Chapter 5
Shares

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Contents

§1 Limited Liability
§2 The Ownership of Companies
§3 Duties of Managers to Shareholders
§4 Alternatives to Tradeable Shares
§5 Duties of Shareholders
§6 Short-Termism
§7 The Ethical Investor

Corporations Have No Souls—absorbed in ch.4.

Rules and Times—to be absorbed in Resp, Codes, Etehcon. Check that nothing left out.

[Consider having Alternatives and Short at end after Ethical Investor]

Abstract

Contrary to a widespread belief, shareholders do not own their companies in a strict sense, and it is not the sole or overriding duty of managers to maximise owner value in the long term, though sustained profitability is, for almost all companies, a prime purpose, and the case for their having other responsibilities has to be argued.

Tradeable shares are not the only possible way of having a stake in a company, and some alternative might be better, but there are strong pressures for being able to trade them, since they are financial assets, and if they can be traded some people will trade in them solely in the hopes of making short-term gains. The ownership of shares nevertheless confers responsibilities as well as rights, and the short-termism of the large institutional investors is a serious defect of current financial practice. Shareholders share a general responsibility for what their company does, and the problems of ethical investment are real, but, as in all business transactions, limited by reason of the impersonality of the market place, itself stemming from a recognition of its often being for the other party to make decisions.

§5.1 Limited Liability

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The limited liability company is an artificial creation. Its chief purpose was to enable investors to take limited risks with their funds. They could buy shares in a limited liability company without being personally liable for its debts if it became insolvent, as they would have been in a traditional partnership. They might lose their investment, but nothing more. It thus became much less risky to invest, and enormous sums of risk capital were unlocked, which financed the industrial revolution, and made possible the economic prosperity of the present age. The public interest was well served by the invention of the limited liability company.

But it remains an artificial creation. If corporations have no souls, the have no natural rights either. Americans believe that human beings have a human right to the pursuit of happiness, which is often understood as the pursuit of money, and the Supreme Court ruled that corporations were persons with a consequent constitutional right to equal treatment in every State of the Union. But it does not follow. It is perfectly fair to treat corporations differently from the way we treat human beings, to tax them differently, and to deny them human rights to equal treatment under the law. They are not human. That is not to say that various principles of justice and equity do not apply. From the very fact that we recognise corporate decisions and corporate actions, certain consequences of public morality and legal principle flow. But the way they apply depends on the way limited liability companies are constituted, and the legal and social framework within which they operate.

§5.2 The Ownership of Companies

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It is often supposed that public limited companies are owned by the shareholders, and that therefore the shareholders have a right to have their owner value maximised, and the managers a corresponding duty that overrides all other duties.[1] But the shareholders do not, in a strict sense of the term, "own" the company. The legal position was stated by Lord Justice Evershed, in *Short v. Treasury Commissioners* (1947): "Shareholders are not in the eye of the law part owners of the undertaking. The undertaking is something different from the totality of its shareholdings"[2] And, when we think about it, this is obvious and right. A public limited company, as we have seen, is not a natural person but a legally constituted one, by means of articles of association, with the shareholders as members with definite rights and responsibilities, but only those laid down. In particular, the shareholders are not responsible for the debts of the company in the way they would be if they were owners. Their liability is limited: so also are their rights.[3]

[1] Tom Sorell and John Hendry, *Business Ethics*, Butterworth Heinmann, Oxford, 1994, ch.5, p.113f.

[2] Quoted by Charles Handy, *The Empty Raincoat*, London, 1995, p.145, and by Tom Sorell and John Hendry, *Business Ethics*, Butterworth Heinmann, Oxford, 1994, p.137.

[3] For a fuller discussion, see Tom Sorell and John Hendry, *Business Ethics*, Butterworth Heinmann, Oxford, 1994, ch.5.

