Business Ethics

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2 Value Systems

In ethical theory there are, to simplify matters, two competing approaches to the evaluation of conduct, whether it is the behaviour of politicians, ordinary people in their daily lives, or business (either the appraisal of the whole system or actions of individual agents operating under its rules); they are the *teleological* and the *deontological*.[1] These apparently irreconcilable value systems colour, in one form or other, all of our moral judgements. Briefly, teleological judgements are based upon some desirable state of affairs, either for an individual or a group, which some action brings about; and the action is evaluated in accordance with its conduciveness to this wanted outcome. It is states of affairs themselves that are intrinsically valuable rather than the moral quality of the actions that bring them about. In contrast, deontological principles relate to those moral duties that restrain us from performing certain actions irrespective of the value of consequences. The duties themselves are intrinsically compelling.

This perhaps crude dichotomy conceals a host of complexities and subtleties but it, nevertheless, encapsulates well enough the ethical context within which business is conducted. Moral theory reflects in important ways the ethics of ordinary life for which competing theories try to account. Business ethics should be about the ethics which most people are familiar with through practice and experience. The special circumstances of business may produce moral conundrums that people are unlikely to come across in ordinary life but the values and principles that are used for the resolution are not substantially different from conventional ethics.

It is a somewhat misleading view of business ethics to see it as a simple application of one or the other of these moral philosophies, deontology and teleology, to particular problems. The practice of business, like any other social activity, generates rules which are not easily described in the conventional language of moral philosophy. The important point here is that business ethics involves economics and although that discipline may claim to be value-free, it has much to offer moral discussions of business. Business undeniably is about worldly success, normally measured in monetary terms. The usefulness of economics is that it describes coherently the constraints to which human action is subject. As we shall see, some of the unrealism, indeed, otherworldliness, of some versions of business ethics is in need of the reminders from economics about scarcity, the almost infinite range of human wants and the more or less immutable 'laws' that govern human behaviour.

The teleological theory most relevant here is utilitarianism: that ethical doctrine which evaluates states of affairs in terms of happiness, welfare, well-being or some other phenomenon that relates to identifiable satisfactions.[2] There are teleological doctrines that locate intrinsic value in other things than sensuous experience – for example, self-realization or some Aristotelian notion of virtue – but they make only fleeting appearances in the literature of business ethics.

Deontological doctrines are best represented by justice: there are certain moral rules of fairness which are so compelling that our adherence to them overrides all other considerations. They are necessary side-constraints on action. Although utilitarians always try to incorporate the rules of justice (fair dealing, giving each person his due, the obligatory nature of promises, and so on) into a comprehensive moral calculus by arguing that they are conducive to overall utility, it is not difficult to see how conflicts can arise between the demands of justice and the dictates of utility. Perhaps it was immoral to trade with apartheid South Africa (because it was an unjust regime) but if it could be shown that everyone was made worse off by a ban, the blacks suffering worst of all, then such a prohibition would be unacceptable by the principle of utility. Many people quite plausibly argued just that. In contrast, the deontologist discounts consequences (although it is a rare theorist who discounts them entirely) in her evaluations and therefore she will have good reasons for condemning such trade. She would argue that it is simply unethical to trade with a regime which denies a fundamental equality, irrespective of the utility gains that might result from such commerce.

Deontological ethics comes into play in business when questions of the entitlement to particular rewards from business activity arise. Is the insider dealer morally entitled to his profits, even though his actions push the capital market towards equilibrium and bring about a correct valuation of assets? Obviously problems of ownership arise here and these cannot be settled conclusively, if at all, by utilitarian considerations alone. The market may make everybody better off, but is its distribution of wealth fair? Do the demands for a 'level playing field' in the securities market exemplify equality of opportunity or do they smuggle in the much more contestable moral notion of equality of outcome?

It should be clear that utilitarianism is not the only ethics relevant to business activity, that commerce is not merely to be evaluated in terms of a calculus of pleasures and pains. Yet it is its most plausible rationale. Since commerce is an activity that responds to people's desires, it seems

the ideal candidate for favourable evaluation by a moral doctrine that exclusively understands good and bad in terms of want-satisfaction. However, utilitarianism is itself a complex doctrine, the meaning of which is constantly in dispute, and its prescriptions are not always determinate. It sometimes seems to offend against deeply-held moral beliefs.

It bears a superficial similarity to the Mandevillian doctrine mentioned earlier: that business does not rest upon virtue but on self-interest and that the latter motivation is validated morally (if at all) by the fact that it generates beneficial outcomes. Although there is more than a trace of Mandevillianism in 'Invisible Hand' versions of utilitarianism, Mandevillianism itself has not secured a respectable niche in business ethics: utilitarianism proper, however, has. It is a comprehensive ethical doctrine and (unlike the 'amoral business' view) has implications at the macro and micro levels of business activity which can and do run counter to the egoism and amoralism implied in *The Fable of the Bees*. Business may be said to generate practical rules which, although they may have an ultimate utilitarian justification, are inconsistent with, and would condemn, egoism. The rules for the self-regulation of business activities would be of this type. These rules, which are designed to restrain immediate gratification, are nevertheless in the long-run interests of transactors, for if they do not restrain themselves, government regulation, and the opprobrium of the public, are more likely to occur. It is not clear how Mandevillianism (or any 'greed is good' business doctrine) could explain the utilitarian necessity for self-restraint. Pure egoism is self-destructive, a properly-understood consequentialism or utilitarianism is not. The only question is: how such restraint can be generated given the motivations that must govern successful business?

