantee that this occurs. Thus, the market is seen as the most efficient means to the utilitarian end of maximizing happiness.

2.4 CHALLENGES TO UTILITARIANISM

We will examine some more specific debates surrounding the free market version of utilitarianism in chapter 3. For now, let us consider some general challenges to the ethics of utilitarianism. We can classify these challenges into two groups—problems raised from within a utilitarian perspective that involve finding a defensible version of utilitarianism and problems raised from outside that challenge the plausibility of the entire utilitarian project.

Problems Raised from within the Utilitarian Tradition

We will mention two challenges that are debated from within utilitarian perspectives. First, all utilitarians must find a defensible way to measure happiness. Phrases like "maximize the overall good" and the "greatest good for the greatest number" require some form of measurement and comparison (how else would you know that this situation rather than another has maximized the good?). Bentham went to great lengths to develop a "hedonistic calculus" to help quantify pleasures. Mill left it to the judgment of a majority of well-informed, competent judges. Economists substitute such measures as the gross national product for determining overall happiness.

Bentham, Mill, and neoclassical economics all sought a scientific, measurable ethics. But there simply is no consensus among utilitarians on how to measure and determine the overall good. This problem is only compounded by the fact that utilitarians are committed to considering all the consequences to all affected parties. Many business ethics issues highlight how difficult this could be. Consider the consequences of using nonrenewable energy sources and burning fossil fuels for energy. It is hard to see how a utilitarian could ever hope to calculate the consequences of a choice between investing in nonrenewable sources and continuing the present reliance on coal and oil. Yet this is exactly what is required by the utilitarian principle. (Attempts to shift focus, as economists often do, on to the "expected" utility of an act is to abandon utilitarianism. At that point we have adopted an ethics not of consequences but of intentions and that is no longer utilitarianism. We'll see this view developed in the following section.)

The second problem with the utilitarian perspective deals with differing versions of the good and the implications for human freedom. Historically, utilitarians are social and political liberals. That is, they all placed a very high value on individual freedom of choice. But there is a tension between objective accounts of the good and individual freedom. Simply put, free individuals do not always choose to do what is good for them. The more utilitarians emphasize freedom, the more likely they hold more relativistic accounts of the good. On this view, good is simply a matter of opinion, or individual desires, preferences, and wants. However, this seems to abandon the entire project of ethics since, after all, people often desire what is trivial, immoral, and bad. On the other hand, the more utilitarians are willing to specify a specific content to the good life, the more the need to abandon the commitment to individual freedom. If we know what is truly good, then individuals ought to act in certain ways (to maximize the good) even if they don't want to. Finding a balance between individual freedom and the overall good is a challenge that confronts most versions of utilitarianism.

Problems Raised to the Utilitarian Tradition

The final challenges are not raised from within the utilitarian perspective but rather go directly to the core of utilitarianism. The essence of utilitarianism is its consequentialism. Good and bad acts are judged by their consequences. In short, the end justifies the means. But this seems to deny one of the earliest and most fundamental ethical principles that many of us have learned: The ends don't justify the means.

This challenge can be explained in terms of rules or principles. When we say that the ends don't justify the means what we are often saying is that there are certain rules or principles we should follow no matter what the consequences. Put another way, we have certain duties or obligations that we ought to obey even when doing so does not produce a net increase in overall happiness. Examples of such duties are those required by such principles as justice, loyalty, and respect, as well as the duties that flow from our roles as parent, spouse, friend, and citizen. We will examine that ethical tradition in more detail in the next section.