§5.3 Duties of Managers to Shareholders

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Even if shareholders do not, strictly speaking, actually own their company, it is widely held that the only consideration that should weigh with a manager of a company is to maximise profits. The story is told of an Oxford don who was accustomed every year to go to Scotland with a trunk full of books to read during the Long Vac. One year a zealous employee of the railway company weighed his trunk, and charged a higher price. The don protested that he had been taking the same load every year and had always been charged less, but after a lengthy altercation was persuaded that the employee was right, whereupon he wrote out a cheque to the company to cover all the underpayments in previous years. The cheque was returned with a courteous letter from the directors, saying that in the special circumstances of the case they were waiving payment for years gone by. The don sent the cheque back with a curt note, saying that the money was not for the directors, but the shareholders. On that view there would be no room for managers to take into consideration any ethical arguments. Provided an action was legal, the only question would be whether it would maximise profits. If it would, it should be done: if not, not.

But the view is false. We have already claimed that it is,[4] and now need to consider the arguments of those who hold it to be true. Some thinkers make their case by definition. Thus Elaine Sternberg in the passage quoted in Chapter Three lays it down as the defining purpose of business that it should maximise owners' value. But if we define business in this way, can we be sure that the term thus defined covers all the transactions we should normally count as business transaction? There are institutions that are not profit-making. I may well do business with them. I may supply the National Health service with sterile dressings, or the National Trust with picturesque tea towels or be employed by a college or a school. In each case there are rights and duties, which we should normally consider under the heading of business ethics: I expect to be paid on time by the National Health Service or the National Trust, and I have duties towards my employer, whether I am employed by ICI or the local comprehensive school.

Elaine Sternberg's definition of business is open to the objection, then, that it leaves out many transactions which we should

[4] In ch.3(False),§3.6 plc.tex

normally call business transactions. It also fails to cover the actual practice of many ordinary profit-making businesses. Many businessmen do not act on the principle of maximising profits irrespective of other considerations: they do not strike the hardest bargain they can with their employees, and often make donations to charitable causes. It is often argued that in so doing they are acting in the long-term interests of the company, and that the well-treated employee will work better, or that the public image of the firm will benefit if it sponsors concerts, and this in turn will bring in more business. That may be so. But such considerations are only rationalisations none the less, attempting to justify, under the guise of self-interest, decisions taken on other, wider but none the less relevant grounds. We can see that they are rationalisations by contrasting the care taken, when proposals genuinely based on long-term profitability are under consideration, to assess very accurately the likely costs and benefits, with the cursory justifications given when it is a question of making some donation to, say, a local football club. No careful balance sheet of likely returns to be set against the cost are drawn up. The decision is really taken on quite other grounds, and the claim that it will improve the firm's standing in the community is put forward only to give it an air of business respectability.[5]

The objection that the definition does not fit the facts can be parried, by allowing that many businessmen do not act so as to maximise owner value over the long term, but maintaining that they should. Elaine Sternberg is quite clear on this point:[6]

> Managers who employ funds for anything other than the legitimate business objective are simply embezzling: in using other people's money for their own purposes, they are depriving owners of their property as surely as if they had dipped their hands into the till.

But then some argument is needed, not just a stipulative definition.

A duty to maximise profits cannot be read out of some imputed right of ownership. The purpose of the company, and the duties of the managers are to be read out, rather, from the articles of association, qualified in the way that fiduciary duties generally are.[7]

[5] See, similarly, ch.4, §8, p.10 of duties4

[6] Elaine Sternberg, *Just Business*, Little, Brown and Company, London, 1994, ch.2, p.41.

[7] See ch.4, §4.6 (TRusteeship).

There could be companies whose sole purpose was to make the greatest profit possible, but most companies are associations for the purpose of trade, or manufacture, or the provision of services, which implicitly commits them to the responsibilities of that line of business, and authorises the directors and managers to use their discretion in discharging those responsibilities.

