

Why Worry About Business Ethics?

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'If you go upon arguments, they are never wanting, when a man has no constancy of mind. My father never changed, and he preached plain moral sermons without arguments, and he was a good man—few better. When you get me a good man made out of arguments, I will get you a good dinner with reading you the cookery book. That's my opinion, and I think anybody's stomach will bear me out.'

Mrs Farebrother, in George Eliot's
Middlemarch, chapter 17

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Bob Ewin

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Why Worry About Business Ethics?

When companies have crashed on all sides and the blame is put on a lack of business ethics, it might seem very odd to ask why we should worry about business ethics: if failures in business ethics are the cause of the trouble, what would be more worth worrying about? It is not simply a matter of investors in Bond Corp or depositors in Rothwells losing their money, but of danger to human life and even loss of human life at Three Mile Island, Seveso, Wittenoom, or Bhopal.¹

But there are reasons for concerning ourselves with that question. One possibility worth bearing in mind these days is that the blaming of these things on a lack of business ethics is really simply a matter of passing the buck: when risky policies do not pay off for a firm, investors might blame the loss of their money on unethical behaviour by the management of the firm instead of recognising that losses do occur in these activities. Somebody who has lost out complains vociferously that *nice* people would not have behaved as the firm behaved; instead of looking after themselves, taking responsibility for their own investments or bargaining, trying to play the part of a shareholder or a citizen properly by keeping an eye on the company's activities or on what the laws of our land allow companies to do, such people complain that others have behaved unethically. The issue of safety standards to be met at Three Mile Island or Bhopal or Seveso is not one that could reasonably, or should, be left to the company concerned. The community in which the company works has to decide on those standards, and to decide to what extent it will play a loosening of those standards off against the provision of jobs to voters, and so on.

1 Some of the story of Bhopal is told in Sanjoy Hazarika: *Bhopal* (New Delhi: Penguin Books [India], 1987), and a version of the Wittenoom story is told in Ben Hills: *Blue Murder* (Melbourne: Sun Books, 1989). The dramatic cases, of course, tend to provoke the more colourful books.

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Union Carbide is not a charitable institution. If its shareholders wanted to be involved in a charitable institution (or only in charitable institutions, since there is no reason to believe that investors in Union Carbide do not also give time and money to charitable enterprises) they would have given their money to Oxfam or War Against Want or something of the sort instead of investing it in Union Carbide. It is not clear by what right a government of a country with no Union Carbide presence could *insist* that Union Carbide set up a plant to provide jobs for nationals; it can attract them by offering tax breaks or cheap labour or low (and perhaps, therefore, cheaper) safety standards, but the government that makes those attractive offers should then take the responsibility for them if they lead to problems. The community sets the standards and cannot reasonably expect that a company will then unnecessarily put itself at an economic disadvantage by unilaterally imposing extra limitations on itself that are not imposed on its competitors. This demand for paternalistic treatment from large companies (which, like the child's demand for the same sort of treatment, is so often accompanied by an insistence on the complainant's independence and possession of rights even if not of responsibilities) does, no doubt, lie behind some of the complaints about business ethics, but it is not the sort of point that I have in mind here.

Injustice can follow from the angry *insistence* on business ethics, too. It has been suggested by many people that Michael Milken really did very little that was both significant and illegal, though he made a lot of money and provoked a great deal of envy.² It might even be argued that, by making possible buyouts that brought back owner-management (though there are questions about the propriety of the part played by management in some of those buyouts insofar as the buyouts were reasonable only because of future savings management would be able to introduce to their own benefit but had not already introduced to benefit shareholders), Milken made ethical behaviour more likely than it was in a situation in which corporations fitted better to the model suggested by Galbraith,³ in which management

2 See, for example, Michael Lewis: *The Money Culture* (London: Hodder and Stoughton, 1991), pages 50–51. See also Connie Bruck: *The Predators' Ball* (Melbourne: Information Australia Group, 1988); Fenton Bailey: *The Junk Bond Revolution* (London: Fourth Estate, 1991); and James B. Stewart: *Den of Thieves* (New York: Simon and Schuster, 1991).

3 See especially *The Affluent Society* (Harmondsworth: Penguin, third edition 1979) and *The New Industrial State* (Harmondsworth: Penguin, second edition 1974).

and ownership are sharply separated and firms consequently come to aim for things other than those assumed in classical economics. As an example, consider this commentary on some of the dealings between Ariadne and Repco:

Individually, the directors seem to have lacked either the confidence or the capital to have been large investors in the company they ran, making it possible that the retention of their jobs and salaries might have been a greater concern to the directors and executives of Repco than the interests of the shareholders who owned the business.⁴

It is clear how developments of corporations in the direction sketched by Galbraith (amongst others) would lead to unethical behaviour of this sort.⁵ The dynamics of corporate behaviour, whether owner-management is necessary if there is to be the right sort of motivation to ethical behaviour; these are important factual issues that need to be examined as such, but I shall not be dealing with them in any detail here.

Another sort of problem arises with perfectly sincere groups who insist on ethical behaviour but are over-impressed with their own ethical views. Henry Bosch picked these up quite accurately:

Many diverse groups are using the idea of ethics to advance their political causes or personal hobbyhorses. They use it in advocating the preservation of the environment, kindness to animals, support for supposedly disadvantaged groups, and so on. For them business is unethical if it does not actively work towards their chosen goals.⁶

These groups make, and encourage in others, a sort of mistake with which I shall want to deal in reasonable detail: they demand of corporations moral qualities that an artificial person such as a corporation cannot have and that natural people acting for a corporation cannot exhibit on its behalf. The error is an insidious one; many people make it.

And lack of facility with arguments about business ethics might actually hold back achievement in business, too.⁷ The manager might

4 Bruce Ross: *The Ariadne Story* (Elwood, Victoria: Greenhouse Publications, 1988), page 85.

5 For a simple and straightforward introductory discussion of Galbraith's ideas, see David Reisman: *Galbraith and Market Capitalism* (London: New York University Press, 1980).

6 Henry Bosch: *The Workings of a Watchdog* (Melbourne: Heinemann, 1990), page 25.

7 Cf. the discussion of managers who back off too readily in the face of 'ethical' objections instead of arguing about the propriety of their behaviour in Mark Pastin: *The Hard Problems of Management: Gaining the Ethics Edge* (London:

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refrain from various actions on behalf of the company and for the good of the company because he was unable to respond satisfactorily to the 'ethical' complaints about its behaviour or because fear of those possible complaints and his inability to respond to them led him to limit his actions unnecessarily. In that way, expansion might not be undertaken and people who could have been in good jobs might be left unemployed and looking for telephone booths to demolish.

Again, when people see the government using public money to buy votes by giving it to firms such as Kodak,⁸ when the Fitzgerald Commission, the Royal Commission into Commercial Activities of Government and Other Matters, and so on suggest that the social structure within which business must operate is rotten, then the public perception is that large firms will not be able to operate without being, to some extent, corrupt: they will have to at least make political donations, even if not settle lawsuits out of court. And that public perception is what constitutes the ethos within which business must act, the ethos that creates the ethics.⁹ That is something which can be affected by the actions of citizens refusing to vote for anybody who seems to be involved in such activities, making clear that there is a community demand for higher standards. It is not the fault simply of business.

So one thing that lies behind the complaints about a lack of business ethics might be an attempt to pass the buck, to avoid responsibility and insist that somebody else take the blame for the fact that one lost money in an investment, found that the goods one bought after only cursory inspection were shoddy, or whatever. That is not a fault in people in business, or not a fault only in people in business. Part of the problem might be that public perception of business activity is such that ethical behaviour becomes very difficult: businesspeople might well get the idea that if they play by the rules, they will go broke. One problem might be that some people try to use business to further their own ethical ends. There are many problems about business ethics. What I want to deal with is only part of the problem: I want to consider just what can properly be expected of business in general terms by way of ethical behaviour and, along with that, what is special about *business* ethics and how it is related to

Jossey-Bass, 1988), pages 3-4 (discussion of defence contractors) and 7-9 (case of the shopping mall).

8 Cf. also Paul Barry: *The Rise and Fall of Alan Bond* (Sydney: Bantam Books, 1990), pages 149-150.

9 The etymology is that 'ethics' derives from 'ethos'.

the personal morality we are all expected to exhibit in our day-to-day lives; I want to consider how it is that ethical confusions arise from people's mistaking the relationship between personal morality and business ethics; and I want to consider what can be done by way of education in business ethics to raise the standards and just what role philosophical ethics can play in that.

I have found, in my experience of giving talks to groups of businesspeople, that they will often tell me beforehand that there can be no ethics in business. The people who tell me this are decent and intelligent people. To my relief, I have usually been able to persuade them that they were mistaken. These are intelligent people who know their field well, but suffer from a conceptual confusion. The confusion is not a simple one; those people would not have made the mistake if it were. Peeling away the layers of confusion to reveal the mistake is not a simple task; travelling along that path with me will require the reader's concentration, especially in the middle sections of the argument. Going through that part of the argument is not, and cannot be, like reading a light novel. But we must go through it. Without understanding the problem, one cannot grasp the solution.

One thing worth thinking about at the start of all this is just who it is to whom writing about business ethics is addressed. One thing that is certainly not the case is that some philosopher somewhere, let alone that I here, will say something about business ethics as a result of which dyed-in-the-wool villains give up their evil ways, return their ill-gotten gains to the aged and ill widows from whom they were taken by fraud or duress, and go off to spend the rest of their lives caring for lepers. A lot of the people who bemoan the lack of business ethics and talk of having education in business ethics do seem to think that courses in the subject would work in some such magic way. Nevertheless, many of the tales told about activities involved in WA Inc., about which people say that they show a failure of ethics and therefore the need for ethical codes and education were, *if* the stories were true, *illegal*, not simply unethical. People who completely ignore the law (as opposed to people who first think about the law and then decide that it is so bad that it must be disobeyed) are not likely to be all that impressed by unenforceable ethical claims. Just saying or writing something to somebody, by itself, without provision of any new motivation, is unlikely to change bad people into good.

But then perhaps we should not set our sights so high. There are possible confusions in business and professional ethics so that well-

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intentioned people, people who want to do the right thing, will wind up doing the wrong thing because of the confusion: setting out to behave good-heartedly and decently, for example, they will wind up failing to carry out their duties to the shareholders or somehow making improper use of the money entrusted to their care. Worse, in some respects, they will see the impropriety of such behaviour and will therefore give up any ethical concern in business or their professional lives. The philosophical contribution to business and professional ethics is to work at removing some of those confusions. The people at whom writing about business and professional ethics should be directed, therefore, are the *ethical*, and that does not mean that we are merely preaching to the converted or dealing with those who will never disagree with what is said. We are writing for people whose behaviour *can* change as a result of the discussion, not for those who are already doing the right thing, and we are writing *only* for people whose behaviour can be changed in that way by the discussion. Education in business ethics will do no magic, and we should not look to it to do magic.

What particularly interests me is the ways in which ethical concerns can lead ethical people to unethical activities. One reason, but only one of several reasons, why it interests me is that sorting out that sort of confusion will help to persuade some people who do not even *try* to behave ethically to start trying to behave ethically. It will not have that effect with everybody who lacks ethical concern even if all my arguments are correct and perfectly clear, but it might have that effect with one particular group. I have often come across business people who deny that there is any ethics in business, just as one comes across many people outside business who make the same claim. At the mention of business or professional ethics they start to make very bad jokes about military intelligence. They think of ethical behaviour as performing required acts from a certain list that seems to be invariant despite change in circumstances; if those acts are silly ones to perform in certain circumstances, then ethical behaviour is silly in those circumstances. It is as though, seeing that telling a lie is improper in certain circumstances, they concluded that telling a lie must be improper in *all* circumstances and therefore made Aunt Mary face the dreadful truth about how she looks in that hat.

Such people, unfortunately, never seem to accept the parallel argument that if they ever, in any circumstances, owe me \$10, then they always, in all circumstances, owe me \$10. They recognise here the change in obligations depending on such circumstances as whe-

ther they have *borrowed* \$10 from me, but seem not to recognise that circumstances might change other cases, too: telling a lie might be dishonest if done to gain an unfair advantage over somebody else, for example, but not if done in a minor case to avoid causing unnecessary pain to Aunt Mary by telling her that her new hat does not suit her.¹⁰ Seeing that 'ethical' behaviour is silly in business in some circumstances, they set aside all restraint even though they do so with regret. Making clear that the restraints are different from the ones that those people regard as ridiculous goes some way towards making it possible for them to think properly about ethical behaviour and to behave ethically. It is a matter of considering what puts those required (or prohibited) actions on the list in the first place, and thus of considering the applicability of ethical predicates to business-people and professionals. We distinguish between actions in one's personal capacity and actions in one's professional capacity. *Of course* one's personal morality matters when one acts in one's personal capacity, but does it matter in the same way when one is *not* acting in one's personal capacity? In what ways should my private moral views guide me when I am acting *as a director or manager* on behalf of shareholders?