Utilitarianism supposes that actions are to be evaluated solely in terms of how much they contribute to the well-being or happiness of a community: rules, conventions and orthodox moral principles have a provisional value only, and are subordinate to the compelling imperative to maximize happiness. In the work of the doctrine's founders, notably Jeremy Bentham (1748–1832),[3] happiness could be calibrated in discrete units of pleasure, the pursuit of which, it was alleged, was the sole purpose of human endeavour. Pleasure was assumed to be as tangible as heat and cold, and a 'hedonic' calculus was proposed for evaluating actions which would be as accurate in the measurement of pleasure as a thermometer is for recording temperature. Two further assumptions are made by Benthamite utilitarians: every person is the best judge of his or her own interest, and each person's interests must be taken into account in the overall calculation of utility. The former requirement rules out paternalism and the latter is a vague and ambiguous commitment to a notion of equality of consideration. It should be noted that there is only a contingent (though some would say, easily demonstrable) connection between the maximization of social utility and the existence of the private enterprise, commercial order.

Because of the requirement to take everyone's interests into account, and to perform intricate (and some would say, impossible) calculations as to the social effects of alternative courses of action, utilitarianism imposes controversial and almost always conflicting duties upon agents. Thus a utilitarian-minded management of a corporation would, in plant relocation decisions, have to take into account the interests of a community whose residents had 'invested' in the firm, the interests of the shareholders who would benefit from efficiency, those in another community who might be badly in need of employment, and so on. These are extraordinarily difficult calculations; great enough, critics of an business ethics would say, to negate the very possibility of a 'social audit' for business derived from utilitarian considerations alone.

A special difficulty is the requirement of making interpersonal comparisons of utility. This necessitates the observer saying by how much an action affects particular persons. Can great gains for some outweigh the minor losses of (perhaps) a minority? Of course, we make rough and ready judgements of this type in our everyday lives, and the morally-minded business agent does so constantly, but the credibility of such judgements has always been questioned. They are ruled out by a strict deontology.

Because of the difficulty of measuring pleasure, and of the making of interpersonal comparisons of utility, contemporary economists tend to limit their welfare judgements to that implied in the 'Pareto principle' (named after the Italian economist and social theorist, Vilfredo Pareto): this holds that it is only possible to speak of a welfare improvement when an action (for example, a two-person exchange) makes (at least) one person better off without making anybody else worse off.[4] Although it rests on a similar view of human motivation to utilitarianism, it is in theory much weaker. Since it precludes interpersonal comparisons of utilities, it must remain silent on actions that although generally beneficial, harm at least one person, however minutely. Almost all business decisions adversely affect some people to a degree.

Unfortunately, the Pareto principle is not much help in the typical business problems. Operating on a restricted notion of harm, a Paretian could maintain that untrammelled markets, in the absence of externalities, do maximize social welfare in the sense described. But the operation

of market forces, which generate never-ending change and uncertainty, leaves many people who can claim to be 'harmed'. A successful innovator may drive rivals out of business but can they be said to be harmed and therefore deserving of compensation? This may seem implausible but some business ethics writers have implied as much. But the Pareto principle itself is too weak ethically to give any firm guidance in this vexed area. It has little use in the texts of business ethics: except perhaps at the macro level, in the overall justification of the market system. At the micro level, in the justification of particular business decisions, harm itself appears to be a contestable concept. Also, a more generous interpretation of the Pareto principle might require each transactor to be fully informed of all possible facts and circumstances of economic life. But this could rule out as 'inefficient' (or exploitative) many otherwise acceptable exchanges.

Thus despite the problems inherent in the notion of pleasure, and the possibly insuperable difficulties of aggregation, the major elements of utilitarianism have survived. Whether it is pleasure that ought to be maximized, or the superficially more tractable notion of preferences,[5] it is always to the consequences of action that moral appeal is made, and the restraints imposed by moral and conventional rules are acceptable only if they are conducive to good outcomes, however these are understood. Utilitarianism does not necessarily justify the capitalist system: indeed, it might well validate constant interventions in search of improvements in cases where suffering might appear to be avoidable. Such a superficially benign doctrine, one exclusively addressed to human well-being and unencumbered by possibly archaic rules, has not surprisingly appealed to governments and the owners and managers of business enterprises. The doctrine is given a greater appeal when compensation is paid to losers in the competitive process or to those who are victims of technological progress or changes in the terms of trade. Farmers throughout history have managed successfully to persuade governments that they should be immune from the adverse effects of economics. Victims of necessary industrial change have used a similar strategy; and owners of enterprises that generate change are often expected to pay compensation to the losers.

Utilitarian considerations are sometimes present in decision-making in business when cost–benefit analysis is used. It is especially relevant to product safety. A corporation will often take a controversial decision on the basis of a measure of the benefits of the product, taking into account the interests of consumers, stockholders and employees, compared to the costs of safety requirements. Safety considerations alone cannot be decisive, it is claimed, since no product can be perfectly safe and utility gains will be forgone because of the probably excessive costs involved in the pursuit of an unattainable ideal of a perfectly harmless product.[6] Often the costs of potential litigation in civil actions will be included in the final calculations, and it is this factor that can make corporations vulnerable to the charge of cynicism. As will be shown in the next chapter, the Ford Motor Company was involved in a famous case that involved the morally dubious use of cost–benefit analysis.

