TAKING SIDES

Clashing Views on Controversial Issues in

Business Ethics and Society

SEVENTH EDITION

Lisa H. Newton
Maureen M. Ford

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Selected, Edited, and with Introductions by

Lisa H. Newton
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To our husbands—Victor J. Newton, Jr., and James H. L. Ford, Jr.

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Introduction

An Essay on the Background of Business Ethics: Ethics, Economics, Law, and the Corporation

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All philosophy is a conversation, and the part of the philosophy known as *ethics* is no exception. Ethics is a conversation about conduct, the doing of good and the avoiding of evil. *Business ethics* is a conversation about right and wrong conduct in the business world.

This book is aimed at an audience of students who expect to be in business, who know that there are knotty ethical problems out there, and who want a chance to confront them ahead of time. The method of confronting them is an invitation to join in a debate, a contest of contrary facts and conflicting values in many of the major issues of the day. This introductory essay should make it easier to join in the arguments. Managing ethical policy problems in a company requires a wide background—in ethics, economics, law, and the social sciences—which this book cannot hope to provide. But since some background assumptions in these fields are relevant to several of the problems we examine in this volume, we will sketch out very briefly the major understandings that control them. There is ultimately no substitute for thorough study of the rules of the game and years of experience and practice; but an overview of the playing field may at least make it easier for you to understand the object and limitations of the standard plays.

"Business ethics" was generally known to be an oxymoron until the last twenty years. Then came the alarming newspaper headlines. Foreign bribes, scandals on Wall Street, exploding cars, and conflicts over whistle blowers and civil rights in the workplace suddenly appeared in the headlines and would not go away. Now value questions are never absent from business decisions, and moral responsibility is the first requirement of a manager in any business. Out of this has emerged a general consensus that a thorough grounding in ethical reasoning is essential preparation for a career in business.

This book will not supply the substance of a course in ethics. For that you are directed to any of several excellent texts in business ethics or to any general text in ethics. *Taking Sides: Clashing Views on Controversial Issues in Business Ethics and Society* teaches ethics from the issue upward, rather than from the

Table 1

Fundamental Duties

	Beneficence—promoting human welfare	Justice—acknowledging human equality	Respect for Persons—honoring individual freedom
Basic fact about human nature that grounds the duty	Humans are animals, with vulnerable bodies and urgent physical needs, capable of suffering.	Humans are social animals who must live in communities and therefore must adopt social structures to maintain communities.	Humans are rational, free—able to make their own choices, foresee the consequences, and take responsibility.
Value realized in performance of the duty	Human welfare; happiness.	Human equality.	Human dignity; autonomy.
Working out of the duty in ethical theory	Best modern example is utilitarianism, from Jeremy Bentham and John Stuart Mill, who saw morality as that which produced the greatest happiness for the greatest number. Reasoning is consequential, aimed at results.	Best modern example is John Rawls's theory of justice as "fairness"; maintaining equality unless inequality helps everyone. Reasoning is deontological: morality derived from duty, not consequences.	Best modern example is Immanuel Kant's formalism, where morality is seen as the working out of the categorical imperative. Reasoning is deontological.
Samples of implementation of the duty in business	Protecting safety of employees; maintaining pleasant working conditions; contributing funds to the local community.	Obedience to law; enforcing fair rules; nondiscrimination; no favoritism; giving credit where credit is due.	Respect for employee rights; treating employees as persons, not just as tools; respecting differences of opinion.

principle downward. You will, however, come upon much of the terminology of ethical reasoning in the course of considering these cases. For your reference, a brief summary of the ethical principles and forms of reasoning most used in this book is found in Table 1.

Economics: The Capitalist Background

Capitalism as we know it is the product of the thought of Adam Smith (1723–1790), a Scottish philosopher and economist, and a small number of his European contemporaries. The fundamental capitalist act is the *voluntary exchange:* two adults of sound mind and clear purposes meet in the marketplace, to which each repairs in order to satisfy some felt need. To the participant in the free market, the *marginal utility* of the thing acquired must exceed that of the thing traded, or else why make the deal? So each party to the voluntary exchange walks away from it richer.