And getting a few more people back into the fold is important, because the numbers who think in this way or that way determine what is the business ethos into which people are inducted: the ethos, the provider of the ethics, comes from the way those in the activity think about the activity. What universities are, for example, is, to a very large extent, determined by what those in them, and outside them but concerned with them, think they are, even though the buildings are unchanged and the certification for entry to certain professions retains its old significance. The task of the philosopher concerned with business ethics is not a *merely* philosophical task, as is much of professional philosophy these days, and it is not merely popular speculative science, as is much of the rest of professional philosophy these days, but it is the use of philosophical skills in quite practical matters sorting out important conceptual confusions. And it can have some effect because it is directed to the misled, not to the evil-hearted. The evil-hearted will not be affected.

So there are several issues for us to deal with. One issue is whether it is possible for there to be ethical education of the mature,

10 Cf. the discussion of complete and incomplete moral notions in Julius Kovesi: *Moral Notions* (London: Routledge and Kegan Paul, 1967), *passim*.

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whether courses on business ethics can actually have any effect on the people in business. What could business ethics do that business law could not do? And if business law can do the job and the job has to be done, why not use the coercive powers of law to make sure that the job *is* done?

Another is the issue of who the experts are who would teach courses in ethics. Who are the ethical authorities? One way of bringing this issue up is through the widespread and remarkably woolly claim that ethics is personal, but there are also attacks on the idea of ethical knowledge as such that would need to be taken up in a really detailed account of the matter. But how can anybody teach something as shifting, as difficult, and as much a cause of disagreement as is ethics? 'Ethics can ... be frustrating because it offers few black-and-white solutions; instead, it offers complex problems, hard choices, and uncertain outcomes. In accounting, $2 + 2 = 4$, or is supposed to, but in ethics there is no cookbook formula.'¹¹ In such cases, one person's guess is, perhaps, as likely to be right as any other person's (one meaning that can be put on the claim that ethics is personal); nobody really knows, so nobody is incontestably an expert. And so *anybody* can set up as head of an applied ethics centre in a way that one could not set up as a brain surgeon, and in the case of the applied ethics expert it is not really even perfectly clear what would count as failure or as getting it wrong. Hence directors of ethics centres will usually be divided into two types: those who make quite specific pronouncements and are accepted or rejected as partisan (as happens with some Catholics involved in bioethics), and those who are not partisan in that way and who simply offer pap, saying that of course business-people should be nice, should be good citizens, and so on. The latter sort of ethical expert tends to be more generally acceptable because the advice is so vacuous that it does not exclude any likely course of action or intrude on the personal ethical views of the businessperson in question, thus making it possible to make donations of the company's money to the ethics centre without having to reflect too much on the company's business activities or whether there is a need to change its ways. Which businessperson who seeks ethical advice, after all, is going to expect or accept the advice that he should be unethical or dishonest or unjust? The pap offered by this sort of ethical expert is like telling somebody who wants to go to Kalgoorlie

11 Pastin: *op. cit.*, page 33.

to take the right road, but making no attempt to tell them, or find out for them, which road is the right road.

It still tends to be clergymen or people of publicly-espoused religious belief who are looked on as ethical experts, at least officially, despite the reported decline in religious belief in Australia and the fact that theologically-based ethics is widely regarded nowadays as being discredited. This reliance on a declining religious belief perhaps goes with an inclination to regard ethics (or morality) as something arcane that has no real bearing on what one should do. One example of this attitude is the student who told me that it is, of course and always, immoral to take a human life. If somebody wantonly attacks you with a view to killing you and then going on to kill your family and the only way you can stop him is to kill him (i.e. the classical case of self-defence), then the moral thing to do is to allow him to go ahead. 'Of course,' the student continued, 'nobody in their right mind would do that.' My concern with ethics here is with ethics as something centrally concerned with determining what is a reasonable way to behave, not with respectable noises to make in conversation at parties. The Senate Standing Committee on Legal and Constitutional Affairs seemed to take a line like that of my student when it said 'Ethics are morals tempered with experience'.¹² The idea here is that we have a lot of high-flown nonsense, which is morality, but experience shows that we have to set about making some sort of a compromise. Experience teaches us what means will get us to various ends; experience does not choose between those ends for us, though we might need experience of them (and other things) to make the choice for ourselves. The ethical part of the problem is simply being skipped over by the Standing Committee's Report.

As we shall see, there are ways of dealing with the problems about whether ethical education is possible for the mature and whether there can be experts to give ethical education. But it should be clear at the start that there are such problems to be dealt with. Those problems are problems for the good-willed, and they are the ones for whom we need to clear the path. Problems of a preliminary sort, such as those that will be dealt with here, are all too often skipped over; insistence on ethics then becomes just a ritual, something to be 'tempered by experience', and therefore to be tempered by the different experiences and different aims of different people. At least

12 *Company Directors' Duties: Report on the Social and Fiduciary Duties and Obligations of Company Directors* (Canberra: Australian Government Publishing Service, 1989), pages 7-8 and several times again later in the report.

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we need the tempering to be by the experience of and in the light of the aims of an ethical person. These prolegomena need to be addressed to get to the problem.

When people speak *about* ethics, they usually express the philosophical views of time gone by. Not only that, of course; Christianity was around before Kant, and it had philosophers giving accounts of its ethical theory before he came on the scene, but a lot of the forms of today's Christian ethical thought are derived from Kant. Kant lectured to his students, who then went out and became teachers, legislators, writers, and so on; gradually, the influence was transferred even to people who had never heard of Kant and it became a commonplace that ethics was a set of rules imposed on us by God through our reason. That is to say, God made the rules of ethics and revealed them to us by giving us reason, through which we recognise the binding force of those rules. One thing to be done in ethical education is to remove the confusion of Kantianism.¹³ Not all philosophers these days, and not all who hold to the sort of ethical theory that Kant espoused, are believers in God, and not all of them hold that ethical rules are created by God, but the common position is that ethical rules are recognised by reason and that their binding force is created by reason.

Our desires and so on are distractions from our truly moral selves, Kant thought; my truly moral self is my reason, and ethical requirements are rational requirements of reason. Kant is wrong about that. There are different sorts of ethical claims, and we need to distinguish them. Some are fairly cold and ratiocinative: if it is a matter of the justice of paying debts, we need to calculate just what is owed and pay that. It is not *more* just to pay more than is owed, though it might show some other moral quality; justice is paying what is owed, which means calculating what is owed and paying it whether one feels like it or not. Kindness is different: if a kind person sees somebody hit by a car and bleeding by the roadside, then he does not calculate what he owes the injured person and put time into working out exactly how much he owes, and he does not go to the injured person's aid *because* he owes that help; he helps because the

13 For Kant's views on ethics, see *The Moral Law* translated by H.J. Paton (London: Hutchinson and Co., 1965) and *Kant's Critique of Practical Reason and Other Works on the Theory of Ethics* translated by T.K. Abbott (London: Longmans, 1963). For some critical discussion of Kant's theory, see Lawrence Blum: *Friendship, Altruism, and Morality* (London: Routledge and Kegan Paul, 1980).

other person is in need, and he is spurred into helping by his concern for the other, by a feeling, not by the deliverances of pure reason.

The good person, and the good citizen, will have a range of these moral qualities: will be kind, caring, just, honest, courageous, and so on. It is often taken for granted that the 'good corporate citizen' will have exactly the same moral qualities. But corporations, as artificial people, cannot *feel*; hence they cannot exhibit those virtues (such as kindness and generosity) that require feeling because they require a certain sort of motivation. Nor can the people who act for the corporation show all the moral qualities for it: self-sacrifice is fine if it is your own self that you are sacrificing, but it is a different thing when you are sacrificing somebody else's self. There is nothing generous about giving away what is somebody else's, as when directors give away the corporation's money when it should go to the shareholders as dividends. And that, as often as not, is the sort of thing that is expected of corporations when they are expected to act as good corporate citizens—they are expected to make donations to charitable enterprises, to keep plants open in order to provide jobs for some people at the shareholders' expense, and so on.¹⁴ Seeing that not all these demands can be met, those who think of ethics in this way decide that ethical requirements can have no place in business. But, in fact, the point is one about *generosity* and other virtues of that sort, virtues that require feeling and that involve the self in such a way that a representative cannot exhibit them for you. It is not a point that applies to all virtues. It does not apply to justice, fairly obviously; other people can hand over the money to pay my debts for me. And while a manager who declines to give the company's money to charitable enterprises on its behalf is not being ungenerous, if he tells lies on the company's behalf he is being dishonest.

So one thing that philosophers can do is deal with the sort of confusion that arises from treating all moral requirements and all moral qualities as though they were the same. Distinguishing them so that we can see which can be exhibited on behalf of a corporation and which cannot makes it possible for people to understand that corporations can exhibit some, but not all, virtues. Because that is part of

14 I do not deny, and will have a little to say later about, the obvious fact that this sort of behaviour might be very good business practice. One of the points making it an ethical issue is that it is not simply a matter of the overt behaviour, which could be controlled by law, but of the motivation and a requirement such as that directors or managers exercise their business judgement to the best of their ability. My point here is about such behaviour performed as a piece of generosity (say) and not in order to increase profits.

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the job of ethics education for business, philosophers need to be amongst those doing the job.

And, apart from sorting out those points about what constitutes ethics, philosophers need to be involved in the issue of whether there can be ethical *knowledge*, that is, of what could be *taught* in ethics education. This brings us back to the role of reason, which Kant and others thought was so central. It also brings us back to the issue of whether ethics education is even possible if ethical behaviour is, at least in part, a matter of having certain *feelings*, as moral qualities such as generosity appear to be.

Either You're Ethical or You're Not

One remark that I have frequently come upon in discussing ethics with businesspeople is the remark 'Either you're ethical or you're not'. The remark is usually made in a very flat tone of voice and is taken to dispose of any point concerning oneself with the business ethics of others: either they are ethical or they are not, and, either way, there is nothing we can do about it except to legislate our requirements and make those who are unethical concern themselves with the avoidance of legal penalties. If they are not kind, generous, and self-sacrificing now,¹⁵ it is very unlikely that we shall be able to change their characters at such a late stage; all we can do is change the circumstances in which their faulty characters have to act, and change those circumstances in such a way that the actions that emerge are the actions that would also have come from a better character. We should, of course, as decent people, concern ourselves with our *own* ethics in business or professional life, but there will be no point in trying to inculcate ethics into others. At least, there will be no point in trying to inculcate ethics into others who have reached the age at which they have entered business or professional life. Trying to turn the unethical into ethical people will then be a hopeless

15 Concern with this sort of quality of character is becoming fashionable again in some circles in moral philosophy after a long period (still continuing in other circles) of a sterile attempt to reduce ethics to mathematics and games theory. See, for example, Lawrence A. Blum: *Friendship, Altruism, and Morality* (London: Routledge and Kegan Paul, 1980); Bernard Williams: *Ethics and the Limits of Philosophy* (London: Fontana and William Collins, 1985), especially the discussion of 'thick' concepts; Alasdair MacIntyre: *After Virtue* (Notre Dame: University of Notre Dame Press, 1981) and *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988); and a recent book by an Australian, Justin Oakley: *Morality and the Emotions* (London: Routledge, 1992). For examples of people who are more concerned about mathematics than about the particular motivation, see David Gauthier: *Morals by Agreement* (Oxford: Oxford University Press, 1986) and Derek Parfit: *Reasons and Persons* (Oxford: Oxford University Press, 1984).

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task. The best we could do would be to legislate and introduce penalties that gave them reasons of self-interest for doing what an ethical person would do without the need for any such coercion.

And teaching business or professional ethics to the ethical, it might well seem, will be pointless: we should be doing no more than teaching them what they already know. If the people *are* already kind, generous, self-sacrificing, unremittingly honest and fair, and generally the sort of paragons of virtue one does not really want to mix with at parties, then they are going to be doing the right thing anyway. Time they spend in ethics courses will be time wasted, time that might better have been put into helping the needy or other things of that sort. So courses on business ethics, or any other sort of attempt to teach business ethics, can achieve nothing: they must, as a matter of logic, be dealing with people who are beyond the redemption that the course offers or with people who are already redeemed. In neither case is anything at all gained from the attempt at ethical education. Or so it appears.

Passing and enforcing laws with heavy penalties might change people's behaviour, but it does not, at least just in that, ethically educate them. Ethical behaviour is not simply a matter of acting in a particular way because that way best serves one's interests, or because failure to do so will result in imposition of a penalty, or anything of that sort. (Ethical behaviour is not *simply* that sort of thing, but we might consider, as time goes by, the possibility that ethics is not so sharply distinct from law or self-interest as some writers have suggested.) Ethical behaviour means acting for the right reasons, with the right motivation: not giving money to a charity simply as a tax dodge or to gain a good reputation, but out of concern for the needy and a willingness to sacrifice oneself, to an extent, for their good. That is why ethical businesspeople will behave decently even when the law cannot get them.¹⁶

By the time people enter the business world (or enter university classes in moral philosophy, come to that), their characters are pretty much formed. Parents have had their effects, as have schools, friends, early reading of history and literature, and so on. They are grown-ups, and they have been brought up as much as they are going to be brought up. Their characters are probably as much moulded (by family, or social circumstances, or happenstance events such as the

¹⁶ See R.E. Ewin: *Virtues and Rights: The Moral Philosophy of Thomas Hobbes* (San Francisco and Oxford: Westview Press, 1991), chapter 7, for more detailed argument.

train crash that killed a parent) as they ever will be. If, at that stage, they just do not care about the interests of other people, it is unlikely that a quick course on ethics will make them do so.

