Chapter 5

Ethical and Social Responsibilities

5.1 Business ethics in a nutshell: Corporate social responsibility[1]

The legal and historic roots of the modern corporation reach well back into the eighteenth century, but it was in the Industrial Revolution of the nineteenth century that this truly extraordinary form of human organization came into its own and, the twentieth century, became the dominant economic force on earth. Consider its amazing characteristics concentration of management, accumulation of capital, shielding of ownership from liability, and being granted a legal existence not necessarily bounded by either space or time—both ubiquitous and eternal! As well, however, consider its fearsome prospects vis-à-vis its lack of accountability, its deficit of democratic governance, its often-uncivilized competitive engagement with all other sectors of society, not to mention its transcendence of both national sovereignty and legal jurisdiction. And there you have it. Is the Trans-national Corporation the answer to the fundamental issues of human survival, or the fundamental threat to life itself? In short, will the corporation of the twenty-first century be a corrupt Robin Hood, or a virtuous Sheriff of Nottingham?

Corporations are not natural persons. Corporations are fictitious, corporations are juridical persons created by law. The point is this: the ethical considerations one might use when dealing with a friend, associate, or stranger, are significantly different when the subject is the corporation.

Getting this straight is critically important to an adequate understanding of business ethics. People—their behavior and the products of their work and intellect—are judged ethically and legally based chiefly on their intentions. Ethical analysis of the behavior of natural persons begins with considerations of what a person meant by what he or she did, said, or produced. In contrast, ethical analysis involving the entity we call "the corporation" must forever begin and end in law and public policy. With reference to the political economy that brought forth the beast. The legal entity, known as the corporation, was created to shield investors from liabilities beyond the limit of their investment (a result that neither sole proprietorships nor partnerships could accomplish) with the legislative intent of facilitating the aggregation of private capital. This legal experiment begun 19th century has succeeded spectacularly.

For people to survive, they need physical and emotional nourishment, and familial and social support. Corporations survive solely by their ability to return value to their shareholders. Hence, corporations are consequential critters, Utilitarian to the core. A friend may forget a lunch date and hurt your feelings, but when he says, "I'm really sorry, I can't believe I forgot." You say, "Hey I missed you, but it's OK. Let's try again next week." When a company launches a new product and if the 100 million dollar venture tanks, shareholders do not want to hear about how sorry management is that things did not work out, or that management meant well. It will do the CEO no good to say, "My heart was in the right place."

When we talk about the ethical criteria for judging the behavior of corporations we speak not of intent, but responsibility: quite literally, the capacity to respond. Corporate ethics is the ethics of corporate social responsibility (CSR), not corporate personal responsibility. The responsibility of a corporation is shaped by

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[1]This content is available online at <http://cnx.org/content/m35556/1.4/>.

two realities: the obligations created by society through (1) law and public policy (legal responsibilities), and (2) the obligations created by corporate culture, i.e. stakeholder (customers, employees, neighborhoods, natural environments) obligations. The two overlap and reinforce each other, but their limits lie within the boundaries of a company's tangible capacities.

Corporate ethics is really about gaining understanding of what are called "mixed motives". When natural persons have mixed motives—you give a hundred bucks to the opera because you want your boss, who supports the opera, to think well of you—we somehow know that this is not an unambiguously laudable act. But when a company that makes computers gives 100 laptops to the public school system, and does so with the hope that exposing children to their brand of computers will lead to increased sales—this "doing good to do well" is not only laudable, it is responsible—responsible both to shareholders and the stakeholders.

Corporations as a matter of fact, can only act with "mixed motives". By law, they are created to serve the bottom line of returning wealth to investors. The law says corporations have a fiduciary responsibility (fiduciary = the highest standard of loyalty and trust owed by agents to principles) to their shareholders, who are the legal owners of the corporation. To do good, a corporation must do well. As a business ethicist, I argue the reverse: to do well, a corporation must do good. People have consciences, and some would say souls; corporations have neither. Corporations are creatures of law and public policy, they are cultural creations; as such, they have unique cultures of their own. Corporate ethics is therefore really about the creation of a culture of responsibility within the corporation.

Dr Lynne Payne of Harvard University has made a major contribution to the understanding of CSR and how it is achieved in her distinction between compliance based organizations and integrity based organizations. In reality, CSR is a product of both compliance (legal and regulatory constraints) and integrity (the internal culture and self regulatory environment). This is underscored by new laws such as Sarbanes-Oxley Act of 2002 and the almost two decade old US Federal Sentencing Guidelines (policy guidelines established in part to determining corporate criminal punishment in US Federal Courts).

Sarbanes Oxley is particularly interesting given Payne's compliance/integrity construct, in that it requires both integrity structures (such as a corporate board of ethics, and internal protections for whistleblowers) and increases fines for violation of anti-trust and other federal statutes regulating inter-state corporate behavior. Thus, corporations are creatures of law and policy and are regulated externally. Corporations have no conscience per se, but like any social system can develop a guiding culture, maintained through education and reinforced by the habits and interactions of the people within the corporation.

In a world of over six billion people, there is little alternative to large and complex organizations designed to feed, house, heal, and help meet basic human needs. The multinational corporation is here to stay; the issues of how these behemoths are guided and controlled is far from settled. How the humans who work and manage these organizations maintain their own integrity within the Utilitarian cultures of the multinational corporation is a chapter of history we are only beginning to write.

The Social Contract between society and the multinational corporation today is being radically renegotiated. The cascading collapses of the Dotcoms, the Enron, Worldcom, and Aldelphia scandals, and now, the meltdown of capital markets across the globe portends a turbulent future indeed for both the corporation and the business professional. Yet, it is in such times that fundamental changes most often emerge. Those who dare to ride these currents of change will emerge in a new order of political economy.

5.2 Business ethics in a nutshell: Management: the meta profession[2]

In 1912 Louis D Brandeis addressed the graduating students of Brown University. Tradition dictated that the graduating class was divided between those receiving learned degrees in the professions of law, medicine and ministry from those in the skill based disciplines, such as business management. The future Supreme Court justice did an interesting thing that graduation day: he turned away from the professional degree candidates toward the business degree candidates, and said:

Each commencement season we are told by the college reports the number of graduates who have selected

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[2]This content is available online at <http://cnx.org/content/m35553/1.4/>.

the professions as their occupations and the number of those who will enter business. The time has come for abandoning such a classification. Business should be, and to some extent already is, one of the professions.

Brandeis minced no words in defining what professionalism was all about. It was:

> An occupation for which the necessary preliminary training is intellectual in character, involving knowledge and to some extent learning, as distinguished from mere skill; which is pursued largely for others, and not merely for one's own self; and in which the financial return is not the accepted measure of success.

Spoken to clergy, physicians and lawyers in 1911, these words would have had a familiar—if unheeded—ring. But to businessmen? Brandeis' intuition about the decisive character of business management for human welfare has been borne out across the tortured years of this past century. His argument, however, that business management was essentially professional in character is debated still.

The three characteristics of professionalism cited by Brandeis address detail the nature of the requisite responsibility, and are the crux of why it is still controversial to call business management a profession:

- First. A profession is an occupation for which the necessary preliminary training is intellectual in character, involving knowledge and to some extent learning, as distinguished from mere skill.
- Second. It is an occupation which is pursued largely for others and not merely for one's self.
- Third. It is an occupation in which the amount of financial return is not the accepted measure of success.

Within Brandeis' three paradoxical pronouncements lies the answer to what it means to be a professional in business.

5.2.1 The paradox of skill

All professions require unique skills. While demonstrated proficiency in particular skills is necessary for admission into a profession, skill mastery alone is not sufficient to define the professional. If it were, a surgeon would be simply a plumber employed to mend human pipes and valves; a lawyer simply a carpenter crafting together legal words and phrases into motions, wills or contracts; a teacher simply an actor skilled at presentation or lecturing. While the surgeon must be extraordinarily skilled in the crafts of incision and suturing, while the lawyer must be adept at the craft of legal word-smithing, and the teacher a master of the practical arts of communication, such skills are not the essence of who they are as professionals, nor are they the be and end all of their practices. Understanding this difference is the key to the classic distinction between a trade and a profession.