Several examples can be used to explain this criticism. Since utilitarianism focuses on the overall consequences, utilitarianism seems willing to sacrifice the good of individuals for the greater overall good. So, for example, it might turn out that the overall happiness would be increased if we allocate health care according to free markets. Utilitarians could object to denying someone needed medical care like an EpiPen not as a matter of principle, but only if and to the degree that denial of medicine to a minority of people detracts from the overall good. If it turns out that such action increases the net overall happiness, utilitarianism would have to support it. In the judgment of many people, such a decision would violate the principles of justice, equality, and respect. As we will see developed in the following section, principle-based ethics would appeal to the concept of ethical rights in criticizing utilitarianism. From that perspective, individuals possess certain basic rights that should not be violated even if doing so would increase the overall social happiness. Some might claim, for example, that everyone has a right to needed health care. Or, critics of laws restricting executive compensation argue that businesses should be free to decide for themselves what to pay their executives. The income paid to executives belongs to the corporation, not to the government, and therefore such a law would violate their property rights. Rights function to protect certain central interests from being sacrificed for the greater overall happiness. Utilitarians can defend rights only to the degree that rights contribute to the overall good.

Another example that can be raised against utilitarianism looks to specific relationships and commitments that we all make. For example, as a parent we love our children and have certain duties to them. Imagine a situation in which you have to choose between saving the life of your child and saving the life of a talented dedicated brain surgeon. Utilitarians are committed to determining the ethical decision by calculating the overall consequences of each choice and doing whatever will maximize the overall good. The example can be arranged in such a way that saving the brain surgeon clearly contributes to the overall good. But what ethical judgment should we make about the parent who even begins to make such calculations?

Utilitarians would seem to be committed to parental love and duty only to the degree that such love and duty contributes to the overall good. Parents should love their children because this contributes to the overall good of society. (And if it doesn't?) But surely this misrepresents (and insults) the nature of parental love. I do not love my children because of the consequences that this might have for society. Principle-based ethicists would argue that there are certain commitments that we make, certain duties that we have, which should not be violated even if doing so would increase the net overall happiness. Violating such commitments and duties would require individuals to sacrifice their own integrity for the common good. Thus, critics of excessive executive compensation might claim that gross inequality in pay is unfair and unjust in principle. We will consider similar themes of professional commitments and duties when a later chapter examines the role of professional responsibilities within business institutions.

2.5 UTILITARIANISM AND BUSINESS POLICY

Before moving on to principle-based ethics, it will be helpful to connect utilitarian ethics to some general concerns of business ethics. At its most basic, utilitarianism is a social philosophy, offering criteria by which the basic structure of social institutions, such as business and the economy, ought to be determined. Utilitarianism asserts that social institutions should be structured in whatever way will maximize the overall good. Two important schools of thought, each reflected in many contemporary policy debates that concern business, have emerged within the utilitarianism for deciding how best to achieve this goal.

One version of utilitarianism public policy holds that there are experts who can predict the outcome of various policies and carry out policies that will attain our ends. These experts, usually trained in social sciences such as economics, are familiar with the specifics of how society works and can therefore determine which policy will maximize the overall good. This approach to public policy underlies one theory of the entire administrative and bureaucratic side of government. On this view, the legislative body (from Congress to local city councils) establishes the public goals, and the administrative side (presidents, governors, mayors) executes (administers) policies to fulfill these goals. The people working within the administration, the classic government bureaucrats, should know how the social and political system works and use this knowledge to carry out the mandate of the legislature.

The government is filled with such people, typically trained in such fields as economics, law, social science, public policy, and political science. This approach, for example, would justify widespread government regulation of business on the grounds that such a regulation will ensure that business activities do contribute to the overall good.

Consider how the U.S. Federal Reserve Board sets interest rates. There is an established goal, a public policy "good," that the Federal Reserve takes to be the greatest good for the country. (This goal is something like the highest sustainable rate of economic growth compatible with minimal inflation.) The Fed examines the relevant economic data and makes a judgment about the present and future state of the economy. If economic activity seems to be slowing down, the Fed might decide to lower interest rates as a means for stimulating economic growth. If the economy seems to be growing too fast and the inflation rate is increasing, they might choose to raise interest rates. Lowering or raising interest rates in itself is neither good nor bad; the rightness of the act depends on the consequences. The role of the public servant is to use his or her expertise to judge the likely consequences and make the decision that is most likely to produce the best result.