Adding to the value of the exchange is the *competition* of dealers and buyers; because there are many purveyors of each good in the marketplace, the customer is not forced to pay exorbitant prices for things needed. Conversely, competition among the customers (typified by an auction) makes sure that the available goods end up in the hands of those to whom they are worth the most. So at the end of the market day, everyone goes home not only richer (in real terms) than when they came—the voluntariness of the exchange ensures that—but also as rich as they could possibly be, since each had available all possible options of goods or services to buy and all possible purchasers of the goods or services brought to the marketplace for sale.

Sellers and buyers win the competition through *efficiency;* that is, through producing the best quality goods at the lowest possible price or through allotting their scarce resources toward the most valuable of the choices presented to them. It is to the advantage of all participants in the market, then, to strive for efficiency. Adam Smith's most memorable accomplishment was to recognize that the general effect of all this self-interested scrambling would be to make the most possible goods of the best possible quality available at the least possible price. Meanwhile, sellers and buyers alike must keep an eye on the market as a whole, adjusting production and purchasing to take advantage of fluctuations in *supply and demand.* Short supply will make goods more valuable, raising the price, and that will bring more suppliers into the market, whose competition will lower the price to just above the cost of manufacture for the most efficient producers. Increased demand for any reason will have the same effect. Should supply exceed demand, the price will fall to a point where the goods will be bought. Putting this all together, Smith realized that in a system of free enterprise, you have demonstrably the best possible chance of finding for sale what you want, in good quantity and quality and at a reasonable price. Forget benevolent monarchs ordering things for our own good, Smith suggested; in this system, we are led as by an *invisible hand* of enlightened self-interest to achieve the common good, even as we think we are being most selfish.

Adam Smith's theory of economic enterprise emerged in the natural law tradition of the eighteenth century. As was the fashion for that period, Smith presented his conclusions as a series of laws: the law of supply and demand, which links supply, demand, and price; the law that links efficiency with success; and, ultimately, the laws that link the absolute freedom of the market with the absolute growth of the wealth of the free-market country.

To these laws were added others, specifying the conditions under which business enterprise would be conducted in capitalist countries. The laws of *population* formulated by English clergyman and economist Thomas Malthus (1766–1834) concluded that population would always outstrip food production, ensuring that the bulk of humanity would always live at the subsistence level. Since Smith had already postulated that employers would purchase labor at the lowest possible price, it was a one-step derivation for English economist David Ricardo (1772–1823) to conclude that workers' *wages* would never exceed the subsistence level, no matter how prosperous industrial enterprise should become. From these capitalist theorists proceeded the nineteenth-century assumption that society would inevitably divide into two classes, a minority of fabulous wealth and a majority of subsistence-level workers.

These laws, like the laws of physics advanced at that time by Sir Isaac Newton (1642–1727) and the laws of psychology and government advanced at that time by John Locke (1632–1704), were held to be immutable facts of nature, true forever and not subject to change. No concept of progress, or of the historical fitness of a system to society at a point in time, was contemplated.

The Marxian Critique

Only within the last century and a half have we learned to think "historically." The notion of progress, the vision of a better future, and even the very idea that we might modify that future, in part by the discernment of historical trends, were unknown to the ancients and of no interest to medieval chroniclers. For Western political philosophy, history emerged as a factor in our understanding only with the work of the nineteenth-century German philosopher G. W. F. Hegel (1770–1831), who traced the history of the Western world as an ordered series of ideal forms, evolving one from another in logical sequence toward an ideal future. A young German student of Hegel's, Karl Marx (1818–1883), concluded from his study of philosophy and economics that Hegel had to be wrong: the phases of history were ruled not by ideas but by the *material conditions* of life, and their evolution one from another came about as the ruling class of each age generated its own revolutionary overthrow.