Both trades and professions require the practice and perfection of significant skills, but a trade is completely defined by its commensurate skill; a profession is not. As Brandeis explains: "A profession is an occupation for which the necessary preliminary training is intellectual in character involving knowledge, and to some extent learning, as distinguished from mere skill." I would add that it is not just in "preliminary training" that intelligence and learning are required, but in all aspects of the practice of the continuing professional life.

In a time when everyone wants to be called professional, a real danger lurks in Brandeis' distinction, an elitism ('mere skill'), a snobbery, a class bias that is inappropriate both to the tradesperson and the professional. Once, the trades were a source of enormous pride and distinction. Through Medieval guilds a revolution in human worth and work was set in motion and the foundations of the industrial and technological revolutions laid. Through the guild structure, the skills of trades were passed from generation to generation, and the pride of association with quality and integrity maintained.

But the professions were something else entirely. Called The Learned Professions as the Middle Ages yielded to the Renaissance, the Priesthood, Law, and Medicine obviously required rigorous training in particular skills, but the application of these particular skills required a dimension of commitment and integrity not necessitated of a trade. The wisdom to counsel human beings in the midst of spiritual, emotional, physical or legal crisis necessarily requires more than technique. It requires a learned and practiced wisdom:

an ethic. It is one thing to entrust your bathroom to a plumber, another thing entirely to entrust your life to a heart surgeon. Those willing to assume the unique burdens of the spiritual, physical, and legal care for humans in existential need were designated, or set apart, as learned professionals.

As I write this chapter, I am in the process of recovering from open heart surgery. The experience of putting my life in the hands of a physician is vivid. I am also sitting in my home that is being extensively remodeled. I am fortunate to have a relationship with two excellent persons: Dick, my heart surgeon and Craig, the skilled construction craftsman (carpenter, plumber and electrician) restoring our home. Both are highly skilled and wise men. Dick, however, is integral to the care and counseling that guided me and my family through my decision to "go under the knife". Craig is full of sage wisdom about the public and foreign affairs of our times, but in no sense is my life vulnerable to his lively and wise insights that we share while he restores my kitchen and replaces the bedroom window.

Exactly three weeks ago Dick, sat on the side of my bed in a Denver, Colorado hospital surrounded by twelve members of my family and talked to me about the alternatives for dealing with a most unexpected heart problem. He showed me the very worrisome pictures of several partially blocked arteries, and told me that, in his opinion, I had no choice but to have quadruple bypass surgery. Dick said he would send my file to anyone I wished for a second opinion, but felt I should reach a decision soon. My kids asked all sorts of nervous and caring questions and he responded openly and fully. Never have I been with someone as obviously open and trustworthy at a time when so much was at stake for me.

As I made my decision to move forward with this personal ordeal, I would learn from friends in the community that Dick was one of the most skilled surgeons in the country. That was reassuring. But I already knew he was a professional: a person wise and caring enough for me to trust my life to.

5.2.2 The paradox of the public pledge

A profession is literally so called a profession because the aspirant to the office is orally sworn to specific public commitments—he/she professes publicly legal and ethical obligations unique to the vocation of lawyer, physician, counselor or priest. The public pledge is the portal condition into the unique relationships afforded the vocation. Be clear, it is not primarily a privilege the professional assumes, rather it is fundamentally self-imposed burdens. No one is forced to swear they will put another's interest above their own, yet this is the condition of all professionalism.

There is a tension between a profession's public responsibility and its commitment (also made publicly) to the private, vulnerable client. Brandies includes both in the observation that, "A profession is an occupation which is pursued largely for others and not merely for oneself". The paradox of "the other" is the paradox of the public pledge.

Quite a great deal is made of the special relationship between professionals their parishioners, patients, or clients—the sanctity of the confessional, the doctor patient relationship, or the lawyer client relationship— each special, private and protected both in law and ethics. Thinking of the confessional booth, the examination room, and the lawyer's office the idea of a uniquely protected privacy, of almost a sacred space, emerges. Assuredly the priest, doctor and lawyer are sworn to hold sacred the disclosures within this zone of professionally protected communication. Being a professional means nothing less than willingly and publicly affirming that the client's, patient's or parishioner's interest shall come before one's own interests.

For many professionals the matter stops with the pledge: "I swear the patient's interests comes first, end of discussion." Yet this commitment to the vulnerable client is only half the issue, as the business and professional crises of our times illustrate. Not only is the priest sworn to care for particular souls, he is also sworn to see to the care of "the people of God", the moral welfare of the parish, the salvation of the world. Not only is the doctor sworn to put the interest of the patient above his own, but the health of the patient's family, neighborhood, and the public is also his professional obligation. The lawyer is not simply employed to represent the particular client, but also sworn to be an "officer of the court". While accountants may be employed by Arthur Anderson to do the books for the Enron Corporation, they also are sworn to keep the interests of the public uncompromised (after all, we call the profession Certified Public Accountants).

I know of no professional comfortable with the tension inherent in this public pledge. No one likes hard choices; no one likes moral ambiguity; each of us wishes to live in a world where things can be reduced to

some least common ethical denominator (for example, a single duty). When teaching business students, the mantra of Milton Friedman is the droning undertone of almost every class discussion: "the business of business is business", the sole responsibility of the business executive is to increase shareholder return.

Yet, the very essence of professional responsibility is to address the difficult and unavoidable ethical tensions between public and private interest—the priest who hears the confession of a disturbed and homicidal parishioner intent on killing yet again; the lawyer who discovers that a client has misrepresented the facts of his case, and is asking for a plea to the court based in lies and distortions; the doctor who is asked to prescribe extraordinarily expensive treatments to a patient too ill, or old to have any reasonable chance of curative benefit; or the engineer who is told that she is bound by a confidentiality agreement, in spite of her certain conviction that a plane, bridge, or space shuttle is likely to fail and potentially cause extensive loss of life. These are not plot summaries for Hollywood; in an infinite variety, they are the stuff of professional life in the complex world of the twenty-first century.

It is by design, and not by accident, that professionals are thrust continually into such Hobson choice predicaments. The professional's public pledge is an acceptance of ethical burdens not incumbent on the rest of society. It is an acknowledgment of the reality of human existence where things do not come out even, where real ethical insight must be exercised and where benign outcomes are far from assured. Someone must live in the land between the rock and the hard place, and those who do so are designated "professional".

I think of professionals as the value bearers for society, those particularly burdened and practiced to address the most difficult and sensitive human ethical dilemmas. I do not mean to imply that a business person, lawyer, doctor, psychiatrist, or teacher is better in some moral sense than anyone else. Instead, that they have agreed to assume a unique ethical burden, to work at the transaction point where issues of significant human value are on the line. The professional is sworn not to desert this post, to be there to counsel, reflect and bear with the human condition in the midst of transition and crisis. This is, to me, the essence of professional practice—the practice of raising the value content of human decisions and choices. That is the professional's sworn burden, it is the very nature of the ethic that defines who the professional is.

All this said, it astounds me that anyone would want the title of professional. But to make sure this point is underlined, let us consider the "Paradox of pay", perhaps the most complexing of all to the business professional.

5.2.3 The paradox of pay

I am watching a sports show on the evening news. A local sportscaster is interviewing a member of the Harlem Globetrotters, who are in town for a game. The interview goes something like this:

>   *Sports Guy: Al, I was surprised you never turned pro.*

>   *Al: What do you mean? I am a pro, I get paid pretty good for playing ball.*

>   *Sports Guy: Well yeah? But I meant you never tried out for the NBA.*

>   *Al: Oh, well I like playing for the Globetrotters better ...*

Almost everyone assumes that being professional means getting paid (and paid well) for one's work. There are professionals and there are amateurs, the former get paid, while the amateurs do it for the love of it. Well, no. Originally, the professions were too important to receive wages in the usual sense. Professionals were not paid for their work; instead, professionals received an honorarium, a gratuity from the community intended both to honor and disassociate the vocation from the necessities of the market, to free the vocation for the selfless task of caring for others.

Three days before my heart surgery I happened to watch a Sixty Minutes piece on a cardiology group in California which was prescribing and performing unnecessary bypass surgery in order to increase their

practice's revenues. It was chilling. I thought of a case we use in business school about how Sears some years ago pressured employees in their auto servicing division to increase revenues by pushing unneeded air filters, mufflers, and break re-linings, etc. But, heart surgeons re-aligning ethical responsibility due to market dependency? I think the Medieval notion of honoraria for professionals may make a lot of sense in this time of triumphant capitalism. There are some values the market is not designed to dictate.