Perhaps the good of others can be made an *occasion* of their own good, so that they can pursue their own good only, or best, by pursuing the good of others;¹⁷ that will make their behaviour conform to requirements, but will not change the person's character and will not make the behaviour genuinely kind, considerate, or whatever. Its effect will be similar to legislation requiring that sort of behaviour (and that effect is worth achieving that way if it cannot be achieved any other way). But nobody running an ethics course will be able to produce a magic formula that suddenly makes the villainous become the virtuous, or produces in the uncaring a genuine concern for the good of others. Whatever the connection between ethics and reason might be, ethics is not derived from reason in any way that makes it possible for a teacher to do sums on a blackboard that make somebody realise the error of his ways and correct them: those sums on the blackboard will not turn a callous person into a caring person, a cheat into somebody who penalises himself in a game of golf because his ball moved when a bee landed on it as he addressed it. Our feelings do not respond to reason in quite that sort of way, if only because pure reason, the laws of logic, do not produce ethical conclusions.

David Hume expressed the point trenchantly and clearly:

... as nothing can be contrary to truth or reason, except what has a reference to it, and as the judgments of our understanding only have this reference, it must follow, that passions can be contrary to reason only so far as they are *accompany'd* with some judgment or opinion. According to this principle, which is so obvious and natural, 'tis only in two senses, that any affection can be call'd unreasonable. First, When a passion, such as hope or fear, grief or joy, despair or security, is founded on the supposition of the existence of objects,

17 Much of political theory is devoted to sorting out systems which will make it the case that one person's pursuing his own good, no matter how selfishly, will be productive of other people's good. Some political theories are actually concerned with how to make self-interest the occasion for *aiming* at the good of others, not merely for producing the good of others even without intending to do so. Politics, in this respect, is aimed at making up some of the ethical deficiencies that are reasonably common in people. (We shall return later to the relationship between ethics and politics.) So much of political theory deals with this sort of issue that it is impossible to suggest further reading that actually covers the field adequately but does not go on forever. One fairly short book

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which really do not exist. Secondly, When in exerting any passion in action, we chuse means insufficient for the design'd end, and deceive ourselves in our judgment of causes and effects. Where a passion is neither founded on false suppositions, nor chuses means insufficient for the end, the understanding can neither justify nor condemn it. 'Tis not contrary to reason to prefer the destruction of the whole world to the scratching of my finger. 'Tis not contrary to reason for me to chuse my total ruin, to prevent the least uneasiness of ... a person wholly unknown to me. 'Tis as little contrary to reason to prefer even my own acknowledg'd lesser good to my greater, and have a more ardent affection for the former than the latter.... In short, a passion must be accompany'd with some false judgment, in order to its being unreasonable; and even then 'tis not the passion, properly speaking, which is unreasonable, but the judgment.¹⁸

So if I hit you because I am angry with you, and I am angry with you because I believe you have done me some harm when, in fact, you have not done me such harm, then my passion and the behaviour that it leads to are unreasonable if it is unreasonable for me to believe that you did me the harm. But unreasonableness attaches only to judgements, not to passions, not to ends chosen out of those passions, and not to behaviour.¹⁹

Hume, a philosopher who set a lot of the terms of philosophical debate since his time, raised another point that is common amongst philosophers concerned with practical reason (that is, the sort of reason that is supposed to make us act, as opposed to theoretical reason, which simply informs us of truths):

'Tis obvious, that when we have the prospect of pain or pleasure from any object, we feel a consequent emotion of aversion or propensity, and are carry'd to avoid or embrace what will give us this uneasiness or satisfaction. 'Tis also obvious, that this emotion rests not here, but making us cast our view on every side, comprehends

dealing with this sort of thing in a readable and useful way is Albert O. Hirschman: *The Passions and the Interests* (Princeton: Princeton University Press, 1977).

18 David Hume (ed. L.A. Selby-Bigge): *A Treatise of Human Nature* (Oxford: Oxford University Press, 1968 edition), pages 415–416. When Hume says that 'judgments of our understanding only have this reference', he means what we would say by means of the words 'only judgments of our understanding have this reference'. His claim at the start of that passage is that only judgements, and not passions, are true or false.

19 A similar line is followed by Patrick Nowell-Smith in *Ethics* (Harmondsworth: Penguin, 1954), at, for example, page 115. For discussion, see Philippa Foot, especially 'Moral Arguments' in *Mind*, 1958 (reprinted in her *Virtues and Vices*

whatever objects are connected with its original one by the relation of cause and effect. Here then reasoning takes place to discover this relation; and according as our reasoning varies, our actions receive a subsequent variation. But 'tis evident in this case, that the impulse arises not from reason, but is only directed by it. 'Tis from the prospect of pain or pleasure that the aversion or propensity arises towards any object: And these emotions extend themselves to the causes and effects of that object, as they are pointed out to us by reason and experience.... Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them.²⁰

Reason doesn't move us. Proof of Pythagoras' Theorem will get us up and moving only if it is relevant to something that we want to do; reason serves only to let us know the means to the ends we have, but the ends are chosen by our passions, that is, by our wants, desires, emotions, affections, and so on. What moves us has to be those passions. To take one of Nowell-Smith's examples: that there is a restaurant across the street is a reason for me to cross the street only if I am hungry.

So the common claim is that desires or feelings move us, reason doesn't. If one is to separate the two things so sharply, the claim is a plausible one. But the two should not be separated so sharply. Lucky²¹ is the person who has not felt, at various times, shame and embarrassment. These are, indeed, feelings, but not as pain is a feeling: they are not brute feelings, but require a cognitive element. That is to say, they require a contribution from judgement or reason; that is what distinguishes between the two, because the element that is brute feeling tends to be very much the same in the two cases. Shame involves as part of itself the belief that one has done something wrong. Embarrassment, on the other hand, involves as part of itself the belief that one has somehow been made to look a fool. It is true that I can be embarrassed by the behaviour of my family or my friends or my compatriots, but that is because their behaviour can make me (identified by others or by myself as one of them) look or feel a fool just as much as my own behaviour can. The *feelings* of shame and embarrassment are not independent of, or even separable from, the deliverances of what Hume would refer to as reason. Fear

[Oxford: Blackwell, 1978], and Julius Kovesi: *Moral Notions* (London: Routledge and Kegan Paul, 1967).

20 Hume: *op. cit.*, page 414.

21 Or, more likely, insensitive and lacking in perception.

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might involve an odd feeling in the pit of the stomach, but what makes it fear is the belief that there is danger: that is why, without being afraid, one can have exactly the same 'raw' feeling when descending quickly in a lift.

Feeling and belief, or passions²² and reason, are not sharply separate. That merely reinforces the point: people are not computers, and they are not moved by facts alone. What matters is not simply what the facts are, or even what I believe them to be, but whether I am the sort of person who feels this way or that way, reacts this way or that way, when he believes the facts to be such-and-such. If this sort of thing does not make me angry, then I shall not respond as a different sort of person would. If I care only about money, or care only about the preservation of rain forests, then the plight of the homeless will not move me unless I can think of some way to make a buck out of them or use them to serve the forests.

If ethics is to be practical, to affect how people behave, then it must be concerned with how people *feel* about various things. Ethical education given in the classroom by writing on the blackboard is unlikely to achieve that. It might, of course. One way in which it can have that effect is to inform people of facts of which they had been unaware: if I do not know that people are starving in the gutter, then I do not try to get food to them or otherwise improve their circumstances because I do not feel any way at all about facts of which I am unaware. Making me aware of that fact will affect how I feel. But that is no ethical change in me: what I needed in that case was education in the facts, not education in ethics, and that was what I got as the story has been told.

By the time people are old enough to go into business, or old enough to go into ethics classes,²³ what sort of person they are and what sorts of things they care about are pretty much sorted out. That is a matter of upbringing rather than of a packaged ethics course later in life. People do change, but changes as dramatic as that on the road to Damascus are few and far between.

22 In case it is not clear already, I should point out that passions, here, are feelings, emotions, and so on, things that are taken to afflict us; they are things with respect to which we are believed to be passive, things that we are supposed to suffer. Reasoning, on the other hand, is something with respect to which we are taken to be active, something we do.

23 Cf. Aristotle in *Nicomachean Ethics*, 1095a, on the difficulties of teaching moral philosophy to young men. The idea of teaching moral philosophy to young women was, it seems, literally unthinkable.

We have not the capacity to control people's character in the way that seems to be necessary if relatively brief ethics courses are to get anywhere. Character *develops* rather than changing in a dramatic way. Even then, there is a limitation on the developments that seem to be available to us. If I set about making myself a better person, making myself somebody more caring and less callous, then one thing that shows is that I am enough of a caring person to care about the fact that I am callous—a *completely* callous person simply would not care about that at all. If one wants to change, it can only be because one cares. The *changed* character, therefore, is but an ethical development of the old one, and is an ethical development brought about by the old one, not by any ethics course. And if one changes because of some tragedy or some other event in one's adult life, there has to be an explanation of why one changed in that way rather than in some other—why did one respond to bereavement by devoting one's life to helping sufferers from cancer rather than by withdrawing from social life altogether and living in as introverted a way as possible? The explanation will be in terms of the sort of person one was *before*. The basic character is formed before we reach adulthood, though that basic character develops further as the person learns more about the world and what the consequences of various sorts of actions are, or as experience makes it possible for him to empathise more with others.

Yes, but
is course
a good one?

Ethics courses that start with birth and end with death might achieve something, but that is pretty much what life is. It is not something that we can require businesspeople to go through before they go into business; their activities in business are part of that experience of life.

What we have to do in ethical education is not simply to give people reasons for believing certain propositions, as we do (in part) in giving somebody a scientific education; we have to mould and train their whole personality, their emotional reactions to various sorts of things, affecting what they care about and how much they care about it. If we could change people's emotional reactions readily, say by administering drugs as is done with the treatment of certain sorts of mental illness, it is far from clear that it would be proper for us to do so, and certainly far from clear that the process would count as ethical education. The sort of decisions involved in that type of manipulative way of changing people requires somebody with different expertise from that of a teacher, and somebody who achieved the position in a way different from that in which one

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becomes a teacher. We are asking for some sort of position that carries with it the authority to brainwash.

If the people who turn up for the ethics course are caring people, then, it seems, there is nothing that needs to be done with them by way of ethics education. If, on the other hand, they are *not* caring people, then it seems there is nothing we *could* do with them: what basis would we have to work on to persuade them that they should care? If they do not care, then the ethical reasons we give them are unlikely to appeal to them or to move them. If we show them that their uncaring actions redound to their own harm through the reactions they provoke from other people, that will not change the object of our attention from being a self-centred person—it will simply show him that he was mistaken about which actions really are in his interests, and will make him a more efficiently self-centred person. No *ethics* education will have been achieved there, any more than it is when we persuade Margaret to refrain from killing Aunt Maud on the ground that it is Aunt Millicent who is rich and has mentioned Margaret in her will. If Millicent is out of harm's way, then we might have prevented any damage being done, but we have not ethically educated or improved Margaret.

We cannot give somebody an ethical education by telling them that murder is wrong. Nobody who understood the word 'murder' and who was clear that the act he planned was a murder and not a justifiable homicide or some other category of killing could wonder whether the act was wrong—murder is wrongful killing,²⁴ so teaching somebody that murder is wrong would be like teaching them that white horses are white. Nor do we give somebody an ethical education by telling them that Othello's killing of Desdemona was murder, or even by telling them lots of truths of similar particularity. That is far too particular; ethical education would have to enable them to extrapolate to new and overtly dissimilar cases in which, say, a newly discovered drug was used, or the murderer showed imagination and came up with an original method of committing his crime. What we have to do to give an ethical education in this field is to teach the student the concept of murder. That requires that we develop in the student the appropriate point of view,²⁵ that is, that we develop in the student the sort of person who, or the sort of character that, values human life in the appropriate way. It is not simply a matter of

24 Cf., for example, *The Shorter Oxford English Dictionary*.

25 See Kovesi: *op. cit.*

teaching theoretical truths, like high school chemistry, or of teaching skills, like riding a bicycle. It involves *caring* about the right things.

Businesspeople²⁶ are adults, and once somebody has reached adulthood it looks as though ethics education is either unnecessary or impossible.

So: why worry about business ethics? If it is something for which the businesspeople concerned are not good subjects, why not make do with business law, requiring the right sort of behaviour from them and backing up the requirement with the powers of the State? It is a question that needs to be considered, and one to which there are several different answers, or several different parts to the answer.

For one thing, there is the straight cost of it. Henry Bosch²⁷ has complained at great length of the time and money (with more time being procurable only with more money) involved in trying to carry out the work of the National Companies and Securities Commission, of which he was chairman from 1985 to 1990. Despite the fact that the NCSC had a budget of \$6 million a year when Bosch took over in 1985, and the further fact that that budget kept pace with inflation thereafter, Bosch found it impossible to carry out the duties of the NCSC properly. That remained true despite the help the NCSC received from the private sector:

Three sources of help were of particular value. We were able to obtain some excellent officers from the private sector and to persuade some employers to subsidise their salaries. The Commission got some very useful people and no doubt the employers got some valuable experience on their return.

