

Chapter 6

Employment

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Abstract (version I)

Work is regarded both as a necessary evil and a fundamental good. Employees want both to be compensated for having to work and to be protected against not having to. The obligations both to and of employees are similarly complex. As regards wages and other emoluments the relationship is an external one, but in most other respects it is an internal one, both parties working together in a common enterprise which constitutes the ground of their mutual obligations. The identification of the employee with his firm is not, and never should be, complete, and conflicts of loyalty can arise, particularly over questions of confidentiality.

—o0o— (version II)

¹ This follows order in Abstract II. I am not sure whether having Work and Jobs late is such a good idea. It might be better after all, to keep that discussion early and move Full and Future Employment to the State. The material of the December 1994 draft are rearranged as follows: The Curse of Adam: in §6.6 Duties as Employees: in §6.2 Dilemmas of Employees: in §6.2 Openness: in §6.3 Privacy: in §6.3 Secrecy: in §6.3 Confidentiality: §6.4 Whistle Blowing: §6.5 Full Employment: in §6.9 Causes and Cures: in §6.9 Flexibility: in §6.9 The Pendulum: in §6.9

The obligations both to and of employees are complex. As regards wages and other emoluments the relationship is an external one, but in most other respects it is an internal one, both parties working together in a common enterprise which constitutes the ground of their mutual obligations. The identification of the employee with his firm is not, and never should be, complete, and conflicts of loyalty can arise, particularly over questions of confidentiality. Many of our difficulties in thinking clearly about the responsibilities of employment are due to an ambivalence about work. Work is regarded both as a necessary evil and a fundamental good. Employees want both to be compensated for having to work and to be protected against not having to. It is a fundamental mistake to think of jobs as goodies, and legislation designed to hand them out to deserving recipients is misconceived. Nevertheless, in some circumstances a businessman should consider claims for employment, and may be able to go some way towards meeting them.

§6.1 Obligations of Employers

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² An employee does what his employer tells him. The employer, therefore, shares responsibility for what the employee does, and has a duty not to tell him to do anything imprudent or wrong. Further, he is responsible *for* the employee's not contravening any legal or moral principle, or causing anyone (including himself) any harm. Many of these obligations have been hammered out and made precise in the common law of master and servant, and in statutes concerned with safety at work and workmen's compensation. The underlying principle is that both parties have a shared responsibility, which neither side can opt out of. This shared responsibility gives rise to a partial identification of the employee with his employer which is the basis of further obligation. It is characteristically long-term. Although legal contracts in Britain are often short-term, and

² Possibly start with previous opening to old ch.7: The false image of the businessman as a ruthless maximiser was first seen to be insupportable when thought was given to the nature of employment. It became evident that employers had duties to their employees, and *vice versa*, and that though these might be spelled out in detail in a contract of employment, they did not stem from that alone, but arose from the nature of the case.

there is some casual and temporary labour, most employment is actually for an extended period, and needs to be—it takes time to learn the ropes, and chaos would ensue if we all had a different job each week. If the employee is ill, has a temporary lapse, gets old, there are grounds for not being too extreme to mark what is done amiss. Human beings do get ill, do make mistakes, do grow old. The nature of the employment made it sensible to have a human being for a lengthy period of time, in which he was likely to suffer some ill health, make some mistakes, and grow appreciably older. In availing myself over the years of your continued willingness to work for me, I have made use of your being a temporally extended agent, and so should have some regard for the concomitants of that temporality. The Japanese go in for life-long employment, and it does not seem that the Japanese economy has suffered as a result. There arguments, however, against making life-long employment a contractual condition universally. It would be very one-sided, unless the freedom of the employee to change jobs were very much fettered. It would make it impossible for employers to adjust to unforeseen changes of circumstance, and so would make them excessively cautious about taking on employees—“if you can’t fire, you won’t hire”. For some occupations good health and youthfulness are essential: those who join the army or become professional footballers know that they cannot expect to be employed into middle age, and a country which requires its armed services to employ the handicapped is unlikely to retain its freedom long. These obligations, then, are not overriding, but they are real. We should be rationally reluctant to terminate a long-standing relationship, though recognising that in some cases there are even weightier reasons for doing so.