I love to tease business students about the matter of pay and the power of money. I ask, "Considering the 'oldest profession' what had you rather be known for: doing it for money, or doing it for love?" In the realm of love making, most us prefer to have non market forces determine the dimensions of our intimate lives. Let us hear it for true amateurs!

In a real sense, professionals indeed do it for love. It is difficult to imagine bearing the burden of a physician, lawyer, counselor, or a professor without having a deep and effusive passion for what one does. Professionals cannot leave their work at the office, because what they do is who they are. As I have discovered, teaching is the most rewarding thing I can think of doing. I do not just teach; I am a teacher. I am glad I am paid for my work, but truth be known I would do it for free. I walk away from a class where the students and I have really "lit it up", and I do not even have words to say how good it feels. I can describe historically and intellectually what a professional should be, but even better, I also know what it feels like. No amount of money can compensate for that feeling.

Consider the burdens of true professionalism that skill alone is not sufficient to qualify: one is publicly pledged to work on the unrelenting tension between the welfare of the client and the good of the society; and that is not the criteria by which success will be judged—why would one choose to "turn pro?" I have only one answer: professions are rightly designated as vocations. We become priests, lawyers, physicians, professors because we cannot do anything else; who we are cannot be achieved outside the realm of what we are impelled to do.

5.3 Different Approaches to Corporate Governance[3]

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    -The first link refers to a news story on Dunn's resignation from the Hewlett-Packard board.
 It is taken from PBS's Online NewsHour in a report delivered by Margaret Warner on September 22, 2006.

-The second link provides background information on the Hughes Aircraft case profiled just below.
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CORPORATE PROFILES:

Arthur Andersen
Once a highly respected company, Arthur Andersen no longer exists having gone bankrupt in the wake of the Enron disaster. Arthur Andersen provided Enron with consulting and accounting services. The consulting division was more successful but the accounting division, with its long tradition of outstanding ethical service, was the corporation's backbone. Arthur Andersen signed off on Enron's use of mark-to-market accounting which allowed Enron to project optimistic earnings from their deals and then report these as actual profits years before they would materialize (if at all). They also signed off on Enron's deceptive use of special purpose entities (SPE) to hide debt by shifting it from one fictional company to another. With Arthur Andersen's blessing, Enron created the illusion of a profitable company to keep stock value high. When investors finally saw through the illusion, stock prices plummeted. To hide their complicity, Arthur Andersen shredded incriminating documents. For federal prosecutors this was the last straw. The Justice Department indicted the once proud accounting firm convinced that this and previous ethical lapses (Sunbeam and Waste Management) showed a pattern of unabated wrongdoing. Arthur Andersen was conficted of obstructing justice on June 15, 2002 and closed its doors shortly after.

McLean and Elkind provided background for this profile on Arthur Andersen. See below for complete reference.

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[3]This content is available online at <http://cnx.org/content/m17367/1.5/>.

AA Timeline (Taken from Smartest Guys in the Room)

- 1913–Founded by Arthur Andersen: "think straight, talk straight"
- Stood up to Railroad company in early years. When asked to change accounting standards, Andersen said, "There is not enough money in the city of Chicago [to make AA give into client demands]"
- 1947-1963–Leonard Spacek became president of AA succeeding Arthur Andersen.
- Spacek helped motivate the formation of the Financial Accounting Standards Board. AA also served as conscience of accounting profession criticizing the profession and the SEC (Securities and Exchange Commission) for "failing to square its so-called principles with its professional responsibility to the public."
- 1963-1989–Slow erosion of standards and development of competition between accounting and consulting divisions. (Consulting division was developed to take advantage of a profitable direction in the financial induistry.)
- 1989–Consultants achieve relative autonomy as "separate business unit." (McLean: 144)
- 1997–Consultants break from firm.
- 1988-1991–Arthur Andersen receives 54 million in fees from Enron
- 2000–Enron pays AA 52 million. The lion share of this was for consulting fees.
- June 15, 2002–AA found guilty of obstruction of justice. "Today's verdict is wrong....The reality here is that this verdict represents only a technical confiction." (McLean: 406)

Hughes Aircraft

Howard Hughes founded this company at the beginning of the twentieth century. Hughes became a regular supplier of military hardware to the U.S. military. In the 1980's this included parts for surface to air misiles and fighter aircraft. One division specialized in computer chips designed to convert analogue information to digital for use in guidance systems and decision support systems. For example, these chips interacted with radar to help pilots of fighter aircraft avoid enemy missiles and also served as an essential component for missile guidance systems, the so-called smart bombs. Hughes had won the competitive bids for these highly profitable military projects but they had also committed themselves to tight delivery schedules with inflexible deadlines. And on top of this, the U.S. Airforce demanded that these computer chips and the systems that integrated them be rigorously tested to show that they could withstand the severe environmental stresses of battle. Hughes soon fell behind on the delivery of these computer chips causing a chain reaction of other delays both within the company and between the company and other links in the military supply chain. The environmental tests carried out by quality control under the supervision of Frank Saia had worked hard to complete the time-consuming tests and still remain on schedule with deliveries; hot parts (parts in high demand) were pulled to the front of the testing line to keep things running but soon even this wasn't enough to prevent delays and customer complaints. Giving way to these pressures, some Hughes supervisors pushed employees to pass chips without testing and even to pass chips that had failed tests. Margaret Gooderal and Ruth Ibarra resigned from the company and blew the whistle on these and other ethical failings that had become rampant in Hughes. So the corporate social responsibility question becomes how to change this culture of dishonesty and restore corporate integrity to this once innovative and leading company. (Background information on Hughes can be found at computingcases.org.)

Patricia Dunn v. Tom Perkins on Corporate Governance

When Patricia Dunn became a "non-executive" chairman of Hewlett-Packard's board on February 7, 2005, she brought with her an outstanding reputation in corporate governance. Her top priorities were to oversee the election of a new CEO after the firing of Carly Fiorina whose management of the recent acquisition of Compaq had lost her the HP board's support. Dunn also was determined to stop leaks to the press from high-level HP officials. She viewed the latter task as a fundament component of the post-Enron corporate governance approach she felt was needed as Hewlett-Packard moved into the 21st century. But her formal take on CG was at odds with powerful board member and successful venture capitalist, Tom Perkins. In his opinion, too strict an approach to CG stood in the way of HP culture and took focus away from competing with Dell and IBM as well as staying on the cutting edge in the development of new technology. As the leaks continued, Dunn's investigation into their source (most likely a discontented HP board member) became more active and rigorous. And the disagreements between her and board member Perkins deepened; their

incompatible views on CG (and other disagreements) led to Perkins's resignation from the HP board. Things became critical when Perkins received a letter from A.T. and T. informing him that an account had been established in his name (but without his knowledge or consent) using the last 4 digits of his social security number and his private phone number. During the HP-led investigation into the press leaks, a private investigation firm used an illegal technique known as "pretexting" to obtain confidential information about HP board members and news reporters including private phone and social security numbers. Perkins reported this to the SEC, and Patricia Dunn, as chairman and de facto head of the leak investigation, was indicted on four criminal charges including identity theft.

For a complete case study see Stewart (complete reference below) and Anne Lawrence and James Weber, Business and Society: Stakeholders, Ethics, Public Policy, 13th edition (McGraw-Hill): 501-513.

Dunn focused on incompatible views of corporate governance as one of the causes of the rift that had developed between her and Perkins's: **"Tom's model of governance may be appropriate in the world of venture capital, but it is outmoded and inappropriate in the world of public company governance."** (Stewart, 165) She also made clear her strong views on board members leaking confidential information shared during board meetings to the press: **"The most fundamental duties of a director—the duties of deliberation and candor—rely entirely upon the absolute trust that each director must have in one another's confidentiality. This is true for trivial as well as inmportant matters, because even trivial information that finds its way from the boardroom to the press corrodes trust among directors. It is even more critical when discussions can affect stock prices....Leaking "good" information is as unacceptable as leaking "bad" information—no one can foretell how such information may advantage or disadvantage one investor relative to another."** (Stewart, 156)

Questions

How can successful corporate governance programs be integrated into companies with free-wheeling, innovative cultures without dampening creative and imaginative initiatives? How does one make sense of the fundamental irony of this case, that a conscientious pursuit of corporate governance (attacking violations of board confidentiality) can turn into violation of corporate governance (violation of the privacy and persons of innocent board members)?