Of course, almost all companies seek to make profits. None of the arguments adduced is intended to deny that, or to suggest that profitability is not a prime concern of those engaged in business. All that is being denied is that it is the sole purpose, or that it should override all other considerations. Just as an individual is generally entitled to pursue his own purposes, but needs to consider others in so doing, and not only should not deceive or defraud them, but place some weight in not putting them out and in not disappointing their reasonable expectations, so should businessmen in their business capacities. The fact that they are employed as managers by public limited companies does not abrogate their being responsible for the way they discharge their fiduaciary commission, and the fact thay are commissioned to carry on some business profitably does not occlude or override their peripheral obligations.

Peripheral obligations are peripheral. Behind the mistaken arguments of those who maintian that managers' sole and overriding duty is to their shareholders is a fear that directors may be tempted to play the *grand seigneur* and disburse their shareholders' money in patronising good causes to their own emotional satisfaction but with little benefit for the shareholders. It is a legitiimate worry. Although it is perfectly possible for companies to be run for the benefit of their employees, like the John Lewis partnership, or for the benefit of the locality, or, indeed, in order to promote artistic endeavour, few comapnies are incorporated for these purposes. In most cases companies are run for profit, and should be managed so as to be profitable. It does not follow that the comppany must chisel its employees, shortchange its customers, or generally seek to screw the last farthing out of all and sundry. And similarly, it does not follow that it must do nothing for the locality, the trade, or the environment. But it does follow that a good case has to be made out before the company disburses its money on any such objects. It is not a matter of the directors generosity, but of the company's having some responsibility in view of its relations with those concerned, its sphere of operations, or its place in the community.

The current opinion that it is the duty of managers and directors to maximise profits at all costs is wrong. It is not a coherent commission. It is reasonable to commission someone to pursue profits, but incoherent to deny him all discretion to take other factors into account in carrying out the general commission. Directors and managers have duties, fairly complicated ones, to protect shareholders' interests from insider trading, market manipulation, and other forms of double dealing. But they cannot be expected to internalise and honour these obligations and to ignore all others absolutely. Solicitous they should be of their shareholders' interests, but their solicitude towards them should be part of a more general solicitude.

§5.4 Alternatives to Tradeable Shares

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Since the limited liability company is an artificial creation, we can consider whether some different invention would serve our purposes better. There are non-profitmaking companies, companies limited by guarantee, and, more importantly, companies whose explicit objective expressed in their articles of association, is to further the interests of some other group of stakeholders—its employees, its customers, or its suppliers.

We are familiar with the Coop. The Cooperative Societies do not have shareholders, but divide their profits among their customers. More recently various producer cooperatives have been established, which market agricultural produce so as to obtain better prices than individual farmers could if each bargained on his own behalf. And it is perfectly feasible to have companies that exist to serve the interests of their employees. Quite apart from some benevolently-inspired institutions such as the John Lewis partnership, there are a number of small companies that exist to exploit the talents of one or a few named individuals. The law allows all sorts of association: it does not have to be for profit, nor need the members of the company be shareholders with tradeable shares.

There are obvious advantages in these other sorts of company, but disadvantages too. The adversarial aspect of the company's dealings with its customers, its suppliers, or its employees, is assuaged, and in particular employees can feel that they have more a stake in the company and the fruits of their labours if they have some share of the profits. But profits do not always happen. There may be lean years in which there are no profits, even losses. Just