Marx's theory, especially as it applies to the evolution of capitalism, is enormously complex; for the purposes of this unit, it can be summarized simply. According to Marx, the *ruling class* in every age is the group that *owns the means of production* of the age's product. Throughout the seventeenth century, the product was almost exclusively agricultural, and the means of production was almost exclusively agricultural land: landowners were the aristocrats and rulers. With the coming of commerce and industry, the owners of the factories joined the ruling class and eventually dominated it. It was in the nature of such capital-intensive industry to concentrate within itself more capital: as Adam Smith had proved, its greater efficiency would drive all smaller labor-intensive industry out of business, and its enormous income would be put to work as more capital, expanding the domain of the factory and the machine indefinitely (at the expense of the cottage industry and the human being). Thus would the wealth of society concentrate in fewer and fewer hands, as the owners of the factories expanded their enterprises without limit into mighty industrial empires, dominated by machines and by the greed of their owners.

Meanwhile, all this wealth was being produced by a new class of workers, the unskilled factory workers. Taken from the ranks of the obsolete peasantry, artisans, and craftsmen, this new working class, the *proletariat,* expanded in numbers with the gigantic mills, whose "hands" they were. Work on the assembly line demanded no education or skills, so the workers could never make themselves valuable enough to command a living wage on the open market. They survived as a vast underclass, interchangeable with the unemployed workers (recently displaced by more machines) who gathered around the factory gates looking for jobs—*their* jobs. As capitalism and its factories expanded, the entire population, except the wealthy capitalist families, sank into this hopeless, pauperized class.

So Marx saw Western society under capitalism as one that ultimately would be divided into a small group of fabulously wealthy capitalists and a mass of paupers, mostly factory workers. The minority would keep the majority in strict control through its hired thugs (the state—the army and the police), control rendered easier by thought control (the schools and the churches). The purpose of the ideology taught by the schools and the churches—the value structure of capitalism—was to show both classes that the capitalists had a right to their wealth (through the sham of liberty, free enterprise, and the utilitarian benefits of the free market) and a perfect right to govern everyone else (through the sham of democracy and equal justice). Thus, the capitalists could enjoy their wealth in good conscience and the poor would understand their moral obligation to accept the oppression of the ruling class with good cheer.

Marx foresaw, and in his writings attempted to help bring about, the disillusionment of the workers: there would come a point when the workers would suddenly ask, *Why* should we accept oppression all our lives? Their search for answers to this question would show them the history of their situation, expose the falsehood of the ideology and the false consciousness of those who believe it, show them their own strength, and lead them directly to the solution that would usher in the new age of socialism—the revolutionary overthrow of the capitalist regime. Why, after all, should they not undertake such a revolution? People are restrained from violence against oppression only by the prospect of losing something valuable, and, as Marx concluded, the industrialized workers of the world had nothing to lose but their chains.

As feudalism had been swept away, then, by the "iron broom" of the French Revolution, so capitalism would be swept away by the revolt of the masses. After the first rebellions, Marx foresaw no lengthy problem of divided loyalties in the industrialized countries of the world. Once the scales had fallen from their eyes, the working-class hirelings of the army and police would quickly turn their guns on their masters and join their natural allies in the proletariat to create the new world.

After the revolution, Marx predicted, there would be a temporary "dictatorship of the proletariat," during which the last vestiges of capitalism would be eradicated and the authority to run the industrial establishment would be returned to the workers of each industry. Once the economy had been decentralized, to turn each factory into an industrial commune run by its own workers and each landed estate into an agricultural commune run by its farmers, the state as such would simply wither away. Some central authority would certainly continue to exist, to coordinate and facilitate the exchange of goods within the country. But with no ruling class to serve and no oppression to carry out, there will be no need of the state to rule *people;* what is left will be confined to the administration of *things.*

Even as he wrote, just in time for the revolutions in Europe of 1848, Marx expected the end of capitalism as a system. Not that capitalism was evil in itself; Marx did not presume to make moral judgments on history. Indeed, capitalism was necessary as an economic system to concentrate the wealth of the country into the industries of the modern age. So, in Marx's judgment, capitalism had a respectable past and would still be necessary for awhile in the developing countries to launch their industries. But that task completed, it had no further role in history, and the longer it stayed around, the more the workers would suffer and the more violent the revolution would be when it came. The sooner the revolution, the better; the future belonged to communism.