Word Version of this Template

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Figure 5.1: This is an example of an embedded link. (Go to "Files" tab to delete this file and replace it with your own files.)

5.3.1 Introduction

James B. Stewart, in a **New Yorker** article about Patricia Dunn and Hewlett-Packard, describes corporate governance as "a term that technically refers to all aspects of running a corporation but in recent years has come to emphasize issues of fairness, transparency, and accountability." This module looks at corporate governance from the macro perspective, (1) examining the management strategies adopted by a firm to ensure compliance and pursue excellence and (2) from the standpoint of government as it seeks to minimize unethical corporate behavior and to maximize the corporation's contribution to social welfare.

5.3.2 What you need to know ...

5.3.2.1 Prisoner's Dilemma: Cooperation or Competition?

Scholarly debates on corporate governance have turned on the advocacy of different approaches, many of which can be modeled mathematically. Two approaches are based on the concepts of agency and stewardship. (See Davis et. al. in Clarke 2004) To enter into this debate, you will reenact the "Prisoner's Dilemma." Imagine that two patriotic spies, A and B, have just been captured by the enemy. Both are placed in separate interrogation cells and are being pressured to confess and provide details about their spying activities. A and B would like to coordinate their actions but the enemy has kept them apart to prevent this. Their objective is to pit A against B another in order to get the desired information. To do this, they have set forth the following systems of motivations, i.e., punishments and rewards.

Options for the Prisoners

- **If both A and B confess**. A and B are put in jail for five years each. The net loss in this scenario is 10. This is the least desirable alternative from the collective standpoint.
- **If one confesses and the other does not**. The confessor is released immediately while the non-confessor gets seven years in prison. This maximizes the confessor's self interest but severaly punishes the patriotic, non-confessor. Net loss is 7.
- **If both do not confess**. After six months of half-hearted interrogation (most of this time is for processing the prisoners' release), both are set free for lack of evidence. While not maximizing self interest (this lies in confessing while the other remains silent) this does maximizes overall welfare by producing a net loss of only 1.

Prisoner Dillema Options Summarized

Prisoner A / Prisoner B	Confess	Not Confess
Confess	Both go to jail for 5 years (Net loss is 10)	A goes to jail for 7 years. B is released. (Net loss is 7)
Not Confess	B goes to jail for 7 years. A is released (Net loss is 7)	Both held for six months, then released. (Net los is 1.0)

Table 5.1

Assumptions in the Prisoner Dilemma

- Cooperation produces the best collective option and the second best individual option. This, in turn, assumes that cooperation produces more social welfare than competition.
- Free riding (competing) on the cooperation of others produces the most individual gains (for the free rider) but the second worst collective results. Society suffers loses from the harm done to the trusting, non-confessor and from the overall loss of trust caused by unpunished free-riding.
- Unlimited, pure competition (both prisoners confess) produces the worst collective results and the second worst individual results.
- Multiple iterations of the prisoner's dilemma eventually lead to cooperative behavior. But what causes this? (1) The trust that emerges as the prisoners, through repeated iterations, come to rely on one another? Or (2) the fear of "tit-for-tat" responses, i.e, that free riding on the part of one player will be punished by free riding on the part of the other in future iterations?
- Does the Prisoner's Dilemma assume that each player is a rational, self-interest maximizer? Are the players necessarily selfish in that they will seek to maximize self interest even at the expense of the other players unless rewards and punishments are imposed onto the playing situation from the outside?

The Prisoner's Dilemma is designed to model the reality of corporate governance where the directors/owners of a corporation delegate responsibility for the corporation's operations to managers who are charged with

pursuing, not their own interests, but those of their directors. The problem of corporate governance is how this cooperative arrangement is institutionalized. Can managers be left alone and trusted to pursue the best interests of the corporation? This is implied in stewardship theory. Or is it necessary to design a system of controls to keep the managers from diverting the operations of the corporation toward their exclusive, self-interests? This is the approach taken in agency theory. Modeling this in terms of repeated iterations of the prisoner's dilemma, does cooperation emerge as the most reliable strategy in the long run? Or does it need to be manufactured by introducing a system of incentives such as fear of tit-for-tat strategies? The Prisoner's Dilemma models the central problems of corporate governance by asking whether cooperation naturally emerges between managers and directors or whether it needs to be manufactured through a system of punishments and rewards.

The Prisoner's dilemma is discussed throughout the literature in business ethics. For a novel and insightful discussion in the context of corporate responsibility see Peter A. French, 1995 **Corporate Ethics** from Harcourt Brace College Publishers.

5.3.2.2 A Short Footnote on Human Nature

- One important means for classifying different approaches to corporate governance is to reflect on the associated account of human nature. This is a very complex issue but, fortunately, political philosophy provides us with some useful insights.
- Thomas Hobbes in the **Leviathan** presents a comprehensive psychological analysis of human nature based on seventeenth century physics. The focal point of this analysis is the human individual's unlimited pursuit of desire. Without external checks (primarily the threat of punishment imposed by a powerful sovereign) the **State of Nature** (where human individuals pursue self interest without external checks) is identical to a **State of War**. This war of all against all is **"solitary, poore, nasty, brutish, and short."**
- Hobbes's view has been characterized by C.B. Macphearson as "possessive individualism" which portrays the self as the possessor of its own attributes including the property acquired through its actions. This leads to a view called atomic individualism which is based on the claim that the self has its characteristics and determinate structure prior to and independently of any social interaction.
- Jean-Jacques Rousseau offers a brilliantly original criticism of Hobbes' conception of human nature in his Second Discourse, the **Discourse on the Origin of Inequality**. According to him, Hobbes's characterization of human nature in the State of Nature is actually a description of the human corrupted by society and the acquisition of property. **"The first person who, having enclosed a plot of land, took it into his head to say this is mine and found people simple enough to believe him, was the true founder of civil society. What crimes, wars, murders, what miseries and horrors would the human race have been spared, had someone pulled up the stakes or filled in the ditch and cried out to his fellow men: "Do not listen to this imposter.""** Rousseau argues that before the notion of property, the human's desire to preserve self was balanced by the social feeling of pity brought forth by the suffering of others. Only the unchecked pursuit of property (seen in terms of exclusive possession) would bring the motive of self-interest into conflict with natural pity.
- In opposition to Hobbes's atomic and individualistic self, a group of political philosophers, beginning with Aristotle, see the self as primarily social. Aristotle characterizes the human as a political animal (a being who naturally constructs a social organism called the "polus"). Sandel describes a "thick self" constructed out of familial, social and political content; this content is integrated into the core of the self. Werhane's description of this "social animal" is worth quoting in full: **"In that socialization process, we develop a number of interests, roles, memberships, commitments, and values such that each individual is an historical, cultural, and social product, a pluralistic bundle of overlapping spheres of foci, a thick self or selves....[T]here is no self as precritical, transcendental subject, totally ideal spectator or dispossessed subject.**
- Thus a series of views of human nature emerge that are instrumental in forming different approaches to corporate governance. Hobbes's atomistic individualism will favor the compliance approach mandated

by agency theory as directors set up external checks to self-serving managers. Rousseau's more nuanced view would require structures to hold the pursuit of self-interest in check while strengthening the equally natural impulses toward socializability and cooperation. The social conception of the self would treat the corporation as an environment where managers, as stewards, recruit employees who will quickly commit to the central corporate values and then develop supporting structures and procedures to help their colleagues find meaningful work while fulfilling social, corporate objectives.