as the investor may lose his money, so the labourer may find that he has laboured in vain. And labourers are rationally reluctant to take that risk, being less able to stand the loss of the fruits of their labour than the investor the loss of his surplus money. If I have got mouths to feed or a mortgage to repay, I need to have my salary secure, and am wise to forgo the prospect of possible profits for the certainty of a weekly wage. Security has its price. Just as risk-averse investors can buy preference shares, with a more assured return, but missing out on possible profits, so workers may opt for wages, but thereby forgo a greater financial involvement in the fortunes of the firm. Mixed systems in which fixed wages were paid, but lower than the normal, together with some share of the profits have been tried. They avoid the disadvantages of the employees having no stake in the profitability of the firm or of their being too dependent on its fortunes, but raise problems of weighing immediate against future share-outs. Large companies operating over a long time need to invest capital to ensure or enhance future profitability. The tension between the short-term interests of their members in having larger dividends, and the long-term interest of the company and its future employees in having invested more, is eased, up to a point,[8] in an ordinary limited liability company, by the shareholders being owners of their shares, and being able to set future value against immediate dividends. With employees, customers, or suppliers, there is no tradeability to even out the relative advantages of present cash and future profitability: if I am due to retire next year, why should I accept a reduced dividend now in order that my successor might be able to add more value to his labour in five years' time? It may not matter in small companies, with a high degree of identification with the firm, or in associations where the profits are small, or little capital is required, as in producer cooperatives; in such cases it is equitable to allow easy entrance and not to give those leaving the company any continuing right to share in its profits: but with large manufacturing firms, it would be inequitable not to give those leaving employment something in return for their restraint in not receiving the maximum dividends possible during their years of employment. They need to be given some sort of share, and there are strong pressures to make these tradeable shares of the traditional type. In which case they

[8] But see below, this chapter §4 (short termism)

have a market value, and will be construed by many employees as simply a wage under another name and in a less convenient form.

Pressures can be resisted. Shares can be non-transferable, or non-tradeable. A completely satisfactory solution to these problems has yet to be devised. If one emerges, it could well become the prevailing legal form of future firms. But always there are risks in business, and many people, and especially many employees, are risk-averse, and with good reason. The risks of business enterprise are likely, therefore, to be carried very largely by those who can afford to bear the loss, if things go ill, in return for the lion's share of the profits, if things go well.

§5.5 Shareholding

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Shareholders do not own their company. Their rights are defined by the law and by the articles of association of their company. Not only is their liability limited, but their directors have carefully specified duties towards them, to protect their interests, especially in regard to dealing in shares and when a takeover is in prospect. Shareholders correspondingly have duties: if a shareholder comes to own a majority of the shares, he must offer the minority shareholders the same price for their shares as he did for those he has already acquired. The aggregate of legal rights and legal duties constitutes what a share is, and what it is to own a share. The moral duties of a shareholder are determined by this concept of share, and the legal rights and legal duties that go with it.

Many shareholders repudiate all such imputations of responsibility: they buy shares simply in order to make money. Elaine Sternberg supports this view:[9]

> There is ordinarily no moral obligation to be, or to continue to be, a shareholder. Being a shareholder is just one of the myriad of roles open to an individual or institution, and the reasons for choosing to be a shareholder are equally diverse. Though some objectives encourage long-term holdings, others do not; they can, however, be equally legitimate reasons for owning shares. And it is the shareholder's objectives for owning shares which should determine if a particular holding is to be bought or kept or sold: the long-term goals appropriate for a pension fund may not be sensible for any given elderly pensioner.

[9] Elaine Sternberg, *Just Business*, Little, Brown and Company, London, 1994, pp.205-206.

But this is a confusion. The personal motives different individuals have for their various financial transactions is one thing, the institutional rationale of some particular form of property is another. A doctor may have embarked on the medical profession because he wanted to be rich, or well repected in his local community. His personal motives fopr being a doctor would not affect his responsibilities, or releive him of any of his progfessional obligations.[10] It is illuminating to consider the analogous case of people investing in landed property, because landed property was for many centuries the only form of investment, and our moral intuitions have been sharpened in considering it. And it has generally been recognised that although people may invest in landed property for a variety of reasons, those reasons do not override the obligations that go with the ownership of land. One particular instance is telling: it was held to be quite wrong to let houses for immoral purposes, that is, as brothels. It was no defence that the landlord was a charity or a pension fund with a duty to get the best return possible. An exactly similar case obtains today with the holding of shares. A more modern parallel arises with those pension funds that have invested in works of art. That may be a legitimate investment. But it would not justify destroying them if they ceased to have market appeal. Although pension funds sometimes say that their duty is solely to their pensioners, they are wrong. To own is to have obligations. An institution cannot own shares, any more than houses or land or Picassos without having some duties in respect of what they own.