Law: Recovering for Damages Sustained

Life is full of misfortune. Ordinarily, if you suffer misfortune, you must put up with it and find the resources to deal with it. If your misfortune is my fault, however, the law may step in and make me pay for those damages.

Through *criminal law,* the public steps in and demands punishment for an offense that is serious enough to outrage public feeling and endanger public welfare. If I knock you on the head and take your wallet, the police will find me, restore your wallet to you, and imprison or otherwise punish me for the crime.

Through *civil law,* if I do you damage through some action of mine, you may take me to civil court and ask a judge (and jury) to determine whether or not I have damaged you, if so by how much, and how I should pay you back for that damage. There are a number of forms of action under which you may make your claim; the most common for business purposes are *contract* and *torts.* If you and I agree to (or "contract for") some undertaking, and I back out of it after you have relied on our agreement to commit your resources to the undertaking, you have a right to recover what you have lost. In torts, if I simply injure you in some way, hurting you in health, life, or limb, or destroying your property, I have done you a wrong (*tort,* in French), and I must pay for the damage I have done. How much I will have to pay will depend (as the jury will determine) on (1) the amount of the damage that has been caused, (2) the extent to which I knew or should have known that my action or neglect to act would cause damage (my *culpability*), and (3) the extent to which *you* contributed to the damage, beyond whatever I did (*contributory negligence*).

Another kind of suit at law alleges *negligence,* which is a tort, on the part of a company, in that it made and put up for sale a product known to be defective and that the defect injured its users. To establish negligence, civil or criminal, four elements must be demonstrated: First, there must have been a *duty*—the party accused of negligence must have had a preexisting duty to the plaintiff. Second, there must have been a *breach of,* or failure to fulfill, that duty. Third, the plaintiff must have suffered an *injury*. And fourth, the breach of the duty must have been the *proximate cause* of the injury, or the thing that actually brought the injury about.

Should companies ultimately be responsible for any harm that comes from the use of the products they profitably market and sell? Or should consumers be content to bear the responsibility for risks that they freely accept? When we are in a hurry, short of cash, or in need of a cigarette, then risky behavior looks to us to be our right, and we are resentful of the busybodies who would always have us play it safe. But when the risk materializes—when the accident or the disease happens—the perception of that risk (and the direction of that resentment) changes drastically. From the perspective of the hospital bed, it is crystal clear that the behavior was not worth the risk, that we never realized the behavior was risky, that we should have been warned, and that it was someone's duty to warn us. In that instantaneous change of perspective, three elements of negligence come into view: duty, breach, and injury. No wonder product liability suits are so common.

Yet the suit is a relatively recent phenomenon because of a peculiarity in the law. Until the twentieth century, a judge faced with a consumer who had been injured by a product (physically or financially) applied the principle of *caveat emptor*—"let the buyer beware"—and could ask the seller to pay damages only to the original buyer, and only if the exact defect in the product could be proven. For example, a defective kerosene lamp might explode and burn five people, but the exact defect (broken seam or shoddy wick) had to be brought into court or the case would be thrown out. In addition, the buyer could sue only the seller, not the manufacturer or designer, because the right to collect damages rested on the law of *contract*, not torts, and on the warrant of merchantability implied in the contractual relationship between buyer and seller. The cause of the action was understood to be a breach in that contract.

There matters stood until 1916, when an American judge allowed a buyer to sue the manufacturer of a product. A Mr. MacPherson had been injured when his car collapsed under him due to a defect in the wood used to build one of the wheels, and MacPherson went to court against the Buick Motor Company. The judge reasoned that the action was in torts, specifically "negligence," and not in contract, for a manufacturer is under a duty to make carefully any product that could be expected to endanger life, and this duty existed irrespective of any contract. So if MacPherson, or any future user of the product, was injured because the product was badly made, he could collect damages even if he had never dealt with the manufacturer in any way.