5.3.2.3 Approaches to Corporate Governance

Summary Table

(1,1)	Description(1,2)	Theory of Human Nature(1,3)	Owner Role(1,4)	Manager Role(1,5)	Corporate Ethics Focus(1,6)
Agency Theory(2,1)	Managers act as agents of the corporation fulfilling the goals established by the owners / directors(2,2)	Managers are rational, but self-interested beings who must be controlled from the outside(2,3)	Owners are principals, that is, they originate the action and bear primary moral responsibility.(2,4)	Managers are agents, that is, responsible for acting in the interest of the principals who hire them. Faithful agency implies avoiding conflicts of interests and maintaining confidences.(2,5)	Compliance focus uses (1) rule-based codes, (2) systems of monitoring, and (3) punishments and rewards to motivate compliance from outside.(2,6)
continued on next page					

Stockholder Approach(3,1)	Corporation is property of stockholders who dispose of it as they see fit.(3,2)	Stockholders pursue self interest. They are rational (instrumental), economic self-interest maximizers.(3,3)	Owners invest in corporation and seek a return (profit) on their investment.(3,4)	Managers are responsible for ensuring that owners get maximum return on investment.(3,5)	Stockholders direct compliance toward manager control and external conformity to laws.(3,6)
Stakeholder Approach(4,1)	Owners drop out of center focus. Corporation is run for the sake of its stakeholders.(4,2)	Groups have special interests but recognize the need to integrate these. Humans possess capacity for procedural reasoning.(4,3)	Owners drop to one of a group of equal stakeholders. Still advocate their financial interests but not to exclusion of other stakeholders.(4,4)	Managers are meta-stakeholders. They treat stakeholders and stakes equally and integrate these to the fullest extent possible.(4,5)	(4,6)
Stewardship Model(5,1)	Managers act as stewards for absentee owners; oversee the operations of corporation and exercise care over them. Emotion (care) plays an equal role with instrumental rationality.(5,2)	Desire and self interest are balanced out by social motives such as Rousseau's pity and Aristotle's virtues.(5,3)	Owners still set cardinal objectives but they also are responsible for providing managers with a meaningful work environment.(5,4)	Managers are stewards exercising care over the property of the owners in their absence. Stewardship is based on internally generated and self-imposed motives toward care.(5,5)	Value-based: (1) identify and formulate common standards of excellence, (2) develop training programs to foster pursuit of these excellences, and (3) develop support structures to help reduce value "gaps."(5,6)

Table 5.2: This table summarizes materials from Introduction: Theories of Governance (Clarke, 1 through 30) and provides a taxonomy of several different approaches to corporate governance.

Agency Theory

1. In agency theory, the owners/directors set the central objectives of the corporation. Managers, in turn, are responsible for executing these objectives in the corporation's day-to-day operations. Corporate governance consists of designing structures and procedures to control management, i.e., to keep their actions in line with director-established objectives.

2. Managers cannot be trusted to remain faithful agents, i.e., to stay faithful to the interests and goals of the owners/directors. This presupposes a particular view of human nature. Humans are rational, egoists. They have desires and use reason to devise means to realize them. Since one desire can be checked only by another desire, this egoism is potentially without limit. Agency theory assumes that

managers will divert corporate resources to pursue their own selfish ends unless checked by some system of external controls. Thus, another key element of corporate governance under agency theory is to find the most efficient systems of controls to keep manager egoism in check.

3. The owners/directors play the role of principal in agency theory. The principal originates the action and bears primary moral and legal responsibility for it. Most of the time the principal of an action is also its executor. But there are times when the principal lacks the knowledge and skill necessary for executing the objectives he or she originates. In this case, the principal contracts with an agent. The principal authorizes the agent to act on his or her behalf. This requires that the agent remain faithful to the goals and interests of the principal. See Hobbes's **Leviathan**, Chapter 16 for an important historical account of the agent-principal relation.

4. Managers are agents. Their primary responsibility is to serve as faithful executors of the goals and interests of the principals. This requires, first, that, managers are responsible for exercising their professional judgment in a competent way. Managers are also responsible for remaining faithful to the interests of their principals. To do this they must avoid conflicts of interests and maintain confidentialities (i.e., keep secrets). Agent can also range from being free (unguided by principals) to bound (tightly monitored and controlled by principals).

5. How does ethics enter into corporate governance under agency theory? Primary emphasis is placed on compliance, i.e., enforced conformity to rules that constitute minimum thresholds of acceptable behavior. Compliance approaches develop (1) rule based codes, (2) systems of monitoring to detect violations, and (3) punishments and rewards to deter non-compliance and reward compliance. Trevino and Weaver provide an empirical analysis to the goals achieved through compliance ethics: "[4] the perception that better decisions are made because of the ethics program [5] ethical advice seeking, [6] decreased unethical behavior in the organization...[7] ethical awareness." (Weaver and Trevino, 1999: 333.)

Stockholder Theory

1. The stockholder approach is quite similar to that set forth in agency theory. The difference is that it views the corporation as the property of its owners (stockholders) who may dispose of it as they see fit. Most of the time this involves using it to receive maximum return on investment.

2. Stockholders are oriented toward self-interest, so stockholder theory, along with agency theory, takes an egoistic/Hobbesian view of human nature. Humans are rational, self-interest maximizers. Owners should expect this from the corporation's managers and employees. They should integrate procedures and controls that channel the corporation and its members in the direction of their (owners) self-interest.

3. The owners invest in the corporation and seek a return (profit) on this investment. But this narrow role has been expanded into overseeing the operations of the corporations and its managers to ensure that the corporation is in compliance with ethical and legal standards set by the government. Just as the master, under tort law, was responsible for injury brought about by the negligence of a servant, so also are directors responsible for harm brought about by their property, the corporation.

4. Managers are role-responsible for ensuring that investors get maximum return on their investment. This includes exercising good business judgment and avoiding conflicts of interests and violations of confidences.

5. Like corporations operating within agency theory, stockholder corporations focus on compliance strategies to monitor managers and make sure they remain faithful agents. However, directors under the stockholder approach also take seriously oversight responsibility which include ensuring corporate compliance with laws such as Sarbanes-Oxley and the Federal Sentencing Guidelines.

Stakeholder Theory

1. Owners drop out of the center of attention in this approach to become one of several, equal stakeholders. A stakeholder is any group or individual that has a vital interest, right, good, or value in play or at risk. (A gambler's stake is the money on the table in play as the roulette wheel turns. Depending

on the outcome of the situation, the gambler either keeps or loses the stake.) Examples of corporate stakeholders include stockholders, employees, customers, suppliers, local community, and government. The corporation on this view exists for the sake of its stakeholders, not stockholders.

2. The stakeholder view can be closely tied to egoism if it is assumed that the different stakeholder groups exist to maximize their selfish interests. But the stakeholder approach to corporate governance goes beyond the egoistic account of human nature. The corporation (and its managers) become responsible for mediating between these different, often conflicting, stakeholder interests, always keeping in mind that all stakeholders deserve equal respect. If stakeholders have any solidarity with one another, it is because the interest set of each includes the interests of the others. (This is how Feinberg defines solidarity.) The ability to envision the interests of each stakeholder and to work toward integrating these must be built on a view of human nature that is as altruistic as egoistic. While not embracing the social view of human nature outlined above, the stakeholder view assumes that stakeholders are capable and willing to negotiate and bargain with one another. It begins, in other words, with enlightened and long term self interest.

3. The first feature of the owner role is the reduction in centrality mentioned just above. They advocate their interests in the same arena as the other stakeholders, but they also must work to make their interests compatible with the other stakeholders. This requires integrating interests when possible and drawing integrity-preserving compromises when necessary. (See Benjamin 1990).

4. Managers play an important meta-role here. They are faithful agents but of all stakeholders, not just stockholders. Thus, they becomes referees or (to switch metaphors) brokers between stakeholders. They oversee the generation of expansive corporate values capable of absorbing and integrating narrower stakeholder interests.

5. Stakeholder approaches combine compliance and value-based approaches. In compliance, corporate officers define a moral and legal minimum; this consists of the minimum set of rules necessary for stakeholder coexistence. Beyond this, value-based approaches seek to create common, broader objectives, aspirations that can unite the different stakeholders in the pursuit of excellence. Stakeholder approaches need both; the compliance approach gets things started and the values-based approach sets them on the path to excellence.

Stewardship Theory

- Managers and employees can be trusted to act as stewards or guardians of the corporation. This means that while they do not own the corporation's resources, they will safeguard these for the owners. A steward is a caretaker who looks after the owner's property and interests when the owner is absent

- This approach definitely makes use of the social approach to human nature. Humans, naturally and spontaneously, realize their innermost natures by forming social unions. The corporation, under this view, is such an organization. While taking on the characteristics of a social contract with the other approaches, especially agency theory, the corporation under the stewardship view is more of a cooperative, collaborative enterprise. Humans can act and find meaning in interests and concerns well beyond the confines of the ego. In fact, to organize the corporation around egoistic assumptions does harm to those capable of action on altruistic motives. The emphasis here is on building trust and social capital to strengthen the social potentialities of human nature.