The shareholder has a voice and a vote. He can speak out if the company is pursuing bad policies. He can raise the matter at the Annual General Meeting of the company, and may attract some attention in the press, and this may be enough to shame the directors into mending their ways, but if it not, there is not much more he can do about it. Other shareholders are not interested. It is different in the USA, where shareholders regularly raise questions of principle and general policy, and directors seek to justify their actions in detail. The American practice is better than the British. It is obviously more in accord with the ideal of share-owning democracy, with shareholders exercising responsibility for their shares as they do for their society at large. But even from the narrower point of view of self-interest, the British practice does

[10] Tom Sorell and John Hendry, *Business Ethics*, Butterworth Heinmann, Oxford, 1994, ch.5, p.118.

not conduce to good management. Although for the small investor the hassle involved in persuading the firm to improve its practice may not be worth the small share of the increased profit he will ultimately reap, for large investors the benefits are much greater. And enlightened self-interest as well as public responsibility should lead them to devote some effort to improving the record of British business as employers, customers, suppliers and associates.

For the small investor the fact that intervention is unlikely to be effective may constitute a good enough reason for not speaking out, but, perhaps, selling the shares instead. That may be the right decision. But it is a decision that has to be taken; for the question does arise simply by reason of the shareholder having the right to speak. He cannot disclaim responsibility, and say that it is none of his business: it is his business; he has the shares; he is a member of the company; he has the right to speak. And although he can plead, plausibly if not entirely convincingly, that his voice is too feeble to be effective, the pension funds and insurance companies can mount no such defence. They have clout. If they do not use it, they are answerable for the failings of the companies in whose direction they have an effective say. Poor performance damages us all, in many different respects, not least in inviting further government intervention and putting off potential entrants from seeking a career in business.

The standard response in Britain is to sell shares rather than intervene in the management of a particular company. Sometimes it may be the only available choice—often because the majority of shares in most large companies are held by insurance companies, pension funds, and other large institutions, who are not concerned with what their companies do, but only with what dividends they will pay and what value their shares will have over the next few months—and sometimes it may be the right course. But there are grave objections to it in general, because it reinforces the prevailing tendency to "short-terminism".

§5.6 Short-Termism

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Managers and directors often complain of short-termism. Shareholders are only interested, they complain, in immediate gains, either by way of dividends or through increases in the share price, and companies cannot, in consequence, afford to take the long-term view. Shares are bought, simply as a speculation, by managers of funds whose own personal salary is related to how their funds perform month by month, without regard to the longer term, which ought to be the chief responsibility of shareholders.[11]

Shares are tradeable. If I have a house, it may take me a long time to find a purchaser who is prepared to pay the price I reckon it is worth; but because there are many shares, each qualitatively identical with many others, there is a continual market for them, and I can buy and sell them with great ease. The question thus arises of whether the shareholder has any responsibility to the company itself. Is there a duty to hang on to shares when the market suggests that the time has come to sell? The market reflects the judgments of many operators, and, in the view of many, is authoritative. But the market is ill informed. If I am astute I may be able to beat the market. But the astuteness is of a peculiar kind. I do not need to know better than the market what the shares are really worth, only what other people are going to think they are worth. I am dealing with appearances, not realities, and appearances tomorrow, not appearances in the fullness of time, when realities will have taken their toll of unjustified expectations. There is a high degree of fleeting unreality built into the stock market. This encourages short-termism. By getting into tomorrow's favourite today and getting out again tomorrow a fund manager can make a lot of money for his fund. Particularly since the Big Bang and the introduction of "performance-related pay" fund managers have sought to make a quick killing on the Stock Exchange, and boards of directors have felt pressured to increase dividend payments at the expense of future investment. Some have called for some form of loyalty lock, to prevent shares being bought and sold like raffle tickets. Others have claimed that there is nothing wrong with speculating in stocks and shares, any more than there is with putting money on horses. But, as Sorell and Hendry point out, the cases are not similar: backing a horse has no effect on the horse, whereas