In the 1960s the automobile was still center stage in the arguments over the duties of manufacturers. Consumer advocate Ralph Nader's book *Unsafe at Any Speed* (1966) spearheaded the consumer rights movement with its scathing attack on General Motors and its exposé of the dangerous design of the Corvair. In response to the consumer activism resulting from that movement, Congress passed the Consumer Product Safety Act in 1972 and empowered the Consumer

Product Safety Commission, an independent federal agency, to set safety standards, require warning labels, and order recalls of hazardous products. When three girls died in a Ford Pinto in 1978, the foundations of consumer rights against careless manufacturers were well established. What was new in the Ford Motor Company case was the allegation of *criminal* negligence—in effect, criminal homicide.

At present, product liability suits are major uncharted reefs in the navigational plans of American business. If a number of people die in a fire in a hotel, for instance, their families will often sue not only the hotel, for culpable negligence, but the manufacturers of the furniture that burned, alleging that it should have been fire-retardant; the manufacturers of the cushions on the furniture, alleging that they gave off toxic fumes in the fire; and the manufacturers of the chemicals that went into those cushions, alleging that there was no warning to the consumers on the toxicity of those chemicals in fire conditions. The settlements that can be obtained are used to finance the suit and the law firm that is managing it for the years that it will take to exhaust all the appeals. This phenomenon of unlimited litigation is relatively new on the American scene, and we are not quite sure how to respond to it.

The Corporation

The human being is a social animal. We exist in the herd and depend for our lives on the cooperation of those around us. Who are they? Anthropologists tell us that originally we traveled in extended families, then settled down into villages of intensely interlocked groups of families. With the advent of the modern era, we have found our identities in family, village, church, and nation. Yet, in the great transformation of the obligations of the Western world (see Henry Maine [1822–1888], *From Status to Contract*), we have abandoned the old family-oriented care systems and thrown ourselves upon the mercy of secondary organizations: club, corporation, and state. The French sociologist Emile Durkheim (1858–1917), in his classic work *Suicide,* suggested that following the collapse of the family and the church, the corporation would be the association in the future that would supply the social support that every individual needs to maintain a moral life.

Can the corporation do that? Or is the corporation merely the organization that implements Adam Smith's self-interested pursuit of the dollar, with no purpose but to maximize return on investment to the investors while protecting them from unlimited liability?

On the other hand, once formed, and having become a major community figure and employer, does the corporation have a right to exist that transcends at least the immediate pursuit of money? The issue of so-called hostile takeovers sends us back to the purpose and foundation of business enterprise in America. Let us review: When an entrepreneur gets a bright idea for how to make money, he or she secures the capital necessary to run the business from investors (venture capitalists); uses that capital to buy the land, buildings, and machinery needed to see the project through; hires the labor needed to do the work; and goes into production. As the income from the enterprise comes in, the entrepreneur pays the suppliers of raw materials; pays the workers; pays the taxes, rent, mortgages, and utility bills; keeps some of the money for him- or herself (salary); and then divides up the rest of the income (profit) among the investors (probably including him- or herself) in proportion to the capital they invested. Motives of all parties are presupposed: the entrepreneur wants money; the laborers and the landlords want money; and the investors, who are the shareholders in the company, want money. The investors thought that this enterprise would yield them a higher return on their capital than any other investment available to them at the time; that is why they invested. However, this is a free country, and people can move around. If the workers see better jobs, they will take them; if a landlord can rent for more, the lease will be terminated; and if the investors see a better place to put their capital, they will move it. The determiner of the flow of capital is the rate of return, no more and no less. Loyalty to the company, faithfulness to the corporation for the sake of the association itself, is not on anyone's agenda—not on the worker's, certainly not on the landlord's, and *most* certainly not on the shareholder's.

The shareholders are represented by a board of directors elected by them to see that the company is run efficiently; that is, that costs are kept down and income up to yield the highest possible return. The board of directors hires management—the cadre of corporate officers headed by the president and/or chief executive officer to do the actual running of the company. The corporate officers thus stand in a *fiduciary* relationship to the shareholders; that is, they are forbidden by the understandings on which the corporation is founded to do anything at all except that which will protect and enhance the interests of the shareholders. That goes for all the normal business decisions made by the management; even the decision not to break the law can be seen as a prudent estimate of the financial costs of lawbreaking.