- Owners still establish the cardinal objectives for the sake of which the corporation exists. But they are also responsible for providing managers with an environment suitable developing human potentialities of forming societies to collaborate in meaningful work.

- Managers act as stewards or caretakers; they act as if they were owners in terms of the care and concern expressed for work rather than merely executors of the interests of others. In other words, the alienation implied in agency theory (acting not out of self but for another), disappears as the managers and employees of the corporation reabsorb the agent function.

- Stewardship approaches are primarily value-based. They (1) identify and formulate common aspirations or values as standards of excellence, (2) develop training programs conducive to the pursuit of excellence, and (3) respond to values "gaps" by providing moral support.

5.3.2.4 External Controls: Fining, Stock Dilution, Changing Internal Governance, Court Ordered Adverse Publicity, and Community Service

Classifications of Corporate Punishments from French and Fisse

	Description	Example	Target of Punishment	Deterrence Trap Avoided?	Non-financial Values Addressed?	Responsive Adjustment	Interference with Corporate Black Box
Monetary Exaction	Fines	Pentagon Procurement Scandals	Harms innocent	Fails to Escape	Few or None Targeted	None	No interference
Stock Dilution	Dilute Stock and award to victim		Stockholders (Not necessarily guilty)	Escapes by attacking future earnings	Few or None	Limited	No interference
Probation	Court orders internal changes (special board appointments)	SEC Voluntary Disclosure Program	Corporation and its Members	Escapes since it mandates organizational changes	Focuses on management and subgroup values	Passive adjustment since imposed from outside	Substantial entry into and interference with corporate black box
Court Ordered Adverse Publicity	Court orders corporation to publicize crime	English Bread Acts (Hester Prynne shame in **Scarlet Letter**)	Targets corporate image	Escapes (although adverse publicity indirectly attacks financial values)	Loss of prestige / Corporate shame / Loss of Face/Honor	Active adjustment triggered by shame	No direct interference (corporation motived to restore itself)
Community Service Orders	Corporation performs services mandated by court	Allied chemical (James River Pollution)	Representative groups/individuals from corporation	Escapes since it targets non-financial values	Adds value to community	Passive or no adjustment: sometimes public does recognize that cs is punishment	None

Table 5.3: This table summarizes material from Brent Fisse, "Sanctions Against Corporations: The Limitations of fines and the enterprise of Creating Alternatives." This article is found in the book, **Corrigible Corporations and Unruly Law** and provides a taxonomy of different forms of punishment for corporations. It helps rate a corporate punishment in terms of whether it targets the guilty, produces a positive change within the corporation, avoids Coffee's deterrence trap, and minimizes interference in what Stone terms the corporate black box. For full reference to book see bibliography below.

Requirements of Sarbanes-Oxley (From Dyrud: 37)

- Provide increased protection for whistle-blowers
- Adhere to an established code of ethics or explain reasons for non-compliance
- Engage in "full, fair, timely and understandable disclosure"
- Maintain"honest and ethical" behavior.
- Report ethics violations promptly
- Comply with "applicable governmental laws, rules, and regulations"
- Dyurd cites: ELT, **Ethics and Code of Conduct**, n.d.; http://www.elt-inc.com/solution/ethics _and_code_of_conduct_training_obligations.html

Ammended Federal Sentencing Guidelines (Dyrud 37)

- Establishing standards and procedures to prevent and detect criminal conduct
- Promoting responsibility at all levels of the program, together with adequate program resources and authority for its managers
- Exercising due diligence in hiring and assigning personnel to positions with substantial authority
- Communicating standards and procedures, including a specific requirement for training at all levels
- Monitoring, auditing, and non-internal guidance/reporting systems
- Promiting and enforcing of compliance and ethical conduct
- Taking reasonable steps to respond appropriately and prevent further misconduct in detecting a violation

5.3.3 What you will do ...

Module Activities

- Study the Prisoner's Dilemma to help you formulate the central challenges of corporate governance.
- Study four different approaches to corporate governance, (1) agency theory, (2) the stockholder approach, (3) the stakeholder approach, and (4) stewardship theory.
- Examine corporate governance from the macro level by (1) looking at the structural changes a company can make to comply with legal and ethical standards and (2) examining the balances that government must make to control corporate behavior and yet preserve economic freedom.
- Design a corporate governance program for an actual company that you and your group choose. It should be a company to which you have open access. You will also be required to take steps to gain the consent of this company for your study.
- Reflect on how to integrate this module's macro description of corporate governance with the micro perspective presented in the module on moral ecologies and corporate governance.

Corporate Governance Plans

- A corporate code of ethics that responds to the specific ethical problems uncovered by your profile of the corporation you are studying.
- A corporate ethics training program designed to acquaint employees, owners, and managers with the company's value aspirations and compliance objectives.
- A Corporate Ethics Audit designed to identify and minimize ethical risks.
- A comprehensive ethics compliance program that responds to the requirements set forth in Sarbanes and Oxley as well as the Federal Sentencing Guidelines.
- A program in corporate excellence designed to articulate and realize the core values that define your company's identity and integrity.

5.3.4 What did you learn?

This material will be added later. Students will be given an opportunity to assess different stages of this module as well as the module as a whole.

5.3.5 Appendix

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Corporate Governance and Hewlett-Packard Case
[Media Object][4]

5.3.6 EAC ToolKit Project

5.3.6.1 This module is a WORK-IN-PROGRESS; the author(s) may update the content as needed. Others are welcome to use this module or create a new derived module. You can COLLABORATE to improve this module by providing suggestions and/or feedback on your experiences with this module.

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5.3.6.2 Funded by the National Science Foundation: "Collaborative Development of Ethics Across the Curriculum Resources and Sharing of Best Practices," NSF-SES-0551779

5.4 Theory Building Activities: "Responsibility and Incident at Morales"[6]

5.4.1 Module Introduction

5.4.1.1 Getting Started...

Manuel, plant manager at the Phaust chemical plant in Morales, Mexico, has just died. While he was babysitting the process of manufacturing Phaust's new paint remover (monitoring on site temperature and pressure conditions) an explosion occurred that killed him instantly. The Mexican government has formed an independent commission to investigate this industrial accident.

This commission (headed by your instructor) has ordered key participants to testify on their role in the accident in a public hearing. Your job is to present before this commission from a stakeholder point of view. You will be divided into groups to role play the following stakeholder perspectives:

- Fred, the chief engineer involved in designing the plant,
- plant workers,
- officials from Mexican government regulatory agencies,
- Phaust management,
- representatives from the parent French company,
- officials presiding over an engineering professional society.

You will be assigned roles and given class time to prepare presentations for the commission. Then the class will enact the public hearing by having each group give a presentation from the perspective of its assigned role. Following these presentations, groups will answer questions from the investigating commission. Finally, you will work through debriefing activities to help solidify your practical understanding of the module's chief concepts. Background materials designed to help you with your presentations include sketches of moral responsibility, links to the "Incident at Morales" Case, tasks to help structure your role-playing, and activities to debrief on this exercise. This module is designed to help you learn about moral responsibility by using responsibility frameworks to make day-to-day decisions in a realistic, dynamic, business context.

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5.4.1.1.1 Before You Come to Class...

1. Visit the link to the National Institute for Engineering Ethics. Look at the study guide and download the script for the video, "Incident at Morales." You want to have some idea of what happens in the video before you watch it.
2. Read the module. Pay special attention to the section on "What you need to know." Here you will read summaries of three senses of moral responsibility: blame responsibility, sharing responsibility, and responsibility as a virtue. Your goal here is not to understand everything you read but to have a general sense of the nature of moral responsibility, the structure of the responsibility frameworks you will be using in this module, and the difference between moral and legal responsibility. Having this background will get you ready to learn about moral responsibility by actually practicing it.
3. Come to class ready to watch the video and start preparing for your part in the public hearing. It is essential that you attend all four of these classes. Missing out on a class will create a significant gap in your knowledge about and understanding of moral responsibility.

5.4.2 What you need to know...

"Responsibility" is used in several distinct ways that fall under two broad categories, the reactive and the proactive. Reactive uses of responsibility refer back to the past and respond to what has already occurred. (Who can be praised or blamed for what has occurred?) Proactive uses emerge through the effort to extend control over what happens in the future. An important part of extending control, knowledge, and power over the future is learning from the past, especially from past mistakes. But proactive responsibility also moves beyond prevention to bringing about the exemplary. How do occupational and professional specialists uncover and exploit opportunities to realize value in their work? Proactive responsibility (responsibility as a virtue) explores the skills, sensitivities, motives, and attitudes that come together to bring about excellence.