The identification between employer and employee is not one of responsibility only, but of achievement as well. The enterprise could not prosper without the cooperation of the employees. They contribute to the success of the collective effort, and so should have some share of the fruits of success. In practice, and on grounds of practicality, the employees’ shares are primarily paid in the form of wages. This is in part because justice is indeterminate, in part because most employees set greater store by a steady income than an unreliable share of fluctuating profits.³ It is quite proper to have clear and definite agreements about wages, but important to

³ See above, ch.2, §2.5 (Justice) and ch.5, §5.4. (Alternative)

remember that they are set in the context of a collective enterprise, and that notions of distributive justice are widespread and deep. The most contentious issues that arise between an employer and his employees concern money and conditions of service. There are cross currents between internal arguments, based on their all being together in a joint enterprise, and external arguments ending in a bargain between parties whose interests are opposed. Money paid in wages is potential profit forgone. *Prima facie*, therefore, it is in the employer's interest to pay as little as he can get away with if the job is to be done. Up to a point, however, enlightened self-interest argues the other way. Well-paid and well-looked-after employees tend to identify with the firm more and work better. But only up to a point. In many factories there is not much scope for working better, and if a better-paid work-force is only as productive as an ill-paid one, competition will drive a good employer out of business. Often the choice has been between offering the employees a starvation wage and not offering them employment at all. It is difficult to be happy employing sweated labour, but if there is one thing worse than being an exploited worker, it is being an unexploited one. The good businessman wants to deal fairly with his employees, but justice is indeterminate, and what is a fair wage depends very much on time and circumstance. In many ages and many places the going wage is far below what seems needful and right in the twentieth century Western world. We should not be quick to condemn those operating under other conditions who fail to meet our own ideas of the just wage. But it is seldom that there is no latitude at all, and almost always there are some decisions to be taken which can manifest a just concern for employees or its absence. Consideration does not always cost money, and some costs are not critical.

On issues concerning money and conditions of service the relationship between employer and employee is evidently external. This is sometimes regretted; it would be better, it is thought, if employer and employee were completely at one, and altogether imbued with an identity of interest. But it is important to accept the externality of the relation, as a recognition of the individual's individuality, and to extend it, by moderating the demand for identification. In some countries and some cultures the firm takes over almost the whole of the employee's life: and even when they do not expect it of all workers, some firms expect too complete a dedication on the part of their executives. I can be paid to promote

Unilever's soap powder rather than Procter and Gamble's, and may, indeed, come to believe that it is better, but I should not be expected to devote myself totally to the firm at the expense of my wife and family or my duties of citizenship. It may be different in some of the professions,⁴ but business is based on an assumption of externality. The salesman does not have a natural vocation to sell soap powders, and his individuality is not being respected if he is expected to identify himself unreservedly with soap. He ought to do the best he can for the firm while he is employed by it; and even after he leaves its employment respect its confidentiality, and neither disclose its secrets nor make use of them to compete with it. But he is not obliged to a lifetime's service, and can, without disloyalty, wonder whether he might not better himself by taking his talents elsewhere.

§6.2 Duties as Employees

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The double relationship, both external and internal, which employees have with the firms that employ them, gives rise both to obligations and sometimes to conflicts of obligation. They do not have a natural or antecedent identification of interest with their firms, in the way in which professional people do have an antecedent identification with the values of their profession:⁵ but, in return for a salary or wage, the employee cooperates in helping the firm to realise some of its objectives. The degree of identification with the firm's shared interest varies: much more is expected of a manager than of a blue-collar worker. Although complete identification should never be demanded, some identification is always required. Even a casual labourer carrying out a specific order accepts responsibility for doing it in a workmanlike manner, and long-term employees, just because they are long-term, come to know much more what is expected of them, and have a correspondingly greater responsibility to work well. Normally it is fairly straightforward what they should do; the very fact of their being employees usually carries with it the existence of a supervisor, foreman, or boss, who can, in all cases of doubt, spell out what actually is required of

⁴ See further below, ch.11 (Professions)

⁵ See below, ch.11 (professions)

them. Problems arise, however, if what they are told to do contravenes the perceived values of the firm, or, more generally, if either of the former are in conflict with the public interest, the moral law, the law of the land, or the employee's own individual ideals.