Deontological theories therefore claim that there should be constraints on human action that defeat all claims derived from utility. In fact, it is maintained that the moral autonomy of the individual is attenuated to the extent that his or her judgements are tainted by the thought of any consideration of satisfactions or beneficial consequences. In the history of moral philosophy there has been a variety of foundations for the apparent austerity of deontological ethics but for our purposes a brief indication of this style of thinking is all that is required.

In principle, deontological ethics rests on the claim that the right is prior to the good; that certain rules and practices, normally those that honour the integrity of the individual and encapsulate universal notions of justice, truth-telling and promise-keeping and so on, take precedence over well-being. In fact, the rules of the French stock market (the Bourse), are called *'les principes des deontologies'*. It is these considerations that are brought to bear most heavily on businessmen engaged in the pursuit of profit.

At the heart of deontological ethics is an argument about the sanctity of the person: that no amount of goodness generated by an action can justify any violation of individual rights. This moral axiom (the Categorical Imperative) is expressed in a famous sentence by Immanuel Kant: 'Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.'[7] This should not be misunderstood. It does not prohibit individuals using each other as a means to certain ends; almost all human interactions involve just this. The business system, which is a complex network of individuals relationships that permit the using of some people's skills and endowments for other people's ends, would be impossible if the Kantian principle were interpreted in the restrictive way. What the injunction does forbid, however, is people being used *merely* as a means for the gratification of others: as the breach of a promise would, or the failure to disclose vital information prior to a purchase or an agreement. These actions involve deception and possibly fraud. A proper interpretation of the Kantian principle encourages reciprocity and forbids exploitation. Controversy

arises, however, over what the doctrine requires in particular cases. Should advertisers tell the *whole* truth about a product? Surely not. Do securities markets require perfect information on the part of all transactors? An impossible demand which if seriously followed would make such markets redundant. Successful business is ethical when it observes the morality of everyday life which often includes rules that are not strictly utilitarian; but they are not the rules of a monastery. The rules of everyday life are a better guide to conduct in business than the speculations of abstract philosophers; though the latter can provide some sort of order and coherence to the whole system.

It might superficially seem that deontological ethics would be hostile to business; that an activity driven by the profit motive and concerned primarily with the gratification of desires would fall short of the standards of the right. But this is not necessarily so, for deontological ethics is concerned only with the constraints that should obtain in whatever activity human beings engage in. A properly conducted business arrangement indeed exemplifies much of the deontological argument, especially in its emphasis on the obligatory nature of contracts and its recognition of the fact that each party is the author of his or her own actions. Indeed, many of those conventional rules that govern business, although they are often given a rule-utilitarian justification in the claim that business could not work without them, could just as easily be interpreted as constraints on action which have an intrinsic moral value. But it has to be conceded that deontological rules occupy a small (though important) place in the moral vocabulary of business and the nature of the activity makes the constraints they impose vulnerable to rule-breakers and opportunists.

JUST BUSINESS

It is on the question of justice that many questions in the ethics of business turn; and the competing appraisals of both the business system and the behaviour of agents within it turn on widely divergent accounts of this crucial concept. It is important to remember that when people talk of the justice or injustice of business, profit and so on they have different exemplars of the concept in mind so that it rarely functions as a kind of Archimedean point against which competing claims can be evaluated. Nevertheless, it is true that the appeal to *social* justice which is often made by anti-business philosophers is an appeal to the most contested of moral concepts, and one which often bears only a remote resemblance to the original meaning of justice.[8] It is also important to note that principles of social or distributive justice have little connection with business ethics: they are properly the concern of social philosophy. But unfortunately they are implicitly alluded to when complaints are made about some of the vast earnings that are occasionally made in business and when employers are censured for pursuing allegedly 'unjust' hiring policies at the workplace in relation to women and racial minorities.

The concept of justice that is most conducive to the business enterprise is one that is limited to the rules of fairness that ought to govern all human relationships: honouring promises, respecting the rights of justly acquired property (either through labour, exchange or gifts) and giving each person his or her due. It might be more accurately called procedural justice. It is not concerned with the 'outcome' of an economic process – that is, the particular distribution of income and wealth that is generated by trade – but with the rules that govern it and the behaviour of individuals under those rules. Claims of injustice relate only to the intentional actions of persons under fair rules. It would be illegitimate, therefore, to condemn inegalitarian distributions of income and wealth that emanate from the following of fair rules as 'unjust'. Adam Smith argued that: 'Mere justice is, our upon most occasions but a negative virtue, and only hinders us from hurting our neighbour.'[9] Contemporary proponents of capitalism, such as Hayek,[10] Friedman[11] and Nozick,[12] have added only sophistication to this fundamental proposition. Smith, and others, may have thought that these rules were morally sparse, and not descriptive of the 'good' society, but they were all that commerce required. They are often likened to the 'rules of grammar', the following of which may not generate beautiful prose but it is essential for communication.

It is a position that can have either a utilitarian or a deontological rationale. The utilitarian argues that to operate at maximum efficiency a market requires inequality of factor reward and that to sanction interference with this process by the invocation of abstract, external principles based on, for example (moral) desert or need, simply leads to the misallocation of resources. The rules of negative justice are simply those basic procedural devices that are required to make the market work efficiently, to guarantee security for property and contract and to provide a framework of predictability for transactors.