5.4.2.1 Different meanings of Responsibility

Reactive Senses

1. **Causal Responsibility** refers to prior events (called causes) which produce or prevent subsequent events (called effects). Cheap, inacurate sensors (cause) required that Manual be present on the scene (effect) to monitor the high temperatures and pressures required to correctly prepare Phaust's paint stripper.
2. **Role Responsibility** delineates the obligations individuals create when they commit to a social or professional role. When Fred became an engineer he committed to holding paramount the health, safety and welfare of the public. (See NSPE code of ethics)
3. **Capacity Responsibility** sets forth those conditions under which someone can be praised or blamed for their actions. Praise and blame associate an agent with an action. Excuses are based on means for separating or disassociating an agent from their actions. Capacity responsibility helps us determine whether there are any legitimate excuses available for those who would disassociate themselves from untoward, harm-causing actions.
4. **Blame Responsibility** determines when we can legitimately praise or blame individuals for their actions.

Proactive Senses

1. **Sharing Responsibility** extends the sphere of responsibility to include those to whom one stands in internal relations or relations of solidarity. Shared responsibility includes answering for the actions of others within one's group. It also includes coming to the moral aid of those within one's group who have gone morally astray; this involves bringing to their attention morally risky actions and standing with them when they are pressured for trying to uphold group values. While sharing responsibility

entails answering for what members of one's group have done, it does not extend to taking the blame for the untoward actions of colleagues. Sharing responsibility does not commit what H.D. Lewis calls the "barbarism of collective responsibility" which consists of blaming and punishing innocent persons for the guilty actions of those with whom they are associated.

2. **Preventive Responsibility**: By using knowledge of the past, one can avoid errors or repeat successes in the future. Peter French calls this the "Principle of Responsive Adjustment." (One adjusts future actions in response to what one has learned from the past.) According to French, responsive adjustment is a moral imperative. If one fails to responsively adjust to avoid the repetition of past untoward results, this loops back into the past and causes a revaluation of the initial unintentional action. The benefit of the doubt is withdrawn and the individual who fails to responsively adjust is now held responsible for the original past action. This is because the failure to adjust inserts the initial action into a larger context of negligence, bad intentions, recklessness, and carelessness. Failure to responsively adjust triggers a retroactive attribution of blame.

3. **Responsibility as a Virtue**: Here one develops skills, acquires professional knowledge, cultivitates sensitivies and emotions, and develops habits of execution that consistently bring about value realization and excellence. One way of getting at responsibility as an excellence it to reinterpret the conditions of imputability of blame responsibility. An agent escapes blame by restricting the scope of role responsibility, claiming ignorance, and citing lack of power and control. In responsibility as a virtue, one goes beyond blame by extending the range of role responsibilities, seeking situation-relevant knowledge, and working to skillfully extending power and control.

5.4.2.2 Blame Responsibility

To hold Fred responsible for the accident at Morales, we need to...

1. Specify his role responsibilities and determine whether he carried them out
2. Identify situation-based factors that limited his ability to execute his role responsibilities (These are factors that **compel** our actions or contribute to our **ignorance** of crucial features of the situation.)
3. Determine if there is any moral fault present in the situation. For example, did Fred act on the basis of **wrongful intention** (Did he intend to harm Manuel by sabotaging the plant?), fail to exercise **due care**, exhibit **negligence or recklessness**?
4. If Fred (a) failed to carry out any of his role responsibilities, (b) this failure contributed to the accident, and (c) Fred can offer no morally legitimate excuse to get himself off the hook, then Fred is blameworthy.

Fred, and other Incident at Morales stakeholders, can escape or minimize blame by establishing morally legitimate excuses. The following table associates common excuses with the formal conditions of imputability of blame responsibility. (Conditions of imputability are those conditions that allow us to associate an action with an agent for purposes of moral evaluation.)

Excuse Table

Excuse Source (Capacity Responsibility)	Excuse Statement
Conflicts within a **role responsibility** and between different role responsibilities	I cannot, at the same time, carry out all my conflicting role responsibilities
Hostile Organizational Environment which routinely subordinates ethical to financial considerations.	The environment in which I work makes it impossible to act responsibly. My supervisor routinely overrules my professional judgment, and I can do nothing about it.
Overly determining situational constraints: financial and time	I lack the time and money to carry out my responsibility.
Overly determining situational constraints: technical and manufacturing	Carrying out my responsibility goes beyond technical or manufacturing limits.
Overly determining situational constraints: personal, social, legal, and political.	Personal, social, legal or political obstacles prevent me from carrying out my responsibilities.
Knowledge Limitations	Crucial facts about the situation were kept from me or could not be uncovered given even a reasonable effort.

Table 5.4

5.4.2.3 Proactive Responsibility

Preventive Responsibility: Responsive Adjustment

- Responsibility to adjust future actions in response to what has been learned from the past
- **Scenario One**: Past actions that have led to untoward results. Failure here to adjust future actions to avoid repetition of untoward results leads to reassessing the original action and retrospectively blaming the agent.
- **Scenario Two**: Past actions have unintentionally and accidentally led to positive, value-realizing results. Here the agent responsively adjusts by being prepared to take advantage of being lucky. The agent adjusts future actions to repeat past successes. In this way, the agent captures past actions (past luck) and inserts them into the scope of praise.
- **Nota Bene**: The principle of responsible adjustment sets the foundation for responsibility in the sense of prevention of the untoward.

Responsibility as a Virtue or Excellence

1. Virtues are excellences of the character which are revealed by our actions, perceptions, beliefs, and attitudes. Along these lines, responsibility as a virtue requires that we reformulate responsibility from its reactive, minimalist sense (where it derives much of its content from legal responsibility) to responsibility as an excellence of character.
2. Aristotle situates virtues as means between extremes of excess and defect. Can you think of examples of too much responsibility? (Does Fred try to take on too much responsibility in certain situations?) Can you think of anyone who exhibits too little responsibility. (Does Fred take on too little responsibility or shift responsibility to others?) For Aristotle, we can have too much or too little of a good thing. From the "too much" we derive vices of excess. from the"too little" we derive the vices of defect.
3. Virtues are more than just modes of reasoning and thinking. They also consist of emotions that clue us into aspects of the situation before us that are morally salient and, therefore, worthy of our notice and response. Two emotions important for responsibility are care and compassion. Care clues us into

aspects of our situation that could harm those who depend on our actions and vigilance. Do Wally and Fred pay sufficient attention to the early batch leakages in the Morales plant? If not, does this stem from a lack of care ("Let operations handle it") and a lack of compassion ("Manuel can take care of himself")? Care and compassion help to sensitize us to what is morally salient in the situation at hand. They also motivate us to act responsibility on the basis of this sensitivity.

4. Responsibility as a virtue manifests itself in a willingness to pick up where others have left off. After the Bhopal disaster, a worker was asked why, when he saw a cut-off valve open, he didn't immediately close it as safety procedures required. His response was that shutting off the value was not a part of his job but, instead, the job of those working the next shift. This restriction of responsibility to what is one's job creates responsibility gaps through which accidents and other harms rise to the surface. The worker's lack of action may not constitute moral fault but it surely signifies lack of responsibility as a virtue because it indicates a deficiency of care and compassion. Those who practice responsibility as a virtue or excellence move quickly to fill responsibility gaps left by others even if these tasks are not a part of their own role responsibilities strictly defined. Escaping blame requires narrowing the range of one's role responsibilities while practicing responsibility as a virtue often requires effectively expanding it.

5. Finally, responsibility as an excellence requires extending the range of knowledge and control that one exercises in a situation. Preventing accidents requires collecting knowledge about a system even after it has left the design and manufacturing stages and entered its operational life. Responsibility requires that we search out and correct conditions that could, under the right circumstances, produce harmful accidents. Moreover, responsibility is a function of power and control. Extending these and directing them toward good results are clear signs of responsibility as a virtue.