We also received direct contributions from the private sector. Meetings and functions were paid for, overseas trips subsidised, terminals for surveillance systems installed without charge and specialist consulting services given free or at very low rates. Holding out the begging bowl was never a preferred option and its dangers were recognised, but without it the Commission's effectiveness would have been significantly reduced.

Probably the most important way of reinforcing the budget was to include an element of the Commission's costs in the commercial settlements that were reached following enforcement actions.²⁸

26 Outside the computer and entertainment industries, anyway.

27 Henry Bosch: *op. cit.*, *passim*, but especially chapter 5.

28 Bosch: *op. cit.*, page 45.

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So, in order to operate, the Commission was forced to become a player in the game it was controlling: taking a financial interest in the outcome of its cases (the last paragraph of the quotation); behaving in a way that raises eyebrows when politicians are found to have behaved that way and would almost certainly do more if judges were found to have behaved that way with people who were coming before their courts (middle paragraph); and training people in the ways of the NCSC before returning them to the private sector with that specialist knowledge of how to evade the NCSC's clutches (first paragraph). The whole task seems hopeless. And when we consider that the objects of the NCSC's investigations were powerful firms that could, if they wanted to, afford the very best in legal and accountancy skills in an effort to evade the requirements of the law, we can see that increasing the NCSC's budget would probably simply result in an increase in the other side's budget and leave the Commission, comparatively speaking, just as badly off as before.

There are, then, practical problems of a financial sort about doing the whole job by means of the law. But there are other practical problems, too. Directors and managers have to use judgement, and they are not infallible. We cannot require that they never make a mistake, but we can require that they *try* to do the job properly: that they consider the sorts of things they are supposed to consider, and do not use their positions simply for their own advantage or anything of that sort. This judgement or discretion of the manager or director cannot be taken over by the law. 'The court will interfere when there is a breach of duty, such as fraud or an abuse of power, but it will not substitute its discretion or judgment for that of the directors acting in good faith.'²⁹ The courts cannot be expected to read people's minds; whatever is a possible business judgement, even if badly mistaken, will be acceptable.

Trust is needed if business is to operate, and it rather looks as though law by itself could not provide enough of that trust. The expense would be too great, and it would take over everything so that no time or money was left for straightforward business activity. There is an underlying reason for that, and the basic reason why law by itself, without ethics, cannot do the job. It is a reason that emerges when we touch on the relationship between ethics and law.

²⁹ J.E. Corkery: *Directors' Powers and Duties* (Melbourne: Longman Cheshire, 1987), page 59.

Law is the community's requirements, and it emerges from the same ethos as produces the ethics of that community. Law that does not emerge from that same ethos will not be taken seriously: breaking the law will be regarded as what real people do; the law will not be enforced too rigidly; thinking up purely technical ways of evading the law will be a respectable activity; and so on. People who are capable of coming up with business law that is fair to all, including business, and that makes business activity possible, are people who already have a good idea of what it is to be fair to all. They can make such a law only if they already have the ethical background from which to make it, and the law will be effective only if that ethical background is taken fairly seriously. The community can then use the law to enforce its ethical will on the recalcitrant or the outlaws, but that possibility depends on there being an ethos creating the community that thus enforces its will.

Laws are made by people, and only decent people will make decent laws. Setting ethics aside and trying to do everything by means of legislation cannot succeed, for that reason: when ethics is forgotten, law has no basis. At the moment we should notice that *trying* to do it all by legislation, setting aside ethics, means setting aside the ethos and the community; it takes us away from democracy and leaves us with, at best, a paternalistic government that decides what is best for us and then forces *its* will (though, no doubt, *our* best interests) on us. The problem about ethics had better not be quite so intractable as it looks.

Who Knows The Answers?

If my car shows signs of breaking down, I take it to a mechanic. The mechanic might, perhaps, be a backyard mechanic who does this sort of work on the side or as a hobby, but I know what I am looking for when I look for a mechanic because I know what it is for a car to be fixed. The same with my body: we know what it is for our bodies to be fixed, and that is why we can have a genuine argument about whether it is better to go to a GP in the local practice or to seek somebody who practises alternative medicine (assuming that the GP in the local practice does not practise alternative medicine). We don't all have to agree that doctors are experts at fixing human bodies or that Fred, who treats a broken axle with herbal tea, is an expert mechanic, but we have to agree on what counts as a satisfactory outcome before we can even have a serious argument about Fred or the doctor.

Who are the experts in ethics? Faced with an ethical problem, some people go to their clergyman, some to their parents or some person they regard as older and wiser, some write to the advice columns in the newspapers or ring up talkback radio programmes, and so on over a range of possibilities.³⁰ Some people, on the other hand, will take no notice of any clergyman, will consult older and wiser people only so that they can do the opposite of what they are told, and so on. There is no agreement about who the experts are in ethics. More than that, though: there is no agreement about how we could sort out who the experts are, because there is no agreement about what the right outcome is or about how to tell what the right outcome is. If the car runs perfectly, it is fixed; if the patient smiles gratefully and drops dead, he is not cured; but there seems to be no analogue for these tests in the case of ethics.

30 Some, of course, set about solving the problem or take to the bottle, but my concern here is with the idea of an ethical expert.

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That n abortions are carried out in Australia each year has, on the face of it, no relevance at all to the issue of whether abortion is or is not an ethical activity. That people behave in a certain way does not show that they should and does not show that they should not. There is a special sort of case, *viz.*, what are often called moral practices or institutions. If everybody broke all of his or her promises, that *does* seem to have some relevance to the issue of what I can properly do after saying 'I promise to do X'. It seems to have that relevance because it seems to be relevant to the issue of whether my saying that amounts to my *promising to do X*. If nobody ever keeps promises, nobody will have been misled by my utterance into thinking that I will do X. How everybody behaves is one of the important issues in sorting out whether a certain convention or institution or practice exists, and that is plainly relevant to the issue of whether it is possible to take on an obligation in that institution. I am setting aside such cases here.³¹ In other cases, how people *do* behave has no bearing on how they *ought to* behave. That one constantly cheats, lies, and steals does not mean that one should continue in those ways.

If we do not check the alleged ethical expert's answers by seeing whether they fit reality and describe what is actually there in the world in the way of people's behaviour, how do we do it? Ethical claims are about what *ought to* be the case, not about what *is* the case, so we check them, basically, by seeing whether we agree with them.³² Before recognising an expert, in that case, we must hold our own views, and we give those views precedence over the views of the possible expert if we use them as the criteria by which we judge whether somebody comes up to expert status. Reference to an expert, in that case, begs the question:³³ given the way in which experts get to

31 For more discussion of moral practices, see, for example, John Rawls: *A Theory of Justice* (London: Oxford University Press, 1971); D.Z. Phillips and H.O. Mounce: *Moral Practices* (London: Routledge and Kegan Paul, 1970); Peter Winch: *Ethics and Action* (London: Routledge and Kegan Paul, 1972), chapters 2 and 3; and Lawrence C. Becker: *Reciprocity* (London: Routledge and Kegan Paul, 1986).

32 I do not mean to imply that this agreement must always be something we check without going through a process of reasoning, reflection, and debate. People can check the views of others against their own unreflective ethical views, or against their own reflective ethical views, depending on whether the ethical views they hold are reflective or unreflective. On the need for some means to verify the alleged expert's judgement, see E.D. Watt: *Authority* (London: Croom Helm, 1982), page 57.

33 Despite what seems to be an ever more common usage, this expression does not mean that somebody has invited an interrogative; it means that they have assumed their conclusion in their premises, committing the logical fallacy of *petitio principii*.

be chosen, I can be quite sure that the experts I choose will tell me what I want to hear.³⁴ I can be equally sure that they will not help me to reach an accommodation with those with whom I disagree about ethical matters.

Of course, we do seek ethical advice, and we sometimes accept it, even though it is not what we would have thought of for ourselves. We accept the advice because we have come to recognise that the person giving it *does* know more about these things than we do. That is to say, we do *not* follow the sort of procedure that I have just described. But we need to be careful here about what is going on: we need to be careful about just what the nature of the advice sought is.

The person to whom we go for ethical advice is likely to be somebody we regard as wiser than we are, somebody with more experience in the relevant field of endeavour³⁵ and perhaps with more imaginative perception of people and circumstances. It is somebody who is better at sorting out the likely outcomes of the various possible actions or better at seeing what all the possible actions are and overlooking none. I might see the fun to be had tonight but overlook the hangover tomorrow; I might recognise the fun to be had tonight, remember the hangover to be suffered tomorrow, and not think of the fact that the person who wants to go drinking with me is very upset and needs company; and so on. The person to whom I go for advice will be somebody who doesn't miss out the relevant facts that I miss out, and who thinks that the most favourable outcome is the one that I would regard as the most favourable outcome, too.

The person from whom I seek advice is approached as an expert on facts, an expert on means to the production of certain outcomes or on recognising what outcomes can be achieved from the present state of affairs. The ethical assessment of those outcomes, the choice of which one to go for, is still mine in a way that seems to make the choice of an expert a question-begging and pointless activity of the sort I described earlier. If ethics education is to be given by people of the sort we do in fact approach for ethical advice, they will not be

34 There are frills to be put on this if one wants to be really precise. I might, for example, accept the priest as an ethical expert even though his judgements differ from mine at times, but only if I am a member of the church (which is a matter of my own belief) and accept the more fundamental ethical principles that give him the ethical authority that he has. I must agree with him, that is to say, on the fundamental principles, but can accept that he is better than I am at applying those more general principles to particular cases.

35 Where the relevant field of endeavour is not ethics as such, but something, such as business or raising children, in which one can be ethical or unethical.

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ethics experts but experts in business, raising families, or whatever the relevant field of endeavour might be. They will be people who can see what can, as a matter of fact, be achieved from here; people who have a lot of experience in the field, and who approach it with imagination.

In the field of business ethics, that could leave us with business ethics courses being taught by just the people whose activities we want to curb. What concerns us when we think about business ethics and look for good examples is not simply experience, imagination, and effectiveness in business, but the ends in pursuit of which those qualities are used, and the limitations that person places on the means he will use in pursuit of those ends. Imagination can be used to think up more unethical ways of achieving an end.

So perhaps there are and can be no ethics experts to teach ethics courses. That is one fairly common view, often mistakenly associated with a form of democratic egalitarianism: everybody's ethical view is as good as the next person's. One reason given in support of that is the claim that all ethical views are equal in that nobody's ethical view is worth anything—'it's all a matter of opinion'. If it is a matter of opinion, so the idea goes, it is neither true nor false.

That, of course, is not true: people's opinions about the shape of the world have varied considerably throughout human history, but the world does have one shape to the exclusion of others and at least most people nowadays are quite sure that the modern view that it is round is correct and the old-fashioned opinion that it is flat is false. *Tastes* are not true or false; if you like the taste of turnips and I do not, then there is no particular reason to believe that one of us has made some mistake.

Opinions are not like tastes; they are beliefs about the world, and as the world is one way or the other in each case, so beliefs or opinions are true or false. We cannot always sort out whether a particular belief is true or is false: sometimes the evidence cannot be produced because it has disappeared into the past or otherwise been lost or because we do not yet have the methods for producing the evidence, or because of some other reason. The relevant belief in each case will be either true or false, but, because we have no way of sorting out which it is, there is no point to arguing heatedly about it. We cannot really hope to get beyond the fact that Fred holds one opinion about it and Mirabelle another; we cannot sort out which of those opinions is true; so we categorise it as merely a matter of opinion, something there is no point to getting upset about. And that

is a socially useful categorisation to have. Nevertheless, it does not mean that there is no point to arguing about the truth or falsity of any opinion or that no opinion is either true or false. And before we can come to the conclusion that something is merely a matter of opinion in the sense that there *is* no point to arguing about it, we have to show that there is no point to arguing about it. Simply to assert that without trying to argue the point out begs the question.

Another line that is sometimes taken is that, even if opinions are true or false, everybody is entitled to his or her own opinion. This is a very common line indeed, but it is not really clear what it amounts to, or on what the right is based, or what it would be for somebody not to have a right to their own opinion.³⁶ If a right to my own opinion precludes my *not* having a right to my own opinion, then it precludes my being obligated not to hold certain views. The right to my own opinion is, therefore, vacuous if the idea of an obligation not to hold certain views is nonsense; it would be vacuous because if all it does is exclude nonsense then it excludes no possible state of the world.³⁷ One can imagine that a priest might have an obligation to believe in the existence of God, but that means something such as that the priest must resign if he ceases to believe in the existence of God. The idea of a belief as something that one adopts by an act of will is not an easy one to grasp.

And a right to one's own opinion, presumably, should not be taken as implying either a right to act on one's opinion or a right to force one's opinion on others. People who murder prostitutes might be perfectly sincere in their belief that they are doing God's will and doing the right thing, but they must be stopped.

These views are often summed up in the remark that ethics is personal, and that is why there can be no ethical experts. For our purposes, the relevant sense in which morality is personal is that there is really no such thing as a moral court. The question of what the law is, of whether or not it is legal for me to deface coins of the realm or to burn the national flag, is not something determined by me on my own. If I get it wrong and act on the basis of my mistaken belief, a court will let me know that I was mistaken. The courts superimpose a

36 If I employ somebody as an adviser, then I have a right to his opinion. My right is based on the arrangement we have made and the fact that I have paid him. Talk of a right to an opinion makes sense there, but a right to my own opinion seems to have no content at all.