However, this rather simplistic utilitarianism is vulnerable to criticism when it is used to validate existing business practices. It is not entirely clear that the (sometimes) vast profits that are achieved in business, especially in the securities market, are required for the efficient working

of the system. Market socialists have claimed, in a variety of complex schemes, that the efficiency properties of free-exchange systems, and the liberty that markets grant to individual agents, can be reproduced without the excess profits and other imperfections that are said to characterize capitalist economies. They claim that a market system could work efficiently with a wider conception of justice than that used by Adam Smith and his modern epigones.

However, it is not solely utilitarianism that sustains the theory of negative rules of justice: most writers in the free-market tradition implicitly allude to the intrinsic value of fair rules. Hayek,[13] for example, argues that socialism cannot be implemented without disrupting the rules of justice. The imposition of a rational plan can, he claims, come about only by the issuing of particular commands which will undermine the universality of just rules. Furthermore, no matter how inegalitarian the outcomes of a market may be, they cannot be regarded as unjust because, in his view, injustice can only be the result of the intentional acts of responsible agents: the market, of course, is an impersonal, anonymous process. Again, Nozick, in a famous argument,[14] argued that the maintenance of a preconceived pattern of distribution, even if its morality could be agreed upon, would involve an unacceptable interference with people's choices, the undermining of the rule of law, and the use of individuals on behalf of collective purposes. However, what makes these views vulnerable to moral condemnation is that they exclude reference to desert or worth in the understanding of economic justice; in fact inheritances or sheer luck are sources of just entitlement as long as the rewards are achieved within the rules.

The critics of the capitalist system who use arguments derived from justice have a much more substantive concept in mind; they are less concerned about questions of efficiency anyway. Much of their argument derives from the deontological claim that the exchange system (and its associated framework of law and private property) exploits workers: their autonomy to pursue their own ends is badly compromised by the wage-relationship, the existence of profit means that they do not receive the full value created by their labour, and the private owner makes little or no contribution to output (since he merely allows his capital to be used, his role is replaceable by the state). Thus concepts such as desert and need become highly relevant to the distributional questions that are repeatedly asked of capitalist orders.

Although most questions of justice in relation to business are raised at the macro level, problems can arise at the level of the individual enterprise. To what extent is a corporation under an obligation to practise 'affirmative action' in its hiring policies? Does not this lead to a conflict between efficiency and justice? Indeed, is not such a policy itself unjust? In most cases there is also the problem of a conflict between the duties that a management owes to its shareholders and the demands of social justice that are prescribed in much of business ethics. As I shall show, these problems are exacerbated when the rules of negative justice are expanded into a more substantive social doctrine. The injunctions of the protean doctrine of social justice are too vague, multifarious and incoherent to offer a precise guidance for individuals, even if it could be agreed that the corporation and other business enterprises were under some obligation to act justly in the wider sense. None of this, of course, implies that the business imperative for management to safeguard the interests of shareholders, employees and consumers releases it from the obligation that everyone has to observe rules of fair play. But there is a difference between an enterprise being under a moral duty and its being under a social duty.

ARM'S LENGTH MORALITY AND MINIMALIST ETHICS

It is because of the difficulty of the direct application of moral principles to commercial life that an approach to business ethics has to take account of the circumstances of business enterprise. Commerce cannot require saint-like behaviour because we are not all saints (and if we were, to whom would we be saintly and what are the duties that saintliness implies?). The whole tradition of market economics, which maintains that good, utilitarian consequences occur through spontaneous processes irrespective of the moral motives of the agents, is still an important starting point for business ethics. It is a kind of utility qualified by deontological rules: indeed Smith's *The Theory of Moral Sentiments* is not so much a celebration of utilitarian ethics as a description of those rules of conduct that we apply to everyday conduct because they are felt to be 'right'. The structure of business ethics must not be about the foundations of 'rightness' but about the role of rules as restraints on egoistic actions in basically anonymous market orders. I shall later call this 'arms's-length morality'. It may today have more resonance in Anglo-American economies than other capitalist regimes but its value will be more appreciated as trade becomes globalized.

It is somewhat far-fetched to imagine that the actions of business agents should be directly guided by the kind of philosophical principles outlined above. These principles are best understood as criteria by which the actions of individuals are evaluated retrospectively by external observers. They are, if anything, ways of appraising the whole of business, and their application to particular cases may be hard to discern. Indeed, the disputes in business ethics themselves are not normally about whether, for example, utility is the only sustainable ethic but whether a particular action would enhance the well-being of the business enterprise. Again, the relevance of justice to commerce is not, surely, because some new distributive criteria may be discovered there but to understand if some particular action was fair or unfair by conventionally accepted standards of right conduct. The difficulty is that these standards have been made infinitely contestable by ethics and political philosophy. Thus in the securities market the sometimes vast earnings that occur are condemnable as unjust, irrespective of the fact that these may have been achieved fairly, because they do not appear to be the outcomes of productive effort, or because some have an unfair (normally informational) advantage over others. Business ethics is special only in the sense that particular commercial practices and organizations (especially the corporation) may make some moral decisions significantly different from everyday ones; although the rules that govern them are not so far removed from conventional ethics.