It is not a new problem. In the middle ages the servants of the crown were sometimes instructed by the king to do things clearly contrary to his interests. A doctrine was developed, sounding quaint to our ears, of the king's two bodies, whereby they could justify by appeal to the king's better and more ethereal body disobedience to what they were told by the king's actual and earthly body. Since the employee is a responsible agent, and is never without some discretion in discharging his commission, and is to some extent identified with the business enterprise, he may be in a position to judge that the actual instructions he has been given run counter to the general policy of the firm. More often, however, the conflict is an external one, in which the firm's instructions or policies cannot be reconciled with what he, as a citizen and moral agent, believes to be right. Sometimes the issue is clear. If my employer tells me to go and kill someone, I am under no duty to obey, but should, rather, go and tell the police. But what if, looking through his papers, I find that he is intending to murder his wife? Surely, then, too, I must tell. But if he tells me he is having an affair? We begin to hesitate.⁶ Some confidences ought to be respected, even if they are about wrongdoing. The seal of the confessional extends beyond the ordained ministry. In modern business life dilemmas mostly arise over questions of confidentiality.

Many organizations engage in dubious practices. Firms cheat customers, default on suppliers, make dangerous products, damage the environment in the Third World. Governments scheme to get the better of foreigners; Ministers lie to Parliament; schools conceal cases of child abuse. Employees who find out, are in a difficult position. Should they "blow the whistle", publish the wrongdoing, and hope that publication will bring about an amendment of practice? Or is their duty of confidentiality to their employer to override their duty as citizens and moral agents? Although the fact that their relation to their employer is in part external gives grounds for other obligations than those directed towards the firm, it can work the other way, and argue for respecting the privacy and keeping the secrets of an institution other than oneself, and under some conditions accepting a stringent duty of complete confidentiality.

⁶ I am not happy about switching to the first person here. If I keep it in the third, I have a confusion of *hims*. But it seems rather sudden to introduce me.

§6.3 Openness, Privacy and Secrecy

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Most firms are public limited companies, and the Board of Directors is under a duty to keep the shareholders in the picture about the activities of the company, for which they are ultimately responsible, and to publish in the press any decisions which could affect the price of shares. Public limited companies are effectively in the public domain. So are schools, colleges, universities, churches and hospitals. Their activities are a matter of legitimate concern for the public, and if journalists ring up to ask questions, they should not be met with a blanket “None of your business”. There is a general presumption of openness, and officials of these organizations, like government officials, should take trouble to answer questions properly, and to keep the public informed of what they are doing and why. It matters to the local community if the factory is changing its production schedules, if there has been an outbreak of salmonella poisoning, if the vicar has become a Roman Catholic. There is a general presumption of openness, which may, indeed, be rebutted in special cases for good reason, but only if the reason is sufficiently good to override the normal requirement of keeping everyone in the picture.

Three general exceptions to the requirement of openness can be justified. The first is that we should respect the privacy of private persons. Almost always an organization will have information about its members—addresses, telephone numbers, age and marital status—which they may not wish to be publicised. My telephone number may be ex-directory to save me from nuisance calls from animal liberationists; I may have put in for a job, and not want my present employer to know; I may have been passed over for promotion, and not want my colleagues to know. Although the firm’s activities are in the public domain, mine are not, and I am entitled to be shielded in my dealings with it from the publicity that attaches to the firm generally.

The duty to protect personal privacy clearly can override the requirement of openness, but it is difficult to delimit it. The fact that someone is employed can hardly be kept quiet. Unsuccessful applications need not be made public, but often appointments committees do swap notes and comments without its being seen as a breach of confidence. Being in the same situation and addressing the same question, they can invoke a doctrine of qualified privilege. If an applicant specially requests it, his present employer

should not be told of his application, but in the absence of a special request, his applying for a job carries with it a willingness to have his merits discussed and assessed by anyone reasonably qualified to do so. His application, and their dismissal of it, should not be made public, but neither need it be kept a secret.