37 Cf. Karl Popper on the importance of falsifiability in *The Logic of Scientific Discovery* (London: Hutchinson and Co., 1959), especially chapter 1.

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public judgement on private, personal judgements of what should or should not be done. That is the recognised function of courts in our form of social life. There is nothing like that in personal morality. If we disagree about a moral matter, then I shall think that you are wrong in a way in which I must recognise the pointlessness of thinking that all the judges are wrong about the law when we have already been to the highest possible appeal court. I might think that the legislators are mistaken and have made a bad law, but it would be very silly for me to maintain the claim that the law is *not* what the High Court has just said it is. Nobody can definitively over-rule me on moral matters as the courts can on legal matters. My moral views are arrived at by me, and there is no moral judge to whom I am subject, or, at least, not in this life.

We need to be careful about the implications of this sense in which morality is personal. That morality is personal in that way, that I cannot be over-ruled by others, does not mean that morality is personal as taste is personal. If I happen to like the taste of pickle, ice-cream and Vegemite sandwiches, then that is all there is to it. Perhaps you will think that I have odd tastes, but there is no point to your arguing with me to try to persuade me that I don't like the taste. To put it very crudely, the fact that I think that I am enjoying the taste of pickle, ice-cream and Vegemite sandwiches when I am eating them is sufficient to make it true that they taste good to me. But simply the fact that nobody can over-rule my moral views is not sufficient to show that my sincerely holding a moral view is enough to make it true, or even to make it true for me in any other sense than that it means that I sincerely believe it to be true.

An analogy might help to show that this sense in which morality is personal³⁸ does not have that implication. If, during a game of cric-

38 Cf. G.E.M. Anscombe: 'Authority in Morals', reprinted in her *Ethics, Religion and Politics: The Collected Philosophical Papers of G.E.M. Anscombe, Volume Three* (Oxford: Blackwell, 1981), pages 45–46:

Now it was wrong, in the list of teachable things with which to contrast morality, to put mathematics alongside the others. 'Be ye doers of the word and not hearers only' I once saw as the motto of a chapter in a big textbook of higher mathematics, and it was right; one does not learn mathematics by learning that mathematical propositions are truths, but by working out their proofs. Similarly it might be held that one's morality *must* be something one has formulated for oneself, seeing the rightness and wrongness of each of the things one judges to be right or wrong; so that if ever anyone else taught one, he was the occasion of one's formulating for oneself what he taught, rather than the source of information.

There is tied up with this view the idea that one's own personal conscience is necessarily the supreme arbiter in matters of right and wrong.

ket, the bowler delivers the ball from a metre in front of the bowling crease and, as it is passing head high a metre outside the leg stump, I hit it off the middle of the bat over the square leg boundary, and if the umpire then holds up the index finger of his right hand and says that I am out leg before wicket, then I am out leg before wicket. The Laws of Cricket say that the umpire is the sole judge with respect to matters of fact. Nobody can over-rule the umpire about such things; what he says goes; but no batsman who has ever been out leg before wicket, and no serious umpire, thinks that umpires cannot be mistaken. That nobody can over-rule the umpire does not mean that he cannot be mistaken, and it does not mean that there is never any point to his consulting the other umpire. The umpire's judgement is not merely personal, because he has the same book of rules as the rest of us have (including the players) and shares with us a general agreement about the interpretation of the rules, but if he is an expert umpire then he is expert in that he sees well, is a good judge of where the ball was, he is not easily flustered or distracted, and he remembers all the relevant rules. It is not the sort of expertise discussed a little earlier, which consists of being good at sorting out the likely consequences of actions, but it can provide a useful model for some aspects of moral life.

In the same way as there can be point to the umpire's consulting his partner, there can be point to seeking moral advice from somebody. There can be point to arguing moral problems out with somebody. As the umpires and players share a common rule book and a common background of agreement about interpretation of the rules, we all share a set of moral concepts (we operate the notions of justice, courage, kindness, and so on) and a background of agreement about their application (we can often work on the basis of agreement about what constitutes a fair thing). That I cannot be over-ruled does not mean that I have great freedom in moral matters, but that I have great responsibility; I have to make the final judgement for myself, but I have the task of getting it right, if possible, and discussion with other people might well help me to get it right. If what I am doing is working out a moral or ethical problem, even in terms of my own ethical beliefs, then I operate in terms of quite public and shared concepts: I argue out (with myself or with others) whether the arrangement is just; whether helping Maureen in some particular way would be kind or unduly intrusive; and so on. It is the use of those particular shared concepts that makes my endeavour that of pondering an ethical problem. I have to work out for myself whether

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Martha was being kind and therefore deserves a sweet, but whether Martha was being kind is not determined by my conclusion.

That ethics is personal means that each agent must take responsibility for his own decisions; he, and he fully,³⁹ is answerable for them. It does not mean that people can act on whim, or that there is nothing for people to learn in the way of ethics or nothing in the light of which they should bring up their children. It does not mean that there are no moral truths or that there are no moral experts.⁴⁰ One thing that we might say is this: personal morality is all very well when you are acting in your personal capacity, but what is special about business ethics might come from the fact that not all actions performed in business *are* performed in your personal capacity. This is a point the significance of which we shall deal with very soon.

There is a problem about whether there can be ethical experts of the sort that seem to be necessary if there is to be ethics education of the mature. One way of bringing this out is by mentioning a tradition that derives, by one route or another, from Aristotle, stressing the practicality of ethics, i.e. its relation to *activity*. The term 'habit' is often used in connection with the activity, but that can be very misleading. Consider one statement of this line, part of a very strong discussion of moral authority:

We may then think of moral authority chiefly as a capacity to make sound judgements in moral matters, together, perhaps, with habits of acting on those judgements.⁴¹

The problem here is that it makes ethical behaviour sound like a combination of two things, making a judgement and performing an action or movement, in an attenuated sense of 'action' in which actions can be done from habit as an habitual smoker will not even notice that he has lit up another cigarette. In fact, the *motivation* can be crucial. I might make the judgement that a particular act would be a kind one to perform in these circumstances and I might even perform it *because I had formed that judgement*. That would, perhaps, show

39 He fully, but perhaps not he alone: that people share responsibility for some action that has been performed does not mean that each has less responsibility than he would have had if he had performed the action alone. Taking part can show full possession of a vice.

40 Consider, as a parallel following from my earlier example, the arguments about the standards of umpiring in Test cricket matches.

41 Watt: *op. cit.*, page 58. See also what he says on page 61.

Cf. also Anscombe: *op. cit.*, page 47:

...one does not learn morality by learning that certain propositions—ethical ones—are true, but by learning what to do or abstain from in particular situations and getting by practice to do certain things, and abstain from others.

me to be dutiful, conscientious, or a number of other things, but it does not show me to be kind—if I am kind, my act springs from an immediate concern with the welfare of another, not from a concern about whether my own behaviour is up to standard. Hence we respond quite differently to somebody who, as far as we can see, helped us out of a concern for our well-being and somebody who helped us in order to win a Girl Guide badge or to make sure that he had enough points for the day on his private moral scorecard.⁴² The judgement might be separable from the action in some respects, but the motivation is not: without that motivation, it is not that action.

What the ethical educator has to do is not teach somebody to make the right judgements, then have them practice carrying out the actions; what he must do is make the student into a certain sort of person, the sort of person who cares about this sort of thing. Living a life with somebody, particularly with somebody young and impressionable, can do that to some extent; it is hard to see classroom activities with the mature achieving much in that direction. But one cannot learn to make the ethical judgements and then practice performing the moral actions in order to develop the ability. One can perform the ethical action only by getting it right as far as the motivation is concerned,⁴³ so it is only if one already has the ability that one can engage in the practice.

Ethical problems arise when people are evil or when there is serious ethical disagreement. The context in which I am working makes disagreement the main problem—I pointed out much earlier on that the audience for this material is ethical people with puzzles, not unethical people on whom my arguments will somehow work like magic. For that reason, it is worth pointing out fairly quickly that it is possible to over-emphasise the significance of ethical disagreement. There are plenty of ethical disagreements, and some of them are very serious and intractable ones: disagreements about the morality of abortion and euthanasia, for example, have gone on for a long time and are nowhere near settled. And that is an example that comes up considering only our own society, where we do manage to live together fairly amicably. If we go wider afield, it is not hard to find

42 The case is argued out in detail in R.E. Ewin: *Virtues and Rights: The Moral Philosophy of Thomas Hobbes* (San Francisco and Oxford: Westview, 1991), chapter 7.

43 If the motivation is a desire to improve one's own moral character, that is a laudable motivation but one that might well rule out the applicability of certain ethical predicates. Again, consider whether an action is kind if it is performed to benefit or improve oneself, even if benefit to another is one's means to that end and the other is thus used as a means to one's own purposes.

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even more serious disagreements that make it difficult, or even impossible, for people to live together in peace: Salman Rushdie needs to be very careful about where he lives; anybody at all needs to be careful how he moves in Ireland or the Middle East; terrorist activities arising from and expressing ethical disagreements can make life unsafe for travellers anywhere. But for almost all people most of the time, the norm is ethical agreement with those amongst whom we live. Were that not the case, we could not live amongst those people any more than Salman Rushdie could live in Iran.

When we do disagree with those amongst whom we live, the disagreement can, indeed, be serious; it can lead to people refusing to speak to each other ever again; in some cases, it might lead to civil war; but in most cases it is not as serious as that. We do not get some marching the streets with banners bearing the legend 'Up with justice!' and others with banners bearing the legend 'Down with justice!' We sometimes get people claiming that the society is divided into those supporting justice and those opposed to it, but that is not a description that their opponents would accept: the disagreement is about X, which one side believes to be just and the other side doesn't, with the side in favour of X saying that they are supporting justice and the others opposing it. And in most cases of disputes about justice, we can at least reach some agreement about what sort of thing is relevant to the argument: we would agree that the fact that somebody had worked hard all day as he had contracted to do was relevant to his claim that it would be unjust not to pay him as we had contracted to do, even if we disagreed about whether it was the *only* relevant factor.

So agreement usually goes a fair way between those who manage to live together and share a culture. Where agreement does not do the job in the first instance, we can usually manage to agree on a fair and binding way to resolve the dispute⁴⁴ so that we get over it and still manage to live our lives together in peace. Ethical disagreement is important, but it can be stressed too much.

The umpire to whom I referred earlier has the same book of rules as other umpires and players, just as anybody concerned with ethics has the same set of public, shared ethical concepts (justice, courage, and so on). The umpire acts against a background of general agreement (not simply against a background of the agreement of the bow-

⁴⁴ See R.E. Ewin: *Liberty, Community, and Justice* (Totowa, NJ: Rowman and Littlefield, 1987), *passim*, but especially chapters 3 and 6.

ler or the batsman, but a background of *general* agreement amongst those whose activities are governed by the rules) on the interpretation of the rules. The person concerned with ethics acts against a background of general agreement about ethical concepts and their application: as we have seen, if there were not such general agreement, we could not live together in a relatively peaceful way. It is this requirement of a background of general agreement that means that ethics cannot be *merely* personal.

And then the umpire is, in part, the sort of expert we discussed earlier: he has good eyesight, and so on. He also has a good knowledge of the rules. But there is something else about him: he is emotionally stable, does not get flustered when players appeal excitedly, shows good judgement about how to deal with players who are getting excited and about other matters such as where to position himself in what circumstances. He does not have a merely theoretical knowledge of means to achieve various ends, but shows good judgement⁴⁵ in his choice. Asking him for advice about something to do with cricket is not like asking for ethical advice from somebody who has wide experience of business but nothing else to base it on.

Similarly, the ethical expert, such as he is, will be somebody with a good understanding of ethical concepts and how they operate⁴⁶ (he will be unlikely to fall into the sort of trap described in the next section), and also somebody of relatively stable character, unlikely to deceive himself simply because of what he would like to happen, unlikely to be misled in his judgement simply because his children are involved in the case, and so on. But, as the umpire needs experience of cricket before he can have good judgement about where to position himself in what circumstances, the ethical expert will need experience of life. Aristotle was right about the pointlessness of *discussing* moral philosophy with young men,⁴⁷ but our *living* an ethical life with the children will be an ethical education for them. The experience of growing up in that sort of environment and of continuing to live a life is the sort of experience that ethical experts need.

45 For a recent discussion of judgement, see Charles E. Larmore: *Patterns of Moral Complexity* (London: Cambridge University Press, 1987), especially chapter 1.

46 On the formation of ethical concepts, see Julius Kovesi: *Moral Notions* (London: Routledge and Kegan Paul, 1967).

47 *Nicomachean Ethics*, 1095a.

Personal Morality and Business Ethics

When, ... pressed by our questions, our father told us how he had won the cross of Saint Anne 'for gallantry,' and the golden sword which he wore, I must confess we felt really disappointed. His story was decidedly too prosaic. The officers of the general staff were lodged in a Turkish village, when it took fire. In a moment the houses were enveloped in flames, and in one of them a child had been left behind. Its mother uttered despairing cries. Thereupon, Frol, who always accompanied his master, rushed into the flames and saved the child. The chief commander, who saw the act, at once gave father the cross for gallantry.

'But father,' we exclaimed, 'it was Frol who saved the child!'