[11] See further, ch.13, §2 (Accountability) p.4 of confron0. Check for Dupl.

buying or selling has an effect, albeit only a marginal one if the purchase or sale is small, on the whole undertaking.[12] For the small punter the principle *de minimis* applies, but the fund managers are not small investors, and need to take account of the overall effect of what they are doing. It is perfectly reasonable to channel funds from the forced savings of pension schemes into capital investments that will yield a good return in time to come. But that is a long-term business, and carries with it a readiness to forgo immediate returns provided the long-term profitability of the enterprise is sufficiently enhanced. Moreover, although short-term fluctuations on the stock market open the possibility of speculators making money, it is essentially a zero-sum game; I may make a killing if I buy tomorrow's favourites today and sell them to you tomorrow, but you will make a loss when you try to sell them the next day, next week, next month, or next year, when the fleeting appearance of profitability has fled. Managers of pension and insurance funds, howev2er, are under an obligation to put safety first, and to follow policies most likely to enhance the value of investments over the long, rather than the short, term. Short-term speculation is not a proper activity for pension funds, and if fund managers are to be paid performance-related salaries, the performance should be assessed not after a few months but after thirty years, when the contributors will actually be drawing their pensions.[13]

This is not to say that investors should not be allowed to buy shares in some fund devoted to speculation, so long as that is made explicit, and they know that they may get their fingers badly burned. Although short-term profitability is what some shareholders want, it is against the interests of shareholders as a whole considered over a longer period of time. By encouraging managers to stint expenditure on research and development, in order to boost immediate profits and interim dividends, it diminishes the firm's ability to compete in international markets, and promotes the general decline of the British economy.[14] What is a reasonable time-horizon will vary very much from industry to industry—a year is

[12] Tom Sorell and John Hendry, *Business Ethics*, Butterworth Heinmann, Oxford, 1994, ch.5, p.119.

[13] Some American record is better. CALPERS, the Californian pension fund, has beenan active and successful shareholder.

[14] The unwillingness of British firms to invest in research is also attributable to their being in a "Prisoners' Delemma" see Appendix A) in as much as the benefits of research do not reliably accrue to those who have incurred the costs.

a long time in the world of fashion, but of little moment if buying super-tankers. But although in the long run all the shareholders will be dead, their estates will benefit if their shares still have a potential for further profitability, and are in firms with a good reputation and in good standing with the public generally. Except in special circumstances—for example, when there is a takeover bid—the duty to the shareholders is adequately discharged by seeking to make the firm prosper over a long period of time and in a general sense.

§5.7 The Ethical Investor

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Much of the concern about business ethics in recent years has centred on the ethics of investment.[15] Although many of the issues are really more fundamental ones of business ethics generally, it is convenient to discuss them in the context of the ethics of investment.

People are ready to feel uncomfortable about investments. The Church used to condemn usury, and the Marxists damned the idle rich. Unearned income seemed immoral. At the time of the Student movement it was customary to demand that colleges and universities should disinvest in South Africa, and should not bank with Barclays. In reaction, many administrators and businessmen maintained that business was business, and ethical considerations should play no part in investment decisions. Their duty was simply to get the best return they could on the money they were investing. But this view cannot be sustained. Ethical considerations cannot be absolutely excluded, even when the prime duty is to use invest the money to provide for some charitable purpose. Shareholders have the right to speak out and vote on company policy, and with that right comes responsibility for what the company is doing. But that responsibility is glossed and limited in a number of ways, often ignored by those who criticize the investment decisions of others.

The fundamental reason why responsibility is limited is that business transactions are non-tuistic, and that it is not my business to determine your priorities or objectives. There is a veil of ignorance, therefore, that is not easily penetrated, and limits my responsibility for the use you make of your share of the cooperators'

[15] This is a rapid rewrite of the original version which got lost on disk. Likely to have some infelicities of style and content.

surplus. I am not my brother's keeper: it is up to him to decide what he will do, and not normally any business of mine. Business is business, and carries with it a proper separation of what is my business from what is none of my business.