Although public limited companies operate in the public domain, they are not public institutions. They have limited objectives, not shared with everyone else, nor with all other institutions. Not only are their objectives different from those they do business with, but typically they are in competition with other firms, seeking to outdo them in getting orders and custom. The competitive and adversarial aspect of business requires an element of secrecy. My new soap powder may not be perfect: but I am entitled to expect my employees not to leak a frank appraisal of its defects to my competitors. Negotiations will be jeopardised if those on the other side of the table are told of our target price in advance. Once it is accepted that not everyone has the same interests or shares the same values, some curtain of separateness is established between different organizations with different interests or pursuing different values. We are not all of one mind, and cannot be required to share information unrestrictedly.⁷

The difficulty comes when the information being kept secret is information which in all honesty ought to be disclosed. It is one thing if my soap powder does not actually wash clothes whiter, another if it damages them, or still worse, if it is injurious to health. Although I do not owe a duty to my competitors to tell them of the former, I do have a duty not to mislead my customers on either of the latter scores. Although the competitive and adversarial nature of business affords an argument for secrecy that overrides the general requirement of openness, it is itself overridden by duties of honesty towards customers, and public responsibility towards all whose health might be affected. The duty of an employee to protect his firm's secrets on the former counts does not extend to covering up its failures on the latter. Ultimately, though not always immediately, and not for merely idiosyncratic reasons, whistle-blowing is justified.

⁷ See above, ch.4, §4.5. (oblig1.tex: The game of chess is disrupted if my secretary points out to my opponent that if he does not move his queen, I shall be able to fork it next turn.)

§6.4 Confidentiality

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The third reason for abridging the general duty of openness is more difficult to spell out. It depends on human fallibility. We often are not sure of our facts, not sure of our judgement, not sure of our moral duty. We hesitate to speak in public. If my facts are challenged, I may not be able to prove them. My judgement may well turn out to be wrong. I might be ashamed if everyone knew the devious course of action I had in mind. So I keep my mouth shut. I do not think the candidate is trustworthy, but had better not say so, because he denied that there was anything wrong in those dubious transactions at the club, and we did not think the case proved beyond all reasonable doubt. But if we all keep our mouths shut, the wrong decisions will be made. We need full information, not the partial information of what people can prove in a court of law, and are prepared to stand by in public. If we are to be in the best position to decide, we need to have people speak freely and proffer their best judgement without fear or favour. And if we are to have them doing that, we must protect them against the adverse consequences of speaking out. In Parliament and the courts of law, proceedings are public, but what is said is given the defence of absolute privilege: in other cases, however, the protection is that of non-publicity; I am free to speak my mind, so long as I do so in good faith and without malice, on the understanding that what I say goes no further than the body I am addressing. The decisions ultimately arrived at may be public, but no statements, views, or opinions, expressed in the course of reaching them may be attributed to any individual.

There is a trade-off between openness and effectiveness. If people are allowed to say what they really think, they may think wrong, and not be corrected. The public are excluded, and some member of the public may be in a position to correct an error or put forward a better proposal. But public proceedings tend to be stilted and unreal. Much goes on behind the scenes that is not said in open court: the smoking room in the House of Commons is reckoned to be more important than the chamber itself. Where local council meetings are open, the real business tends to be done in committee or caucus, being only rubber-stamped at the meetings to which the public is admitted. Instead of expressing my doubts about someone's honesty openly in the appointments committee, I talk privately to those I trust, and together we vote him down. And

that, even on the score of openness is counter-productive: for if I had felt free to express my doubts to the whole committee, someone there might have been able to counter them, and cite further evidence to show the candidate to be trustworthy after all. Insisting on all official proceedings being public leads to real decisions being taken entirely in private. If we want bodies to be effective, we have to protect their proceedings with confidentiality.

The principle extends to officials acting on their own. They need to be able to express their real thoughts unencumbered by publicity. And their real thoughts may not be very good ones. If adverse reports about my soap powder start coming in, my first thought is to suppress them, and hope that they will go away. If I am a Minister, and an opposition member is on to some disgraceful goings on in my department, my inclination is to cover up, throw wool in his eyes, and hope no more will be heard of it. Answers to parliamentary questions are an art form: they are courteous, informative, and give as little away as possible; they should not actually tell lies, but may be economical with the truth, stating many truths that were not asked for, but avoiding the point at issue so far as may be. Within that frame of reference, I may well discuss with my permanent officials just how far we can go in preventing Parliament from finding out what has been going on. And in exploring the bounds of constitutional propriety, I may well, in the written expression of my thoughts, go beyond them. If a memo is leaked, I shall be greatly embarrassed. I was trying to pull a fast one, but I did not want it to be known.