'What of that?' replied he, in a most naive way. 'Was he not my man? It is all the same.'⁴⁸

Of course, it is not all the same; that is so obvious that Kropotkin simply tells the story to make his point. Gallantry is a quality one can exhibit only in one's own person. The same sort of point arises with the applicability of a number of ethical predicates in the context of business ethics. Some ethical predicates simply *cannot* apply in the case of a corporation and its activities or in the case of an officer acting *for* the corporation. The key notion for us here is the notion of *representation*.⁴⁹

A corporation is a legal person, but, if it is to do anything, some natural person must act for it; a corporation cannot act for itself quite independently of what all natural people do. That incapacity does not preclude its having rights and duties, and does not mean that a

48 Peter Kropotkin (introduction and notes by Nicolas Walter): *Memoirs of a Revolutionist* (New York: Dover Publications, 1971), pages 10–11.

49 What I have to say about representation draws very heavily on A. Phillips Griffiths: 'How Can One Person Represent Another?' *Proceedings of the Aristotelian Society, Supplementary Volume*, 1961.

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corporation cannot be a moral person in any important sense:⁵⁰ there are important classes of people (infants, the comatose, the insane) who retain their rights despite the fact that there are many things they cannot do for themselves and must have done by others. But being able to act only through a representative does limit the possibilities of action for a corporation in ethically significant ways, because it restricts the ethical predicates that are applicable to the actions of a corporation. As a result, the ethical choices of somebody acting for a corporation and in the light of business ethics are (properly) more severely restricted than those of somebody acting only in the light of his personal morality.

Corporations can act only through corporate officers, their representatives or agents, and corporate officers representing the corporation can do only those things that representatives can do. What representatives can do is work in terms of rights and duties. To make somebody my representative is to make him my actor or agent in the original sense of those words: it is to make him somebody who performs actions on my behalf. Somebody can sell my house for me, for example, given the appropriate power of attorney: he can, if duly authorised, exercise certain of my rights on my behalf, and *his* performing certain acts will count as *my* having performed those acts. That is the mark of the action of a representative: one person performs the physical movements, but the action counts as the action of another.

Not all actions can be performed by representatives. The absolute monarch who employs a food taster might live longer than the one who does not; nevertheless, the absolute monarch who employs somebody to eat *all* his food will not last long: what was to have been the monarch's dinner will turn out, in those circumstances, to have been the other fellow's dinner, and the monarch will go hungry. I cannot, unfortunately, employ somebody to complete the boring task of swimming a kilometre a day for me to keep me fit; their exercise will *not* keep me fit. And there are cases that are not clear. If I employ somebody as a teacher to educate my son, is that person simply my

50 While it is clear that corporations are legal persons, there has been considerable debate about whether they are moral persons and, if so, to what extent they are moral people. See, for example Peter A. French: *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984); Patricia H. Werhane: *Persons, Rights, and Corporations* (Englewood Cliffs, NJ: Prentice-Hall, 1985); and R. E. Ewin: 'The Moral Status of the Corporation', *Journal of Business Ethics*, 1991. The last mentioned of these is the source of much of the argument in this section.

employee or also my representative? Am I educating my son through the other person's actions?

Representatives can commit one to various things. Somebody with the appropriate power of attorney, representing me, can sell my house and thus commit me to treating it as I treat other people's houses and not as I have formerly treated it. The representative, acting in terms of my rights and duties, can change the pattern by, for example, exercising my rights in such a way as to incur duties. Somebody authorised by the corporation to buy stock, by his actions in doing so commits the corporation to paying the bill, that is, creates a duty for the corporation by his exercise of one of the corporation's rights that he has been authorised to exercise. If he decides also to buy chocolates for his partner, the corporation can properly require that he pay that bill from his private funds—that purchase was a private one, not carried out in his capacity as representative of or agent for the corporation.

Through a confusion of representative and responsible government, we often take it that representatives must be authorised by the people they represent. That is a mistake. As an example: it was not uncommon when colonies were not uncommon for the colonial government to appoint somebody to represent the natives and not to be bothered about consulting the natives in doing so. Sometimes the whole point of having a representative or agent, as in the case of somebody appointed to represent an infant or somebody comatose, is that the person represented is believed to be incapable of making any such decision as who would be a good representative. How, then, can this sort of representation be distinguished from simple theft of rights? If I deliberately give up my rights then, clearly, they have not been stolen. In these cases, though, the people concerned have not deliberately given up their rights; they had no say.

The distinction is drawn in terms of a limitation on what the representative can do with the rights of those he represents: insofar as the rights and duties of the represented allow, the representative must act so as to further their interests. The representative is not acting in his personal capacity, but in the capacity of the person represented; *that* person's interests, not those of the representative, are the focus of the operation. If I simply take over your rights and make them mine (perhaps you sell them to me), then I can quite properly use them to further my own interests: they are no longer your rights but have become mine. If, instead of taking over your rights and making them mine, I represent you with respect to those rights, then

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I must use them to further your interests rather than my own. The difference is not in any empirical mark in the situations, but in an obligation that the representative undertakes.⁵¹

The same sort of relationship holds between a guardian and an infant ward, to take a standard case, when the guardian must act as the infant's representative with respect to an inheritance the infant has received: that the guardian is the guardian and thus the infant's representative is not a matter of authorisation from the two-year-old, but, because of that, what the guardian can do in exercising the infant's rights is severely limited.

Part of the point of the case of guardian and ward is that the person represented, the ward, is being represented because of youth and incapacity; she cannot, therefore, *vary* the requirements of representation, which do not depend here on her will. The same applies to the person appointed to represent the native interests. Cases of representation without authorisation are, in that way, pure cases of representation and bring out what the function of a representative is. The executive officers of a corporation are not appointed without authorisation; in the standard case, they are elected by shareholders or appointed by people who were elected by shareholders,⁵² but that is a matter of how they got to be representatives and not of what jobs they have as representatives. As representatives of the company and its members, they still have the job of furthering the interests of the corporation and its members as much as possible within the limits imposed by their rights and duties, even if that duty is now hard to enforce. If corporations have changed to some extent in the ways that Galbraith suggests,⁵³ that merely shows that motivation and duty will no longer fit together as easily as they used to: it does not change what the duties are. An important point to emerge from considering corporate officers as representatives of the corporation is that it brings out the following fact: the fiduciary duties of directors and

51 And again, since the representative will have to exercise judgement about the represented's interests, we see that discretion must be allowed and that the law cannot deal with all the possible problems that arise; again, we must recognise that the obligation is, to an important extent, an ethical obligation.

52 In fact, these days the shareholders, as often as not, are other corporations; one gets the most amazing nests of corporations owning each other. The map of the structure of Ariadne in May of 1986, set out at the start of Bruce Ross: *The Ariadne Story* (Elwood, Victoria: Greenhouse Publications, 1988) looks like a thousand-piece jigsaw-puzzle. Eventually, though, we get back to shareholders who are natural people; in the end, those are the ones I am concerned about here.

53 See J.K. Galbraith: *The New Industrial State* (Harmondsworth: Penguin, second edition 1974).

other officers are not merely extraneous things tacked on by law and possibly removable at some time in the future; they are essential to the very idea of a director or corporate officer.

As representatives of the company—and really, in the end, of the shareholders—corporate officers exercise the rights of the company or shareholders and do so within the limits of the duties of the company or shareholders. The limitations imposed by the rights and duties of shareholders are important limitations, though I shan't make much of them here except for this stress on them. Nevertheless, the issue is worth some thought. Roughly, the position could be summarised by saying that, if natural people are allowed to do it, then corporations are properly allowed to do it, and if natural people are not allowed to do it, then corporations may not do it either. If nobody is allowed to throw rubbish in the river, then corporations may not throw rubbish in the river even if that cuts their costs and thereby increases their profits. If people *are* allowed to throw rubbish in the river, then, on the face of it, corporations may do so. Putting special limitations on corporations is putting special limitations on the shareholders, the old people on fixed incomes, etc., all those who had to be protected by the various State governments when the W.A. Teachers' Credit Society or other institutions went down the tubes. The fair thing, on the face of it, is that they are not precluded from doing anything that you are allowed to do unless there is a special reason why they should be stopped—a reason that would justify stopping you, too, if it applied to you.

There are advantages to incorporation; were there not, people would not bother to incorporate. As Corkery points out,⁵⁴ it is possible to take part in business without incorporation and without taking on the advantage of limited liability. He quotes Street J from *Re Ferrari Furniture Co Pty Ltd* on the subject of corporate management, but the point applies in the relevant way to shareholders:

A prohibition against taking part in the management of a company does not import any prohibition against taking part in business activities. But it denies to a person thus prohibited that statutory advantage that flows from participating in the market place under the shield of statutory limited liability. It is easy to take for granted the right of every citizen by the simple procedure of incorporating a company to avail himself of this shield of limited liability.⁵⁵

54 J. F. Corkery: *Directors' Powers and Duties* (Melbourne: Longman Cheshire, 1987), page 38.

55 [1972] 2 NSWLR 790 at 792, quoted by Corkery *ibid*.

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There are advantages to limited liability for shareholders: they are liable only to the extent of the unpaid portion of their shares, so they might remain rich after the company has gone broke and its creditors been left unpaid. Their risks are reduced by limited liability, so it is not unfair that special limitations be placed upon them to even things up. But the advantages to make it a fair thing should go to the people who would otherwise be at a disadvantage: not the citizens in general (who might have a claim in return for the industry's being allowed to operate with no tax on its earnings, for example), but the people to whom the corporation owes money. And the simplest way to handle that is not to have laws placing quite special limitations on shareholders or corporate officers with respect to citizens in general, but for people to insist on personal guarantees from directors before loaning money in significant amounts to corporations.⁵⁶

Think about a few cases: consider whether corporations have any *special* obligations with respect to beautifying the environment. Consider whether they have any special obligations with respect to contributing to government revenue, so that they may not arrange their finances in legal ways that minimise tax just as the rest of us claim any deductions to which we are entitled. Is there really any special reason why retired old people living on the pittance they get from their investments should have to pay a greater contribution to public coffers than the rest of us? Consider whether corporations (or particular natural people) may employ people in conditions that put them at risk of contracting asbestosis, either letting the potential employees know of the risk or not letting them know. Consider whether compensation can properly be required of the employer afterwards if the employee does contract asbestosis. If the potential employees did know of the risk, and if the alternative was that they be unemployed because the business could not be run with the added costs of removing the risk, does that change anything? Versions of all of these have been live issues within living memory. I describe them as I do to make my point about representation more emphatically, because corporations are often thought of simply as impersonal things that cannot be hurt. In fact, corporations are combinations of the shareholders, who are natural people and certainly can be hurt. Even if fact does not mirror theory in the construction of corporations, the

56 This does not limit the shareholders, but it gives extra protection to creditors who would otherwise be at extra risk.

shareholders can still be hurt and the managers and directors of the corporation are still acting as their representatives.

Not everything done to further the interests of the represented is done in the capacity of representative, even if representatives should act so as to further the interests of those they represent; a representative can act as such only when acting within the limits imposed by the rights of the represented.⁵⁷ It can be *my* act only if I could have authorised it, and I cannot hand over rights that I do not possess. Here, of course, is an important part of the case for making directors *personally* liable in the case of certain sorts of wrongdoing.⁵⁸

Let us return to the example of guardian and ward to make a point about another, and more surprising, limitation on the activities of representatives. The ward, when she comes of age and takes over her inheritance, will have the rights to do all sorts of things with the money and may act in or against her own interests as she sees fit. The guardian, as we have seen, is more limited in what he can do. He is not allowed to exceed her rights in his pursuit of her interests, but he is not precluded only from perpetrating fraud on his ward's behalf or anything of that sort; he is not allowed to do various sorts of good on her behalf, either, because doing so might be contrary to her interests. And that is not simply a legal matter: the guardian is *ethically* precluded from such action and, as we shall soon see, is therefore *logically* precluded from it.

This is one of the ways in which business or professional ethics is different from personal ethics: one is acting in a business or professional capacity, not in one's personal capacity, so different considerations are relevant. To put it differently, if one is acting in a personal capacity when acting as a corporate officer, one is acting in somebody else's personal capacity; one is acting in the personal capacity of the

57 And, of course, not always then: often enough, special authorisation is needed because the authority to make the decision about whether to seek the good of the represented in that particular way does not lie with the representative who acts.

58 In acting outside the rights of those she represents (Investing Women, Inc), the representative (Molly) would have failed to act as representative and the act, in a very important sense, would clearly not have been that of the represented. Molly would have been acting in her personal capacity, not in that of Investing Women, Inc., or any of its shareholders, so she must personally take responsibility. Others who encouraged Molly to her act, fellow corporate officers or shareholders, share blame because of the vice they showed in encouraging her, but it was not their act that she performed; their relationship to the corporation does not matter, since anybody else who encouraged Molly would have shown the same vice and shared blame for the outcome in the same way.

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shareholder, performing his or her actions and not one's own.⁵⁹ This is one of the important points about which there can be confusion that leads people who mean well to behave improperly. While, as they think, doing the right thing and standing on principle, they are in fact simply and arrogantly forcing their views on others or taking what belongs to others and distributing it in accordance with their own private views on those things.