Business is business, but not every business is a morally acceptable way of earning money. If I owned a factory, and a Third-world dictator wanted me to supply him with thumbscrews, it would be wrong of me to do so, no matter how lucrative the order. And the same would apply if the factory were owned by a public limited company in which I had shares. Even though he would certainly be able to buy the thumbscrews from some other supplier, and even if the order would make the difference between solvency and bankruptcy, and widespread local unemployment, it would be wrong to make money by such means. Instruments of torture have but one use. They are bloodstained, and the stain extends to the money made from making them. The veil of ignorance is penetrated by such instruments, and I neither can be ignorant nor rightly unconcerned with the implications of what we are doing.

Most commodities and many services are less specific in their use, and the veil of ignorance correspondingly more opaque. But a pharmacist might properly refuse to sell a small boy fifteen ounces of potassium nitrate and two ounces of flowers of sulphur, reasonably suspecting that he was going to make three ounces of charcoal himself and then have the ingredients for gunpowder. It is now common practice not to sell ether to adolescents, though still all right to sell it to elderly car buffs having difficulty in starting their elderly cars. A public limited company would be wrong to sell the specific ingredients of mustard gas to Iraq, though having no qualms in selling the same chemicals to an agricultural research station. Often in the real world such purchases are made through intermediaries; but often also the ultimate destination is known or suspected, and that knowledge can carry with it responsibility for the ultimate outcome. British arms manufacturers who supplied Argentina with arms did not know that they would be used to kill British soldiers, but did know that they were intended to kill.

But knowledge does not always carry responsibility. The pharmacist knows that the heroin he is dispensing to an addict is destroying him, but should dispense the prescription none the less. It is the doctor's responsibility to decide, and except when he has reason to suspect the authenticity of the prescription or the integrity of the prescriber, the pharmacist's duty is simply to dispense the

drugs specified. Much of life is like that. We have to coordinate our activities, and can do so only if each of us does not take it upon himself to decide everything, but conforms to the role expected of him.[16] Often, indeed, we go further, and lay on business enterprises "common carrier" obligations, which preclude their refusing to serve customers even in pursuit of bad ends. In the United States the Mann act makes it a criminal offence to convey a woman across a State boundary for an immoral purpose; but no railroad corporation or bus line could refuse a ticket to convey a woman who had such a purpose in mind. British Telecom and AT&T earn some of their money from calls made to call-girls by would-be customers, yet we do not stigmatize the dividends they pay as immoral earnings from prostitution. Indeed, while we may well think it wrong for British Telecom to provide a dial-in pornographic service, we should not think that telephones should be denied to women who might then use them to make assignations.

Business responsibility is not simple. Businessmen are responsible for what they do, but their responsibility is limited. There is a presumption of not being responsible for what the other party to a business transaction does, but this presumption can be rebutted. Even then, when we know that the other party is using our help as a means to a bad end, we may be under a duty not to withhold our cooperation. It is the same as in civil society, where we often have defend the other person's right to be wrong. We are not all agreed, but we still have to live together.

The investor is responsible. An individual shareholder has a voice and a vote. If the company is doing one particular thing wrong—advertising in Third-World countries to persuade mothers not to breast-feed their babies, but use the company's products instead—then it is reasonable to protest. But often protest is unavailing, sometimes inevitably so—a tobacco company exists to process and sell tobacco—and then the only recourse is to sell the shares. People sometimes complain that that will not do any good, and only moves the problem to someone else: but it is not to be expected that any single individual will be able to effect much of a change; the case is like that of the manufacturer who refuses to make thumbscrews—he will not stop the Third-World dictator from getting them, but he will have had no part in it. Similarly, a shareholder who sells his shares ceases to be responsible for what