In many areas of business life, the standards and values of the market, which are broadly utilitarian, conflict with public morality. The latter has strong deontological elements: some actions are just not 'right', whatever the 'goodness' of the consequences that they bring about. This problem is compounded by the fact that public standards of morality are not only disputable in their application to particular cases but also they are relative to particular communities. For example, 'bribery' in business is condemnable in Western capitalist economies but may be an integral part of social and business life in some communities. Can the deontologically-based prohibition of it be applied incontrovertibly to international trade? The Lockheed bribery scandal of the mid-1970s is the *locus classicus* here.[15] The executives of the corporation bribed Japanese officials to secure a contract that (allegedly) 'saved' the investment of the stockholders and the jobs of the employees. However, some people would say that the bribery was simply wrong, despite the utility gains it produced. The problem is that in Japanese society such action is not thought to be morally wrong (or even as 'bribery'). What are companies to do in such circumstances? Abstract moral philosophy is not much help, though an ethics more closely related to the practice of business may be.

The reason for the failure of abstract ethics to give definitive answers is that the morality of business is comprised of a plurality of potentially conflicting principles, an unstable amalgam of possibly competing practices and maxims. But business itself does not seem the type of activity appropriate for evaluation by rationalistic ethics. It is at best the ethics of self-interest, sanitized by the utilitarian claim that decentralized economic action does on the whole lead to better results for the anonymous public, and tempered by the restraints that deontological principles (imprecise though they are) impose on egoism. The notions of trust and honesty are relevant here: although a short-term gain could be achieved by their breach they are essential for the activity of business in the aggregate.

In an important sense, business morality does differ from the morality of the family or that of small, closely knit communities. In these phenomena, ordinary egoistic action is restrained by principles of solidarity which are clearly understood and which can secure almost unanimous agreement: they are reinforced by the close proximity of the human agents involved. But Anglo-American business morality is not like this, although some business ethicists would seem to want to make it so.

The obligations of family members are not 'self-assumed' (they are for the most part involuntary) while in business they clearly are: they are the voluntary obligations created primarily by contractual arrangements between strangers to advance their interests. There is no escaping this and a business ethics that underestimates it will (if 'legislated', as it frequently tends to become) systematically undermine the commercial enterprise. Of course, the formal agreements between individuals in basically anonymous markets have to be underwritten by moral rules and conventions which are not 'assumed' by agents, otherwise business would be uncertain. But they are of a minimalist kind, and in many ways are self-enforcing. What this approach does imply is that extreme caution, if not outright scepticism, should be exercised in the face of demands that business agents should be encouraged or compelled to conform to values that emanate from outside the business relationship. Normally these extra-business values come from highly contestable social and political philosophies. Business is a moral enterprise that depends upon trust and honesty for its validity rather than the pursuit of all-embracing social goals, about which there can be little agreement. Indeed it would be hubristic for business agents to suppose that they know what these are; that they can know what is good for the community. It is also a mistake to suppose that business practices and mores can be easily transported across cultural boundaries. Critics of Anglo-American business all too often assume that the intimacy of communitarian business cultures can be

costlessly adopted for the more impersonal worlds of Wall Street and the City of London.

Business relationships in Western societies are therefore conducted at arm's length; the participants do not in the main know each other and therefore can have no other duty than to respect their interests and the rules under which they exchange. Using this elementary model I shall cast doubt upon the possibility of 'contracts' between business and society[16] since this presupposes that society can be represented as a determinate agent with a well-ordered and consistent hierarchy of values suitable for the exchange relationship. Again, attempts to mimic the business practices of more intimate, communal societies such as Japan's may not only be detrimental to Western business, but also fatal to its morality. In fact, Western society consists of a multiplicity of conflicting values to be realized and demands which press for satisfaction. I shall show that a properly structured set of legal and moral rules, emanating the business enterprise itself, may very well be the only means for 'solving' problems raised by a more activist business ethics.

Western morality has an advantage over its rivals that derives from its *universalism*. The rules which apply to it are indifferent to race, religion, nationality and any other feature that is merely contingent. The pursuit of profit is a great solvent of cultural differences and reconciler of divergent ways of life. Business agents are held together by rules that enable them to pursue their self-chosen goals and each actor has the right to choose whatever business method he likes as long as he remains within these constraints. In more intimate business relationships, outsiders seem not to enjoy the same protection of rules. This is why there are probably more serious business scandals in Japan than on Wall Street.[17] Those that come from outside the groups are treated very differently from insiders. There are few restraints that operate on the members of intimate organizations and groups when they deal with strangers.

It should also be noted that the more successful a business becomes in its fundamental aim, to provide cheap and reliable products through competition for the consumer (surely a moral enterprise in itself), the less 'fat' there will be for other activities, for example, charitable donations to worthy causes. Ironically: only monopolies, because of their 'immoral' and socially inefficient rents, will be able to comply with the more ambitious demands made by some business ethicists.

This suggested restriction of business ethics to the conduct of agents under rules appropriate to the commercial order, and expressed doubt about the wider social obligations of business that have been urged by business ethicists, nevertheless leaves a host of ethical problems. In

Britain and the USA the complaints and scandals that occur in commerce are precisely about breaches of what I have called minimalist rules. It is also the case that these rules do not apply solely to large-scale conglomerates. For although the moral indiscretions there are, for obvious reasons, likely to attract publicity, unethical conduct can occur in any relationship between strangers that is powered by self-interest. As the prominent US business ethicists Robert Soloman and Karen Hansen once pointed out: 'There is no reason to suppose that Mom and Pop's grocery store is any more moral than IBM.'[18]

A dominating principle inherent in this approach is the concept of *harm*. The most compelling of the negative obligations applicable to business is the injunction to refrain from damaging the interests of the trading partner: the crucial moral feature of the commercial order is voluntariness and it can be safely assumed that individuals do not voluntarily submit to actions that harm their interests. This is not to say that harm is the only consideration in the evaluation of business. An action may be adjudged right or wrong even if no one is harmed by it; for example, sometimes all people may gain in the long run from an action which was originally fraudulent. But business could not go on without this minimum condition of non-harm being met. The strict prohibition of harm is the most important of the side-constraints on self-interested action and it is this that must constitute the primary element in a viable business ethics.