A second influential version of utilitarian policy invokes the tradition of Adam Smith and claims that competitive markets are the best means for attaining utilitarian goals. This version would promote policies that deregulate private industry, protect property rights, allow for free exchanges, and encourage competition. In such situations the self-interest of rational individuals will result, as if led by "an invisible hand" in Adam Smith's terms, to the maximum satisfaction of individual happiness.

The dispute between these two versions of utilitarian policy, what we might call the "expert" and the "market" versions, characterizes many disputes in public policy and many within business ethics. Consider recent debates within the United States concerning health care policy. Some argue that the country's health care is best provided by a government-regulated and -managed, if not government provided, health care system. Others argue that health care decisions are best left to the decisions of private individuals within a free market deciding for themselves the appropriate level of health care that they are willing to pay for. Both sides might agree that the ultimate goal is to provide the best health care for the most people, but they disagree significantly on the appropriate means for attaining that goal.

Another example of these debates within business ethics concerns regulation of unsafe workplaces. One side argues that questions of safety and risk should be determined by experts who then establish standards that business is required to meet. Government regulators (in this case, the Occupational Safety and Health Administration [OSHA]) are then charged with enforcing safety standards in the workplace. The other side argues that the best judges of acceptable risk and safety are workers themselves. A free and competitive labor market will ensure that people will get the level of safety that they want. Individuals calculate for themselves what risks they wish to take and what trade-offs they are willing to make in order to attain safety. Workers willing to take risks likely will be paid more than workers who demand safe work environments. Thus, a market-based solution will prove best at optimally satisfying these various and competing interests.

There is no question that utilitarian reasoning dominates among policy makers and policy administrators. Policy experts at all levels are focused on results and on getting things done. This makes the utilitarian emphasis on consequences particularly attractive to fields such as economics, business, and government. It seems obvious that policy questions should be judged by results and consequences. The utilitarian emphasis on measuring, comparing, and quantifying also reinforces the view that policy makers should be neutral administrators. The standard view is that policy goals should be left to the democratic decisions of the people. The people decide what they want and what makes them happy; the job of social policy is simply to help them attain those goals in as efficient a manner as possible. Efficiency is simply another word for maximizing happiness.

Despite these close connections between utilitarianism and public policy, serious ethical challenges remain. We turn now to a major alternative to utilitarian ethics: principle-based ethics.

2.6 PRINCIPLE-BASED ETHICS

Principle-based ethics, or what is sometimes called an ethics of rights and duties, emphasizes the fact that sometimes the correct path is determined not by its consequences but by certain principles or duties. More familiar synonyms for duty include obligations, commitments, and responsibilities. This principle-based approach faults utilitarianism for thinking that our acts should always be judged by their consequences to the overall good. This ethical tradition denies the utilitarian belief that the ends do justify the means. It holds that there are some things that we should, or should not, do regardless of the consequences.

To understand why the ends don't justify the means we need to emphasize that utilitarian ends are focused on the collective or aggregate good. Utilitarianism is concerned with the well-being of the whole. (This is one of the things that makes utilitarianism attractive to public policy makers.) But many of us have a deep commitment to the dignity of individuals. We believe that individuals should not be used as a mere means to the greater overall good. A prominent way of explaining this is to say that individuals have rights that should not be sacrificed simply to produce a net increase in the collective good.

Consider the debate mentioned previously concerning child labor in the developing world. Some policy makers in impoverished countries believe that the best means for raising the standard of living within their country is to increase exports. This brings in hard currency with which the country can pay for food, medicine, and education (and repay debts!). Increasing exports will raise the standard of living for all citizens and thereby meet the utilitarian goal of improving the collective good. However, to increase exports a country must be capable of selling their goods at costs below those of competing countries. Since labor is a major production cost, keeping labor costs low helps the country as a whole. Unfortunately, one means for maintaining low labor costs is to employ young children. (Cases of child labor in the manufacture of athletic shoes and clothing are only the most well-publicized instances of an all too common phenomenon.)