[16] See the Rule of the Road in Appendix I.

that company is doing, and if it is something he disapproves of, it is likely to be his only course. The Bishop of Oxford cites a long list of sensitive issues.[17] Sorrell and Hendry describe a number of investment trusts which invest only in companies not likely to make shareholders feel queasy. Typically they do not invest in countries ruled by oppressive regimes, or in which basic human rights are disregarded, nor in companies that pollute or are low-wage employers, nor ones involved in gambling, pornography, tobacco, or alcohol. It is perfectly possible to find investments which do not offend and which provide an adequate yield, though they tend to do less well than investment funds not so restricted in their scope.[18] But the individual investor is under no obligation to keep the shares in order to maximise his return. If I were to invest my time and talents in being a bookmaker, I should be richer than I am, but I am free to earn my living as I think best, and the same goes for investing my money.

The case is altered when it comes to criticizing the investments of others, or deciding what investments some trust or corporate body ought to hold. Even if I disapprove of smoking, it does not follow that I am entitled to condemn you for having tobacco shares. Many of our fellow-countrymen know all about the dangers of smoking, but would rather die at sixty six after a happy life puffing away at the weed than live to a moribund old age in austere asceticism, and if you enable them to carry out their choices, who am I to condemn you? Equally a trustee needs not to let his ethical sensitivity subvert the purpose of the charity. The charity has a specific purpose, not a general remit to make the world a better place, and if every investment has to be socially responsible, money intended for the healing of the sick may be diverted into providing low-cost housing for ethnic minorities.

Mere disapproval is not enough. Criticisms can be made, but if they are to be heeded need to be even-handed, and to take account of answers that may be given. Many critics are selective in their indignation. In the 1970s and 1980s there was much indignation at the undoubted evils of apartheid, but a complete unworriedness about involvement in the Soviet Union, severe condemnation

[17] Richard Harries, *Is There a Gospel for the Rich?*, London 1992, pp.144-145.

[18] Tom Sorell and John Hendry, *Business Ethics*, Butterworth Heinmann, Oxford, 1994, pp.132,133.

of Chile, but, until the Falklands war, complete silence about Argentina. It was impossible to take such criticisms seriously. It was arguable that we should not dirty our hands with South African gold, but in that case Russian gold was even more blood-stained; if it was acceptable to do business with the Soviet Union in order to maintain contact and wean them away from their wicked ways, then it was equally acceptable to keep in touch with South African liberals, and show South Africans generally that there were better ways of doing things.

It is also incumbent on critics to listen. If they criticize a company for being a low-wage employer, they need to consider the reply that the alternative in the actual situation would be to go out of business and be a no-wage employer. That may not actually be the case. If it is not, then the criticism is justified: but the case needs to be considered. It is reasonable to be worried about nuclear energy, and to fear a repetition of Three Mile Island or Chernobyl. But one needs also to consider whether British or French operators are as irresponsible as American or Russian ones, and to weigh the possible hazards of nuclear energy against the actual damage done by burning coal, and the many lives actually lost in mining coal. In the end a judgement has to be made. But it should be a reasoned and responsible one, not an ill-informed emotional one.

Almost every business activity could offend an ethically sensitive person. We are always engaged with people, some of whom are not very nice. Business transactions are with people who have values significantly different from ours. We may, as in this book, take a benign view of it, and say that it takes all sorts to make a world, but we may take a darker, more Augustinian, view, and see ourselves emeshed in a worldly Babylon, a squalid city far removed from the society of our dreams, and yearn to be free of all its earthy entanglements, and withdraw into monastic seclusion, free to realise our ideals in company with a few like-minded souls. But if we thus separate ourselves off and we leave the world to stew in its own juice, we abandon any real chance of improving it. If we are to enter into the business of the world, it must be on the basis that not everything will be as we would wish it. But then we are not responsible for all its ills. If we cooperate with those we do not agree with, we can sup on the fruits of cooperation with a reasonably long spoon.