So: there are significant differences between the representative and the person represented. They might even be allowed to do different things. A representative might not even be allowed to do good on behalf of the represented. When she takes over the inheritance, the ward can give it all to charity and enter a nunnery for the rest of her life if the mood so takes her; the guardian cannot, when the ward is still two years old, give all her money to charity and put her in a nunnery for life. But the law might allow a conservative imputation of authorisation from a ward still too young to authorise anything: it might allow that the guardian, from the income on the inheritance, make conservative contributions to charity which the ward, if capable, might be expected to authorise if she is a decent person.

But it is worth thinking about how that sort of imputing of authorisation would work, because there is, in fact, a clear principle behind it. And the principle behind it will not support some of the positions that people often want to take. The basis of that imputed authorisation would be that the ward could be expected to make it if she were capable of deciding such matters. *Adult shareholders are quite capable of deciding such matters for themselves, so the same justification for doing good on behalf of those represented rather than pursuing their interests will not apply in the case of those representing the shareholders.* For a corporation to be charitable, *prima facie*, is simply for some people (the executives of the corporation) to be 'generous' with money belonging to other people (the shareholders), and that is, to put the point mildly, a very dubious form of generosity. If those people who are being forced into 'generosity' want to be generous with their own money, then they are quite capable of doing it for themselves and exercising their own judgement about which charitable enterprises are most worthy of support. There is no obvious ground here for a relaxation of the principle that the representative should act so as to further the interests of the represented as far as possible within the limits

⁵⁹ And self-sacrificing acts have ethical value only if it is one's *own* self that one sacrifices. In these cases, the self that was sacrificed would be that of the person represented.

imposed by the rights and duties of the represented. It is not that corporate officers *should not* be generous; they cannot, *logically cannot*, be generous in that sort of situation. When they are acting in their personal capacities, asked for a loan by the secretary or for a charitable donation from their own pocket, they can be generous; when asked to take on extra work so that somebody else can have a day off for grandmother's funeral they can, as a personal favour, agree, because that is a personal sacrifice within the corporation and not a sacrifice of the corporation; but in acting *for the corporation* they cannot be generous for the same reason as Kropotkin's father could not have been courageous through his servant's act in going into the burning house.

The sorts of points that have been made will apply also when the issue that comes up is one of the relationship between the corporation's interest and the national interest. Except insofar as there is a specific duty to act in the national interest, a duty which would limit the actions that were open to the corporation, the job of the corporation will be to look after the shareholders' interests and leave them to concern themselves with the national interest to whatever extent they, personally, see fit. If the money is to be made in the domestic market, then corporations will be under no special obligation to try to produce export goods because the government has allowed a huge build-up of foreign debt.

Of course, it might be very imprudent for a corporation to *look* as though it was entirely selfish and might, with such a poor corporate image, have deleterious effects on its trading performance, but that is not sufficient to defeat the point and solve the problem. All that shows is that a firm might sometimes have reason to donate to charity or become involved in local affairs, considering what promoted its interests in the long run and employing a good advertising agency. Or one might not even need to employ an advertising agency:

Franchisees were advised to become involved with the favorite charities of their local newspapers—a surefire way of getting mentioned in the press coverage of any fund raising activity....

Golin concluded that such community involvement was a far more efficient form of promotion than advertising was....

Supporting a visible charity was not just a cheap form of advertising, it was better. For a drive-in chain looking to appeal to a family market and seeking respectability in an industry burdened with a

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questionable reputation, the community involvement by local operators produced the type of image-boosting publicity that McDonald's needed. Yet, their early community service work had a single motivation: selling hamburgers. 'We got into it for very selfish reasons,' Fred Turner remembers. 'It was an inexpensive, imaginative way of getting your name before the public and building a reputation to offset the image of selling fifteen-cent hamburgers. It was probably ninety-nine-percent commercial.'⁶⁰

As the final section of that quotation makes clear, McDonald's behaviour does not show that I am wrong and that corporations can be generous; it shows that there can be reasons other than generous ones for doing what generous people would do. Such behaviour, especially with a confused populace, can be good for business. But if it is done for other reasons, for what might look like genuinely generous reasons, it is a failure on the part of corporate officers to do their duty.

And the interesting thing about this failure is that it is one that will be tempting to the *ethical* person, the person to whom I said at the start that material on business ethics should be addressed. It is the person of goodwill who will be tempted to help those in need with the money ready to hand to which he has access even if it is not his own. Since business judgements might differ about the effectiveness of some of these 'charitable' activities on the part of corporations, it is a case that can really only be dealt with in terms of ethics. Legislative prohibition on such overt behaviour might cut off businesses from perfectly proper attempts to sell their products: the behaviour of McDonald's described above is not really improper and should surely not be made illegal. Corporate officers will sometimes make mistakes in their calculations and will give money to charitable causes when, as things turn out, they do not get a good return. But the same might happen with some advertising campaigns. Mistakes of that sort cannot be outlawed, but the concern is with the motivation, with what it is that the corporate officer should be trying to do, and here is a temptation to goodwilled corporate officers which is nevertheless a temptation to impropriety, giving away what is somebody else's. The same sort of thing can apply with readily giving wage increases or better conditions to employees: sometimes it should be done, there will be excellent reason for it. Such activity certainly cannot be ruled out by law; the overt behaviour might be per-

⁶⁰ John F. Love: *McDonald's: Behind the Arches* (Sydney: Bantam Books, 1986), page 212.

fectly proper, and the law's primary concern is with the overt behaviour. But it should be done for the right reasons, i.e., business reasons.⁶¹ It *might* be done because it makes life easier for the corporate officer or makes him popular with the workers. 'Image advertising' can have a point,⁶² but it can also be a temptation because it helps to create a high profile for the corporate officers.

Michael Milken took up a lot of these points in his arguments for owner-management:

...Milken pointed to the Beatrice buyout as an example of the efficiencies that can be wrought by owner-management. 'Why is this company worth fifty dollars a share three months after the company decided to sell stock at thirty-two? This company spent hundreds of millions of dollars on things an owner-manager might not spend money on. The company spent as much as seventy million dollars a year sponsoring races. Elimination of seventy million dollars a year in cash outflow increases your value by half a billion dollars a year.

The company spent thirty to fifty million dollars a year on corporate-image advertising, so that people would know what a Beatrice is. You think knowing what Tropicana orange juice and Samsonite luggage [Beatrice products] is is good enough. And so there you can add another three to four hundred million a year.⁶³

The temptation is there, but a lot of the time it will not really pay off for the company.

Owner-managers, of course, might do all sorts of things with their money, just as shareholders might when their dividends arrive. Owner-managers might choose to give large amounts of money to charity or whatever. But there is no problem about that: the *owner-manager* is acting for himself, not for somebody else. If he is giving away his own money (or whatever), then it is his own self that is being sacrificed. The problem is likely to arise if a company goes public and the previous owners treat that as merely a way of raising money, not as something changing the nature of their job (if they remain as corporate officers) to one representing the interests of shareholders. There are sometimes suggestions that the previous owners have tried to hold special powers and keep a special place

61 Cf. The views of one judge: 'there are to be no cakes and ale except such as are required for the benefit of the company.' Bowen LJ, quoted in J.F. Corkery: *Directors' Powers and Duties* (Melbourne: Longman Cheshire, 1987), page 59.

62 BondCorp went in for a good deal of image advertising after the furore about its use of Cook Islands, and that was probably justified in commercial terms.

63 Connie Bruck: *The Predators' Ball* (Melbourne: Information Australia Group, 1988), page 273.

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after going public. Rupert Henderson's farewell speech at Fairfax might serve as raising some of the points in a quite deliberate way:

The formation of the public company nine years ago was the inevitable consequence of growth. It had to come, but with it came a number of subtle and quite inescapable changes.... One regrettable consequence, and the one that added enormously to my worries, was that it changed the ownership and the final responsibility from a family to a large and impersonal group of shareholders. The Fairfaxes cannot own a public company. They can and do control it. But they are not the owners and in law are just as subject to restraint and are as responsible to the shareholders as you or I. This of course is very difficult to adjust oneself to. Frankly I haven't. Equally I don't think the chairman has....⁶⁴

So problems arise from a failure to recognise that corporate officers are, standardly, acting in a representative capacity. This is not just a failure on the part of the corporate officers: it is a failure on the part of the general public, too. Banks, for example, are regarded as some sort of charitable institution and not as businesses. A bank is regarded as something quite impersonal, not at all as the shareholders behind it, and then seems to be confused with the State welfare system as it is required to do all sorts of nice things for its customers on other than commercial grounds. Perhaps these things should be done for those people, but, on the face of it, they should be done by the community as a whole through its taxation system and not by imposing a special burden on those (superannuation funds, retired people, etc.) who hold shares in banks. Standing back and insisting that somebody else (a certain group of shareholders) bear the burden is refusing to carry one's own fair share.

No attempt is usually even made to find out whether those who benefit from the banks' activities are poor and in need of them. There are charitable institutions to which people give money when they want to give money to charitable institutions; when they buy shares in a bank, they are doing something different. If banks are turned into charitable institutions, people will cease to invest in them and there will be no banks from which people can borrow money. The requirements often made of banks by the general public suggest a very one-sided view of business ethics as simply a matter of suiting

64 Quoted in James Fairfax: *My Regards to Broadway: A Memoir* (Sydney: Angus and Robertson, 1991), page 84. Cf. also the suggestion that Alan Bond failed to recognise the significance of BondCorp's becoming a public company in Terence Maher: *Bond* (Melbourne: William Heinemann, 1990), page 157.

the interests of the customer in every way, and business cannot operate like that.

There have been times when people, even those whose main interest in banks was the interest returned on their savings, understood how banks worked and were surprised if the interest rates were too high. One rarely sees these days comments like those of John Whitehead to Edwin Bowring in his letter of 17th April 1875: 'The Banks in Sydney and New Zealand are giving 7 pr cent for money deposits 2 years and 6 at one year. Where are the dividends to come from?'⁶⁵ Nowadays, the depositors' only concern would be with getting the interest rates higher, and the general public shows no awareness of the issue of dividends.

Complaints that banks or other corporations are impersonal and treat consumers like numbers, with no human concern but concerned only about profits, are unfair. Corporations treat customers like customers. Customers who think of the corporation that way and complain of being treated as customers are treating the shareholders as nothing more than faceless and forgotten providers of funds.

Business is expected, often enough, to take all the responsibility. If a bank loans more to somebody than he can repay, then it has made a mistake and is responsible to its shareholders for that mistake. The idea now seems to be spreading that the bank is also responsible for the *customer's* mistake and should be made to bear all the loss for that, too. This is a picture of citizens as infants who need to be cared for and answered for by their parents all the time, not of adults who can have a democracy.

That ethos makes business activities very difficult indeed. If business is to operate properly, education in business ethics is needed for the whole community, not just for businesspeople. It is the community at large, not merely the businesspeople in it, that creates the ethos in which business must operate and that constitutes the ethics of business. People need to develop proper expectations of business, an ethos in which business can operate without fudging. Working on the assumption that one should pay for the materials and time for labour, but expecting the business somehow to absorb research costs, and expecting it also to make huge donations to charities is simply confused: businesses cannot do that sort of thing any more than governments can reduce taxation and increase welfare spending.

65 F.A. Vernon and M.N. Sprod: *The Whitehead Letters: Tasmanian Society and Politics 1871-1882* (Hobart: Tasmanian Historical Research Association, 1991), page 83.

here⁶⁷ was formed to make money. If a bunch of people with money to spare decided that they wanted to help the needy and to form a company with that end, they could do so, but it would be a different sort of company.

So people get the idea that business lacks heart; that it has no concern for the well-being of others; that it lacks generosity and is, in fact and in general, selfish; and that it is a crass and uncultivated activity concerned only with money. In fact, business also produces and distributes the food, clothing, housing, medicines, and so on that the needy need. It does not produce only monogrammed toilet rolls and plaster models of ducks. Perhaps it should be borne in mind, too, that art is as much a business as any other; the people in it, when they fail to produce a product that anybody wants to buy, complain bitterly that the customer is wrong again and seek to be kept in business by the provision of money extracted forcibly from the taxpayer.⁶⁸ People have a confused and limited idea of how business operates, and a confused and limited idea of how ethical predicates apply in business.

The corporation itself, as opposed to its officers, has no feelings; you can make the managing director scream in pain by jumping on his toe, but you cannot make the corporation scream in pain by jumping on its toe. A corporation cannot have the sorts of feelings (desires, etc.) that are involved in selfishness, so the corporation *itself*, literally, cannot be selfish. The corporation's officers are acting on behalf of the corporation and its members, the shareholders—given the nature of representation, the relevant acts of the officers are acts of the shareholders. So the question is: are the shareholders selfish? No doubt some of them are, but the appropriate response to that, if one is to make life hard for anybody, is to make life hard for those particular selfish ones and to show that Marie of 64 Dagmar St Shenton Park is a selfish and nasty person. One needs then to go ahead and show that

67 There are, of course, many other sorts with different points: Greenpeace, Oxfam, the Australian Broadcasting Corporation, Edith Cowan University, and so on. The ethical problems they raise are usually of a different sort because they have a different sort of point from the point of BHP or CRA, and the problems they raise are not usually thought of as problems of *business* ethics. Nevertheless, some of the alleged problems in business ethics nowadays, when businesses are accused of lacking heart or being selfish, consist of picking on, say, BHP or a company with a similar point, and complaining that it is not, say, Oxfam, and that is simply silly. For a start, if all business suddenly became Oxfam, there would be nothing for Oxfam to distribute.