Yet our dealings with the business world, as citizens and as consumers, have always turned on recognition and support of the huge reliable corporations in established industries; not just coal and steel, which had certain natural limitations built into their consumption of natural resources, but the automobile companies, the airlines, the consumer products companies, and even the banks. Companies had "reputations" and "integrity," and they cultivated (and bought and sold) "good will." Consumers cooperated with the companies that catered to them in developing "brand loyalty." And, most important, those working in business cooperated with their employers in developing "company loyalty," which became a part of their lives, just as loyalty to one's tribe or nation was part of the lives of their ancestors. Is the company that sought our loyalty—and got it—just a scrap of paper, to disappear as soon as return on investment falls below the nearest competition? What part do we want corporations to play in our associative lives? If we want them to be any more than profit maximizers for the investors, what sorts of protections would we have to offer them, and what sorts of limitations should we put on their extra-profit-making activities?

Current Issues

Business ethics ultimately rests on a base of political philosophy, economics, and philosophical ethics. As these underlying fields change, new topics and approaches will surface in business ethics. For example, hostile takeovers did not take place very often in the regulatory climate that existed prior to the Reagan administration. The change in political philosophy introduced by his administration resulted in new business practices, which resulted in new ethical problems. Also, the work of John Rawls, a professor of philosophy at Harvard University, profoundly influenced our understanding of distributive justice and, therefore, our understanding of acceptable economic distribution in the society. The work currently being done in postmodern philosophy will change the way we see human beings generally and, hence, the activity of business.

No single work can cover all the issues of ethical practice in business in all their range and particularity, especially since, as above, we are dealing with a moving target. Our task here is much more limited. The purpose of this book is to allow you to grapple with some of the ethical issues of current business practice in the safety of the classroom, before they come up on the job where human rights and careers are at stake and legal action looms outside the boardroom or factory door. We think that rational consideration of these issues now will help you prepare for a lifetime of the types of problems that naturally arise in a complex and pluralistic society. You will find here no dogmas, no settled solutions to memorize. These problems do not have preset answers but require that you use your mind to balance the values in conflict and to work out acceptable policies in each issue. To employ business ethics, you must learn to think critically, to look beyond short-term advantages and traditional ways of doing things, and to become an innovator. The exercise provided by these debates should help you in this learning.

There is no doubt that businesspeople think that ethics is important. Sometimes the reasons why they think ethics is important have to do only with the long-run profitability of a business enterprise. There is no doubt that greater employee honesty and diligence would improve the bottom line or that strict attention to environmental and employee health laws is necessary to protect the company from expensive lawsuits and fines. But ethics goes well beyond profitability, to the lives that we live and the persons we want to be. What the bottom line has taught us is that the working day is not apart from life. We must bring the same integrity and care to the contexts of the factory and the office that we are used to showing at home and among our friends.

In this book, we attempt to present in good debatable form some of the issues that raise the big questions—of justice, of rights, of the common good—in order to build bridges between the workaday world of employment and the ageless world of morality. If you will enter into these dialogues with an open mind, a willingness to have it changed, and a determination to master the skills of critical thinking that will enable you to make responsible decisions in difficult situations, you may be able to help build the bridges for the new ethical issues that will emerge in the next century. At the least, that is our hope.

On the Internet . . .

Business Ethics Resources on WWW

Sponsored by the Centre for Applied Ethics, this page of business ethics resources links to corporate codes of ethics, business ethics institutions and organizations, and online papers and publications, as well as other elements.

http://www.ethics.ubc.ca/resources/business/

Critical Thinking Across the Curriculum Project

This site, sponsored by Longview Community College in Lee's Summit, Missouri, links to resources in critical thinking. They are divided into the core resources and discipline-specific resources.

http://www.kcmetro.cc.mo.us/longview/ctac/toc.htm

International Business Ethics Institute

The International Business Ethics Institute offers professional services to organizations interested in implementing, expanding, or modifying business ethics and corporate responsibility programs. Its mission is to foster global business practices that promote equitable economic development, resource sustainability, and democratic forms of government.

http://www.business-ethics.org

Contents In Brief

Contents