The difficulties with the notion of harm are exemplified in the debate about 'victimless crimes'; for many critics of the over-moralization of business maintain that the current legal and moral persecution of insider trading in the stock market invokes precisely that. As we shall see, straightforward utilitarian and efficiency principles might well sanction insider trading, yet people feel uneasy about it: largely, I suspect, because they are distressed by the particular distribution of rewards that comes from it. However, as we shall see, (Chapter 5) the question of harm in insider dealing is an extremely complex one. The minimalist conception of justice in the sense of fair rules (in which the 'no harm' principle occupies pride of place) clashes with certain deeply held and probably communally-based values of desert and merit. Even within the minimalist view, there may be disputes about what is or is not a fair contest, irrespective of the question of harm. The difficulty of identifying victims of alleged immoral practice has led some business ethicists to claim that, irrespective of the absence of injured individuals, the business community as a whole has been harmed, though this is disputable. It is an example of the intrusion of collectivist notions in what is basically

an individualistic activity. The assumption of these ideas for the evaluation of business practice ends to corrode the concept of individual responsibility for action which is integral to the Western moral tradition. I shall deal with this problem more fully in the next chapter.

There are other equally important problems relating to the harm principle. Just as there are problems of identifying the victims of actions commonly held to be wrong, there are disputes about the perpetrators of the wrong. Since business largely takes place through corporations which have a technical legal personality, and since commerce has strong features of a collaborative enterprise, it is often difficult to locate exactly who is responsible for a wrong. The minimalist wants to locate moral responsibility for action in individual biological persons: they are the only agents, it is claimed, who can act with intent, an essential condition for legal and moral responsibility. Yet there has been a tendency, in the USA especially, to make corporations legally liable for criminal wrongs, as if a corporate agency were capable of a *mens rea* (guilty mind). The process began with the famous (but ultimately unsuccessful) prosecution of the Ford Motor Corporation for reckless homicide because of its failure to correct known faults in the Pinto car. The nearest example in Britain was the prosecution of the P&O company for corporate manslaughter over the Zeebrugge ferry disaster. What was theoretically significant about this last case was the fact that the prosecution was allowed to go ahead: not the final result, which was an acquittal of the corporation, as represented by its directors, by the judge.

The moral problem raised by these cases is not so much the possibility that the prosecution of corporate bodies for criminal acts may be used to shield individuals from legal liability (in cases of corporate crimes the common law requires that culpable individuals are prosecuted as well) but the meaningfulness of the claim that corporations can be treated as if they were moral persons. Arm's-length business morality requires that praise and blame be attributed to identifiable, biological persons who are the only agents who can be said to be causally responsible for actions. A corporation is formally identified through its owners, the shareholders. Although they are in normal circumstances remote from the alleged wrong, it is they who have to pay the costs flowing from the wrong if the corporation is convicted of a crime.

I shall point out later the disturbing implications for business ethics that this growing legal phenomenon has. At this stage it is sufficient to say that it represents a dramatic departure from the individualism associated with arm's-length morality: it substitutes collective for individual responsibility and hence blurs lines of moral accountability. It may even be said to replace justice with vengeance. From a strictly utilitarian position, corporations might be deterred from economically worthwhile activity if their owners knew that they were to be liable for every action of individual employees. It would make the 'monitoring' of agents by company owners extremely costly. Hence, many of the obvious economic advantages of the corporate form of organization would be forgone.

Arm's-length morality is concerned with agents exchanging properties for their well-being, and exploiting whatever assets they might have in a rule-governed context in which rights are clearly specified. Ethical problems normally arise in those grey areas where property rights are in dispute and where the effects of business on third parties are neither clear nor quantifiable. This becomes especially important in the corporate form of organization where the right to exclusive use of assets, especially knowledge, is indeterminate. Much of the dispute over insider trading arises from the doubt as to whether a company employee has the 'right' to use information for her own share purchases and sales: it is always knowledge which she has not disclosed to the company's owners (the stockholders). Is this a form of theft?

A most important feature of arm's-length morality is the emphasis it places upon individuals as responsible, independent and autonomous agents; whether they are consumers, traders or other transactors in voluntary market relationships. It makes the somewhat ambitious claim that the market and the conventional legal system 'filter out' many of the problems identified by the more critical business ethicists. Hence arm's-length morality contains a moral bias toward *caveat emptor* in all of its manifestations, and a distrust of paternalism. Since much of business ethics consists of injunctions to government to provide protective services to persons whom, it is maintain, would be helpless against, among others, corporations and advertisers, it is often in conflict with the arm's-length tradition. It is *ipso facto* dissatisfied with the effectiveness of market mechanisms as a corrective to perceived moral wrongs committed by business personnel. It wishes to provide other remedies than those contained within civil and criminal law and the exchange system itself. It is, of course, true that we must have some regulations in the business world, especially in product safety, in financial markets and in the environment, precisely because the slowness of common law and the market in correcting wrongs in these areas means that many people would be harmed unnecessarily. The need for such regulations would be reduced, however, if business could effectively regulate itself. It would also be less required if a traditional liberal notion of personal responsibility for action were to be revived. No consumer, or any other economic

agent, can be protected against the vicissitudes of economic life but the desire to hold corporations responsible for every misfortune has become a feature of some business ethics.