Reponsibility as Virtue

- The Incident at Morales provides us with a look into a fictionalized disaster. But, if it is examined more carefully, it also shows opportunities for the exercise of responsibility as a virtue. The following table will help you to identify these "responsibility opportunities" and allow you to imagine counbterfactuals where had individuals acted otherwise the "incident" could have been avoided and moral value could have been realized.
- Think of virtuous or even heroic interventions that could have prevented the accident. These represents, from the standpoint of the film, lost opportunities for realizing responsibility and other virtues.

Responsibility as a Virtue: Recovering Lost Opportunities

Characteristic	Relevance to Incident at Morales
Change goal from avoiding blame to pursuing professional excellence.	Could this have led participants to look for more creative responses to EPA environmental regulations?
Develop a flexible conception of your role responsibilities and move quickly to extend it to fill responsibility gaps left by others.	Could this have structured differently the relation between those responsible for plant design/construction and those responsible for its operation?
	continued on next page

Extend the scope and depth of your situational knowledge, especially regarding accumulating information on the operational history of newly implemented technologies.	Would this have led to further follow-up on the early signs of leakage of the couplings?
Extend control and power. This includes finding ways of more effectively communicating and advocating ethical and professional standards in the context of group-based decision-making.	Could Fred have handled more proactively the last minute change in the chemical formulation of the paint remover?

Table 5.5

Section Conclusion

Integrate the retroactive and proactive senses of responsibility into your group's presentation for the public hearing. Don't just work on the reactive approach, i.e., try to avoid blame and cast it on the other stakeholder groups. Think proactively on how to prevent future problems, respond to this accident, and turn the events into positive opportunities to realize value.

Questions to Get Started

- Is Fred (blame) responsible for the accident and even Manuel's death? (Use the conditions of imputability and the excuse table to get started on this question.)
- Did Wally and Chuck evade their responsibility by delegating key problems and decisions to those, like plant manager Manuel, in charge of operations? (Start the answer to this question by determining the different role responsibilities of the stakeholders in this situation.)
- What kind of responsibility does the parent French company bear for shifting funds away from Phaust's new plant to finance further acquisitions and mergers? (Looking at the modules on corporate social responsibility and corporate governance will help you to frame this in terms of corporate responsibility.)
- Do engineering professional societies share responsibility with Fred? (The CIAPR and NSPE codes of ethics will help here. Try benchmarking corporate codes of ethics to see if they provide anything relevant.
- Look at the positive, proactive moral responsibilities of professional societies. What can they do to provide moral support for engineers facing problems similar to those Fred faces? Think less in terms of blame and more in terms of prevention and value realization.

5.4.3 Presentation on Moral Responsibility

[Media Object][7]

5.4.4 What you are going to do...

In this module, you will...

1. apply and integrate the concept of moral repsonsibility (blame responsibility, sharing responsibility, responsibility as a virtue) to situations that arise in the video, "Incident at Morales."
2. learn the basic facts, character profiles, and decision-situations portrayed in the video, "Incident at Morales." You will see the video in class and examine the script and Study Guide at the NIEE website.
3. work in groups to develop and play a stakeholder role in a fictional public hearing. Your group's specific tasks are outlined below in one of the group profiles provided. In general, you will prepare a statement advancing your group's interests and points of view. The responsibility frameworks will help you anticipate questions, prepare responses, and defend your role against those in other roles who

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[7]This media object is a downloadable file. Please view or download it at
<Moral Responsibility.pptx>

may try to shift the blame your way. But most important, this module provides tools to help you go beyond the reactive, blame standpoint.

4. participate in a mock public hearing by playing out your group's assigned role.
5. work with the other groups to debrief on this activity. The public hearing will generate a lot of information, ideas, and positions. Debriefing will help you to structure and summarize this material. The objective here is to learn by doing. But to truly learn from what you have done, you need to reflect carefully.

5.4.4.1 Stakeholder Roles

Mexican Government Regulatory Agencies

- Look at OSHA regulations on safety. Do any of these apply to the incident at morales. Pay particular attendion to responsibilities for providing safe working conditions and to mandated procedures for accident prevention. How as a government agency can you encourage companies to take active and positive measures to increase workplace safety and prevent accidents?
- Look at EPA or JCA for ideas on environmental issues. What are Phaust's responsibilities regarding local environmental conditions? (Should the Mexican government require lining waste water ponds?)
- As an official representing Mexican government regulatory agencies, how do you balance the safety and environmental needs of Mexican citizens and workers with the need to attract foreign companies and investors to Mexico to promote economic development. Should safety and environmental values ever be traded off to promote economic development?

Workers at Morales Plant

- Manuel, your plant manager, has just died. You and your co-workers are concerned about the safety of this new plant. Can you think of any other issues that may be of concern here?
- Develop a statement that summarizes your interests, concerns, and rights. Are these being addressed by those at Phaust and the parent company in France?
- The Mexican Commission established to investigate this "incident" will ask you questions to help determine what cause it and who is to blame. What do you think some of these questions will be? How should you respond to them? Who do you think is to blame for the incident and what should be done in response?

Designing Engineer: Fred

- Examine Fred's actions and participation from the standpoint of the three responsibilty frameworks mentioned above.
- Develop a two minute position paper summarizing Fred's interests, concerns, and rights.
- Anticipate questions that the Commission might raise about Fred's position and develop proactive and effective responses..
- Be sure to use the three responsibility frameworks. Is Fred to blame for what happened? In what way? What can professional societies do to provide moral support to members in difficult situations? How can interested parties provide moral support? Finally, what opportunities arose in the video practicing moral responsibility as a virtue? (Think about what an exemplary engineer would have done differently.)

Phaust Management: Wally and Chuck

- Chuck and Walley made several decisions reponding to the parent company's budget cuts that placed Fred under tight constraints. Identify these decisions, determine whether there were viable alternatives, and decide whether to justify, excuse,or explain your decisions.
- Develop a two minute position paper that you will present to the commission.

- Anticipate Commission questions into your responsibility and develop effective responses to possible attempts by other groups to shift the blame your way.

Corporate Governance: French Parent Company

- You represent the French owners who have recently required Phaust Chemical. You have recently shifted funds from Phaust operations to finance further mergers and acquisitions for your company.
- What are your supervisory responsibilities in relation to Phaust?
- Develop a preliminary two minute presentation summarizing your position and interests.
- Anticipate likely commission questions along with possible attempts by other groups to shift the blame your way.

Engineering Professional Society

- You represent the professional engineering society to which Fred belongs.
- Develop a two minute presentation that outlines your group's interests and position.
- Anticipate possible Commission questions, develop responses, and anticipate attempts by other groups to shift the blame your way.
- Respond to whether your professional society should extend moral support to engineers in difficult positions like Fred's. Should they clarify code provisions? Provide legal support and counseling? Make available a professional/ethical support hotline?

Investigative Commission
This role will be played by your instructor and other "guests" to the classroom. Try to anticipate the commissions questions. These will be based on the conditions of blame responsibility, the principle of responsive adjustment, and responsibility as a virtue.

5.4.4.2 Module Time Line

- Module Preparation Activities: Read module and visit niee.org to get general orientation to "Incident at Morales"
- **Class One**: Watch Video. Receive group role. Begin preparing your group role.
- **Class Two**: Work within your group on preparing your group's statement, anticipating questions, and developing responses.
- **Class Three**: Participate in the Public Hearing. The group representing the Mexican Commission will convene the public hearing, listen to the group's statements, ask questions, and prepare a brief presentation on the Commission's findings
- **Class four**: Class will debrief on the previous class's public hearing. This will begin with the Commission's findings

5.4.5 Incident at Morales and Jeopardy

Jeopardy and Incident at Morales
[Media Object][8]
Jeopardy on Socio-Technical Systems in Incident at Morales
[Media Object][9]

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[8]This media object is a downloadable file. Please view or download it at
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[9]This media object is a downloadable file. Please view or download it at
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5.4.6 What have you learned?

Listen to the findings of the Mexican Government Commision. Write a short essay responding to the following questions. Be prepared to read parts of your essay to your professor and to your classmates.

1. Do you agree with the Commissions findings? Why or why not? Be sure to frame your arguments in terms of the responsibility frameworks provided above.
2. Were there any opportunities to offer Fred moral support by those who shared responsibility with him? What were these opportunities. How, in general, can professional societies support their members when they find themselves in ethically difficult situations?
3. What opportunities arise for exercising resonsibility as an excellence? Which were taken advantage of? Which were lost?
4. Finally, quickly list themes and issues that were left out of the public hearing that should have been included?

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