68 This example has come to be followed by many other industries, including amateur athletics.

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one's own moral position is superior, that Marie really does owe the people of Kalgoorlie a kindergarten and should be donating her money to that cause rather than spending it on a holiday for the kids or food for herself or whatever. Once one gets down to this picture and thinks about how ethical predicates really do apply, it is difficult to make out any general claim about selfishness of corporations. A claim that it is necessarily selfish to invest in a corporation rather than donate the money to the Cats' Home or something of the sort is most implausible—in investing in a corporation one might be creating jobs for others, trying to make sure that one will not be a burden on the state in one's old age, or any other of a number of perfectly proper things.

So the point about generosity and the inapplicability of that concept to a corporation's activities is an important one: it reflects a common misunderstanding of corporations as selfish, money-grubbing, unfeeling entities. Confused and improper expectations of business lead to cynicism that makes things even worse: the ethos of business becomes one of low expectations, in which case some upright and decent people will be put off entering business, thus making things worse still.⁶⁹ It is important that some ethical concepts that are important in personal morality do not apply in business ethics, but one should not allow confusion to lead one to the conclusion that there can be no ethics in business.

Other ethical predicates, plainly, do apply in business, and they should not be thrown out along with the bath water. One of the crucial predicates, plainly applicable and central to the provision of trust in business and the proper operations of the market, is *honesty*, and dishonesty is one of the main things that have been complained about in business of recent years. Lack of generosity is what people complain about when they want to get something out of business or

69 I should stress again something I mentioned at the start of all this: I am addressing those concerned about ethics, and that is why my argument takes this form. I do not intend to suggest that there are no unethical people in business (or elsewhere). There are, and they are a significant part of the problem, but they are not a part of the problem that can be dealt with directly by a concern with business *ethics*. It takes legislation to stop those people in the short term. In the long term, if the confusions I am picking out were avoided and the expectations of business changed, so that the ethos in which business operates changed, decent people who nowadays avoid business would cease to do so and, with more decent people in business and a different ethos, it would be harder to *do* business in an unethical way. One's misbehaviour would be taken seriously, people would not do business with one because they had the option of doing business with decent people, and ethical behaviour would become good policy even for the unethical.

when they reflect on ethics and think of it as something to which altruism rather than fairness is central, but lack of honesty is what people still complain about when they look back, feeling badly done by, and complain with nothing to gain personally from doing so. As an example, consider what Henry Bosch says:

Perhaps the most common practice has been the use of 'creative accounting', which might better be called 'cosmetic accounting', to present company results in a favourable light. Examples include treating capital gains as operating profits while (sometimes in the same report) treating capital losses as extraordinary; equity accounting the earnings of associates when no significant influence has been exercised over them; the use of off-balance-sheet and trust structures to conceal financial problems; some uses of debt defeasance techniques; and the generation of 'profits' by the sale of assets from one associate to another within a group. All of these practices and many more have been used to inflate profits, particularly those of paper entrepreneurs.

Less common, but no less misleading, has been the use of secret put and call option arrangements to reverse transactions. Some operators have announced large sales with remarkable profit margins but have not announced that the transactions can be reversed at the option of the 'buyer' by an arrangement entered into as part of the deal. A variant of this is specifically to arrange that the transaction will be reversed after the balance date of the first company, giving it an apparent benefit at its reporting time without imposing cost or risk on the second company. Some companies have reported large profits as a result of selling assets from company to company within their groups at higher and higher prices. The use of associated entities in different countries with different balance dates has allowed the presentation of even more attractive results. In a further variant, bad or doubtful debts have been 'bought' from a company just before balance date by associated companies financed by the first company through two-dollar companies created for the purpose.⁷⁰

These are all forms of dishonesty, and examples come to mind fairly readily. People who make the mistaken and illogical move from the recognition that not *all* ethical predicates can apply to business activities to the conclusion that *none* can apply might be led to think that these are proper business activities. Such activities are distasteful, no doubt, they might say, but that's business. In fact, such

70 Henry Bosch: *The Workings of a Watchdog* (Melbourne: William Heinemann, 1990), page 29.

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notions as honesty and dishonesty do apply, and the limitations placed on a representative's actions by the requirement that he do nothing that the represented have not a right to do places ethical limitations on his activities in the same way as the context of the profession of law or medicine places ethical limitations on what a lawyer or doctor can properly do. Confusion about these things can remove the trust required for business activity to go on.⁷¹

Consider this account of activities:

The sale of Solarguard to Impala enabled the directors of Ariadne to write an extraordinary profit of \$8,220,120 into the accounts for the year to 30 June 1983. The auditors, Ernst and Whinney, promptly wrote it out. Their grounds were, firstly, that none of the consideration for the sale was received by the end of the financial year. Further, argued A.H.W. Anderson, Ernst and Whinney's Brisbane partner, as the previously listed shares of Impala had been suspended from 22 July to 22 October 1983, the value of the shares at 30 June, which comprised much of the consideration and hence the profit, was uncertain. He might have added that this was particularly so with a takeover bid from the vendors on the table. Mr Anderson made two other points: the cash was to come from a share placing by Impala sometime in the future—in fact on 13 October—and, as Ariadne, through its holding in Impala, had a substantial continuing indirect interest in the business that had been sold, how much of a sale had there actually been?

The latter point particularly infuriated Judge, who countered that the value of Ariadne's interest in Impala was being disregarded by the auditors in the consolidated balance sheet. He found lawyers to support his view and insisted that the profit be taken into accounts.

Ernst and Whinney insisted on a very heavy qualification to Ariadne's 1983 accounts stating that they 'are not properly drawn up in accordance with the provisions of the Companies Code....' Worse, they maintained that, if this disputed profit were to be excluded from 1983 profits, Ariadne would show a loss for the year of \$6,190,860 instead of the profit of \$2,029,260 declared to the world and used ever since in the promotion of its record....

71 As an indication of the importance of ethical behaviour to business activity, note that Bosch *defines* the ethical in terms of its effects on the market:

I shall therefore consider 'ethical' those generally applicable forms of behaviour that create confidence in the markets and maintain the reputation of participants ... On this analysis behaviour is unethical if it undermines the integrity or reputation of markets, industries or professions.

(Bosch: *op. cit.*, page 25.)

Bruce Judge had the audacity to state, on the first page of his chairman's report for 1983, 'Directors believe the group to be one of the few public companies in Australia to have accounted for its balance sheet items on the conservative realisation level applicable in the present recessionary phase of our country's economy.'

...The auditors the following year were Arthur Andersen and Company.⁷²

Note that Judge was able to get legal support for his views about some of the matters involved, but there can be no doubt that relevant information was held back from the shareholders.

In this, we see some of the problems that arise at an institutional level. Auditors have the job of reporting to the *shareholders*, but they are chosen by and paid by corporate officers. Placing qualifications, giving information that is not helpful to the officers and might have been withheld, generally doing the job properly in circumstances that are not favourable to the corporate officers: these things make it quite likely that the auditors will lose work. Some sort of independence for auditors might help to improve business ethics by making dishonesty harder to get away with.⁷³ A return to owner-management might do so, too, if only because the people who pay the auditor are then the people to whom the auditor reports.

And again, in accounting, the issue is not quite as simple as it might be thought to be. Accountancy is not a perfectly straightforward business with no room for originality; standards and practices change from time to time, and usually for good reasons. Consider this account of some activities at McDonald's when the company was trying to raise loans:

The fact that Boylan's accounting did not square with GAAP [generally accepted accounting principles] did not bother Sonneborn. It was the financiers—not the accountants—whom he was trying to impress.

McDonald's, of course, disclosed its accounting changes, but the numbers they produced on the bottom line of the income statement were far more prominent than the footnotes that detailed the novel accounting Boylan used. 'We fully disclosed everything in the footnotes,' explains Gerry Newman, McDonald's senior executive vice

72 Bruce Ross: *The Ariadne Story* (Elwood, Victoria: Greenhouse Publications, 1988), pages 36–37.

73 The position of auditors might be strengthened if the big sharebuying institutions stated a preference for the shares of firms that used auditors employed by the institutions themselves.

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president and chief accounting officer. 'Our numbers were funny numbers, but without them we never would have gotten the loans to expand, because we didn't have real profits.' Boylan disagrees strongly with that assessment. 'Every number in our financial statements was fully explained and supported by accounting principle,' he argues. 'There was nothing funny about them. Funny numbers are imaginary numbers, and our numbers were not imaginary.'

Boylan's work was not a violation of basic accounting concepts, just a deviation from standard practices. In fact, all his changes were rationalized using longstanding accounting philosophy, and years later some of his innovations began to make sense to other accountants as well. Indeed, a couple were finally adopted as generally accepted principles of accounting, including his capitalization of interest on construction debts.⁷⁴

This says very little for Gerry Newman, who was quite prepared to operate with what he regarded as funny numbers. Nevertheless, the fact that some of these innovative procedures later became generally accepted principles of accounting suggests that creative accounting can be good accounting; it can notice and set out more accurately things that have not been noticed before. And that, again, suggests the difficulty of legislating to block off what is dishonest without also ruling out all sorts of worthwhile advances. It suggests the importance of ethics for business.

74 John F. Love: *op. cit.*, pages 174–175.

Ethics and Other Things: Some Concluding Remarks

Ethics is important to business. For one thing, it is important to business for commercial reasons. Honesty, as we have seen, will pay. Certainly, discovered dishonesty will *not* pay, and the costs of making sure, really sure, that regular dishonesty is not discovered would be prohibitive—they would be sufficiently high to make honesty a good investment. That one refrains from confused displays of ‘generosity’ and can therefore put one’s product on the market cheaper is unlikely to hurt one’s capacity to sell. If ethical behaviour is the norm in business, then all the costs of legislation and enforcement, which are likely to be of limited effectiveness anyway, will be saved; people in business will be better off, and so will people not in business.⁷⁵

I pointed out much earlier that whether behaviour is ethical depends, in the typical case, on the motivation. Helping others simply in order to win a good reputation or get them to vote for me does not show me to be kind. Paying the greengrocer for the potatoes instead of stealing them, simply because I am afraid of being caught and punished, does not show me to have much of a sense of justice. So surely we are now stuck with a different sort of problem: in explaining the importance of ethical behaviour for business, we have given people a reason to follow the *policy* of ethical behaviour, as the policeman beside me in the greengrocer’s shop gives me a reason to follow the policy of honest behaviour, but we have not given people a reason to be ethical. I think we have, actually, and if the right moves are made then a situation will be created in which the unethi-

75 Or, at least, we *might* be better off. I hesitate to suggest that government would respond to this considerable drop in its outgoings by making cuts in taxation, but what they spent money on would be different and might be more pleasant for us all.

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cal, while they will not become ethical, will have a reason to follow the policy of ethical behaviour.

The remark that either you're ethical or you're not has point to it; it is, in an important way, a truth. What I have been through is not a set of reasons for being ethical, but an explanation of some of the ways in which the ethical can go wrong. A business ethics course will not turn the unethical into ethical people, but it will help ethical people to be better and more effective at being ethical. Being ethical (not merely ethical behaviour as a policy, but genuinely being an ethical person) is, indeed, likely to pay off in business,⁷⁶ and that does not detract from the ethical character of those people.⁷⁷

If people behave in the way that ethical standards require *simply* because it pays to do so, then they will not do so when they can get away with an infringement. Certainly there are people who are just like that. But if that is the norm, and not merely an exceptional case, then the ethos becomes unethical behaviour and so does the practice, with trouble all around for business. What has to be done to correct this is to remove provocations to unethical behaviour as far as possible and to remove confusions about the ethics of business behaviour.

The removal of confusions about the ethics of business behaviour has two aspects to it: some understanding of what goes on in business, and an understanding of which predicates from personal morality carry over and apply in business behaviour and which do not.⁷⁸ And, since what is at issue is the creation of an ethos that will produce a good ethic for business, it is the community of which that will be the ethos that needs the ethics education: all of us, and not merely those engaged in business. We have to be prepared to take responsibility for ourselves as a democratic community instead of simply complaining about a lack of ethics and waiting for somebody else to do something about it. We have to be prepared to vote out corrupt governments that set a bad example, and, in order to do that, we have to be prepared to refrain from simply voting the hip-pocket

76 See, for example, the arguments and examples in Mark Pastin: *The Hard Problems of Management: Gaining the Ethics Edge* (London: Jossey-Bass, 1986), *passim*.

77 This is argued out in detail in R.E. Ewin: *Virtues and Rights: The Moral Philosophy of Thomas Hobbes* (San Francisco and Oxford: Westview, 1991), chapter 7.

78 So, to the question I raised earlier about who should teach ethics courses: not simply people who are experts in ethics, but people who know a lot about how business works and people who have some understanding of how ethical concepts work and see the difference between personal morality and the less personal ethics of business or the professions. It is probably amongst philosophers that we should look for such people, though certainly not all of them, and not even all who describe themselves as moral philosophers, fit the requirements.

Some Concluding Remarks

nerve and then complaining of the venality of others. What is the problem is not simply the lack of business ethics in business, as though business were entirely separate from the rest of life; it is the lack of business ethics, and the lack of reflectiveness about ethics in general, through the community as a whole.