THE DIFFICULTIES OF SELF-RESTRAINT

The possibility of business regulating itself independently of government, in the way that other professions, such as law and medicine, have through established and enforced codes of ethics, seems (superficially at least) to be remote. This is so, despite the fact that, as suggested above, it would be in the business community's self-interest to do so. The reason is that such co-operative activity comes up against a familiar problem in social theory – the 'public good' trap (or, in the technical literature, the 'Prisoner's Dilemma').[19] Put simply, this means that cooperative activity, which would be to the benefit of rational, self-interested agents, is unlikely to be forthcoming through the voluntary action of the same agents, since however well-motivated each person might be he cannot be sure that the others will be so reliable.

The existence of this phenomenon creates real dilemmas for business. A familiar example is the problem of pollution. The business community has been assailed by ethicists for not taking account of the environment in its profit-maximizing activities: a proper audit would therefore include the costs imposed on third parties. Yet pollution cannot be wholly bad, for the activity that generates it is productive of jobs and lower prices for consumers. It cannot be assumed that the efficiency solutions imposed by the state produce an appropriate balance between, on the one hand, productivity, employment and lower costs, and on the other, environmental protection. Yet if possibly counter-productive regulation is to be forestalled, business would have to behave in a more co-operative manner. Is this precluded by the omnipresence of self-interest? The problems of co-operation in business can be explicated by a brief discussion of game theory.

In the Prisoner's Dilemma 'game' two suspects, Smith and Jones, are questioned separately by an interrogator about a robbery they have committed. If they both remain silent they will face a less serious charge carrying a short prison sentence of three years; if they both confess to the serious offence they will get 10 years each; if one, for example, Smith, confesses and implicates Jones (who remains silent) in the serious offence, Smith will get off scot free but Jones will receive a punitive sentence of 12 years. The best co-operative outcome, that is the outcome which involves the minimum combined prison sentence (a total of six years), would require both prisoners to remain silent. However, since they cannot trust one another, rationality dictates that they confess, hoping to implicate the other in order to get the reduced sentence. The interrogator has so arranged the 'payoffs' that whatever strategy is selected by Jones, it is better for Smith to confess, and vice versa. Confession is the 'dominant' strategy for both. The problem is shown in the accompanying table, which illustrates all possible outcomes. Even if the prisoners could communicate, each could not be sure the other would co-operate. There is no possibility of the build-up of trust.

		Smith's choices	
		Silence	*Confession*
Jones's choices	*Silence*	Cell 1 3, 3	Cell 4 12, 0
	Confession	Cell 1 0, 12	Cell 3 10, 10

Figure 2.1 The Prisoner's Dilemma

The application of this arcane argument to business is actually quite straightforward. Business agents are normally driven by self-interest and this according to conventional market theory is socially beneficial. However, on some occasions it may be harmful to the agents themselves; a measure of co-operation is therefore required and this might be impossible under the conventional assumptions of market theory. Business agents would clearly gain if they could agree to observe common moral standards, and behave 'responsibly', since this would reduce or even eliminate heavy and profit-reducing government regulation. However, in the anonymous world of Western commerce can agents be relied upon to keep to voluntary agreements? All may be well-motivated but they lack the assurance which is required for co-operation to occur. What is needed here is, of course, that elusive quality of *trust*.

An example is the recent Clean Air Act passed by the US Congress in 1990. It is conceded that this will impose heavy costs on industry, costs that will ultimately be passed on to the public in the form of higher prices, fewer jobs (temporarily) and lower returns to stockholders. What cannot be known is whether the gains the community secures in the way of environmental protection exceed the costs measured in orthodox business terms. Many observers think that they will not but, however

that may be, is it likely that the business community could behave with the kind of self-restraint which is required for it to resist such legislation? There have been other examples of environmental legislation that involve the same problem. It is certainly the fact of 'large numbers' that makes co-operation between business agents unlikely.

Again, it is possible that the self-enforced 'rules of the game' in the financial world would have been sufficient to restrain those practices – insider dealing, the fixing of share prices and so on – which seem to be an affront to widely-held conceptions of justice? People think not, hence the rise of excessive regulation, which has in fact hampered the efficiency of these markets and, as we shall see below, brought threats to the rule of law. In Britain, even with the Financial Services Act of 1986, the City of London is to some extent self-regulating. However, the code of rules under which it operates is regarded as inadequate by critics, who recommend that it should be replaced by something akin to the more coercive US model. The presence of self-interest in business makes its agents appear morally feeble and hence vulnerable to intervention. Business self-restraint, which would benefit all agents, is perhaps a type of public good which it is in no one person's interest to generate.

However, it should not be assumed that rules of restraint for business could not develop spontaneously and hence preclude the need for often heavy-handed state intervention. Although the rules of commerce require everyone to observe them if they are to be effective, they are not quite like the conventional public goods. They are co-ordination rules which make transactions smooth and efficient over an extended period of time. Violators of rules can be identified and punished through the 'tit-for-tat' strategy,[20] and the success in co-ordinating commercial activities which rules achieve leads to their spread from small to large groups. Unlike the classic Prisoner's Dilemma, where the game is played only once and self-interested agents have an incentive to defect from agreements, commerce is an 'iterated' (or repeated) game which, despite being competitive, still depends on a certain amount of voluntary co-operation. It is because the business game is played almost endlessly that agents have an incentive to co-operate voluntarily under informal rules. An evolutionary process[21] can gradually weed out non-cooperators: nobody will trade with rule-breakers.

In fact, the rules of commerce developed out of medieval fairs in precisely this voluntary manner.[22] That such rules have developed is a tribute to the fecundity of the concept of 'economic man', for the adoption them does not depend on a change from self-interest to altruism but romotion of an enlightened self-interest; it is an historical fact that the rules of commerce developed in advance of the state. Indeed, in the chaotic world of post-Soviet Russia, where the state's law is unreliable, and often unenforceable, business agents are developing their own rules of conduct.[23] Of course, things may get so bad that a genuine Prisoner's Dilemma comes about which requires an all-powerful sovereign for its solution.

In certain areas business agents may be confronted with what look like genuine Prisoner's Dilemmas, where there is little incentive to co-operate. As already mentioned, the environment is an obvious example because normally no one agent is specifically responsible for adverse effects on society; it is the *additional* polluter who causes the problem, and he cannot be readily identified. Although business agents would undoubtedly gain in the long run if they exercised restraint, there are circumstances where self-interest and moral or social duty do not coincide. But even here, as we shall see, the solution to the problem is not always state control. As has often been demonstrated, moral restraints, when strengthened by a property rights system that encourages socially responsible behaviour (for example, the issuing of pollution 'permits', see below, Chapter 7), may obviate the need for what is almost certainly efficiency-reducing state regulation.

Apart from in obvious examples of 'one-shot' Prisoner's Dilemmas (a game that is played only once so that trust cannot be built up), the business community can develop rules of self-restraint which are in its long-term interest. Indeed, historically it did. The rules of the City of London were quite effective in regulating the securities market before the rash of legislation that has emerged in the last 20 years. There is no real evidence that the latter has reduced the number of scandals. The interesting question is: why has such excessive regulation occurred in all aspects of business life? It does partly reflect a failure of self-regulation on the part of business, or the reluctance by politicians to allow it to develop, but it is also a response to the distrust which many people still feel for commerce (at least in comparison to the conventional professions): scepticism which has been powered by certain intellectual developments in the Western world. We shall explore some of these problems in relation to the corporation in the next two chapters.

Notes

2. Value Systems

1. For an introduction to the major ethical principles as applied to business, see W. Shaw and V. Barry, *Moral Issues in Business* (Belmont: Wadsworth, 4th edn, 1989) chs 1 and 2.
2. See A. Quinton, *Utilitarianism* (London: Oxford University Press, 1978); also R. Frey (ed.) *Utility and Rights* (Oxford: Blackwell, 1985).
3. J. Bentham, *An Introduction to the Principles of Morals and Legislation*, edited by J.H. Burns and H.L.A. Hart (London: Athlone Press, 1970), first published 1789.
4. See A. Hamlin, *Ethics, Economics and the State* (Brighton: Wheatsheaf, 1986) pp. 7–10.
5. For a discussion of utilitarianism in terms of preference satisfaction, see P. Pettit, *Judging Justice* (London: Routledge & Kegan Paul, 1980) ch. 12.
6. See A. Wildavsky, *Searching for Safety* (New York: Transaction Books, 1988).
7. *Foundations of the Metaphysics of Morals*, trans T. Abbott (London: Longmans Green, 1909) p. 15.
8. The doctrine of social justice, especially the version made famous by John Rawls, has been subjected to devastating criticism in A.G.N. Flew, *The Politics of Procrustes* (London: Temple, 1981).
9. Smith, *The Theory of Moral Sentiments*, p. 160.
10. F.A. Hayek, *The Mirage of Social Justice* (London: Routledge & Kegan Paul, 1976).
11. See M. Friedman, *Capitalism and Friedman* (Chicago: University of Chicago Press, 1963).
12. R. Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1973).
13. For a demonstration of the incompatibility of socialism and procedural justice, see Hayek, *The Mirage of Social Justice*.
14. In his famous Wilt Chamberlain example, Nozick shows how it would be impossible to maintain an equal distribution of income without coercion if people wanted to pay money in excess of the decreed figure to see the legendary basketball player perform.
15. This led to the passing of the Foreign Corrupt Practices Act, 1977.
16. See M. Keeley, *A Social Contract Theory of Organizations* (Indiana: University of Notre Dame Press, 1988).
17. There have been many scandals in the Japanese securities market, see *The Times* (4 September 1991).
18. R. Soloman and K. Hansen, *It's Good Business* (New York: Atheneum, 1985) p. 36.
19. For a description of the Prisoner's Dilemma, see M. Taylor, *Anarchy and Co-operation* (London: Wiley, 1976).
20. See R. Sugden, *The Economics of Rights, Co-operation and Welfare* (Oxford: Blackwell, 1986).
21. Sugden, *The Economics of Rights*, chs 5, 6, 7.
22. For description of the spontaneous development of commercial law in medieval times, see L. Trakman, *The Law Merchant: The Evolution of Commercial Law* (Colorado: Littleton, 1983).
23. Most of the evidence so far is journalistic but persuasive.