The practice of the law courts is illuminating. Legal procedures are structured competitively and adversarially. Each side is striving to win, putting forward the best arguments it can, and not giving any help to the other side, and entitled to keep its secrets from the other side. But though structured competitively and adversarially, the procedures are intended to serve the course of justice, and there are duties of disclosure where justice demands it. Documents have to be made available. Prior notice of an alibi must be given. Lies must not be told on oath. These are analogues of the duties of honesty firms bear towards customers, and Ministers to Parliament. Beyond these, however, is a further provision: communications between a party and his solicitor are privileged, and need never be disclosed. A criminal can tell his solicitor exactly what he did in complete confidence that it cannot be used against him, and that the solicitor will still help him to mount the best defence he

can. We can understand the reason for this. Although the courts want to know the truth, they also want everyone to be able to put his case as best he can, and most people, not being lawyers, can do so only if they can consult a lawyer with complete freedom and security. Absolute confidence is required, even though it derogates from the openness and fullness of information also needed if the courts are to do justice.

Confidential secretaries are in some respects like solicitors. They are privy to their bosses' secrets, even their unadmirable ones. They have a duty of loyalty, much as friends have, that overrides most duties of disclosure. Not absolutely—not if the plan is to murder his wife—but very widely. And the reason is clear: only if he can have complete confidence in his secretary, can the boss do his job reasonably well. Otherwise, he will have to resort to hand-written notes, and super-secret files, which will waste time, and obstruct the efficient discharge of his duties.

But the very reasoning that justifies a high duty of confidentiality on the part of confidential secretaries, also restricts its application. Although some communications are confidential, not all are. The habit of marking all documents "Strictly confidential" is unjustified as well as being counter-productive. The circulation of such documents belies their really being that confidential. A Minister may have one confidential secretary, who will keep her mouth shut even when he is lying to Parliament, but cannot extend the cloak of that degree of confidentiality to the whole Department. The Department is a Department of State, with an overriding duty to abide by constitutional proprieties, and not tell lies to Parliament. Employees are servants of the Crown, not of the Minister. It is right to keep cabinet papers confidential as part of the normal process of government, and to protect the duty of officials to speak their minds freely, but not to cover up ministerial misdemeanour.

§6.5 Whistle-blowing

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The three exceptions to the principle of openness give guidance about what an employee should do when faced with a dilemma, without resolving all dilemmas. There is always an obligation of loyalty. Just as the business enterprise should not expect complete identification on the part of the employee, and should respect the employee's autonomous individuality, so the employee should not expect the business to espouse all his own values and ideals, and should respect the firm's right to be different. If I am a Roman Catholic, I should not take employment with a contraceptives manufacturer, if I am a vegetarian, I should not work for a sausage-maker, if I believe that the government of Britain is a conspiracy to defraud the people of their rights, I should be a civil servant; or if I conclude that any of these occupations is right for me, I must be guided the values implicit in my employment, and not use my position to subvert its purposes.

Within the general obligation of loyalty, there are many different cases. Rather few are confidential secretaries, who have a special duty of loyalty to particular persons, and should respect their confidences in almost all circumstances. Apart from them, the duty is to the firm, not the managers, and the firm may be presumed to want to keep within the law, and do its duty by its customers, its employees, and the public generally—if it has a mission statement,⁸ that will constitute a statement of the firm's values independently of what the managers say on a particular occasion. But the managers may be presumed to want this too, and should be given the benefit of fair dealing in any dubious case. If, for example, some adverse reports are beginning to come in, managers can reasonably hold that time is needed to evaluate the reports before taking what may prove to have been precipitate action. Only if there is a clear breach of duty, and internal approaches have been rebuffed or have proved fruitless, is it right to go public.

⁸ See above, ch.4, ch.4, §4.9 (codes)

§6.6 Work

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Many of our difficulties in thinking clearly about the responsibilities of employment are due to an ambivalence about work. Work is regarded not only as a necessary evil, but—somewhat surprisingly—as a fundamental good. Why do people want work? It is not inherently satisfying for most people. It never was. The back-breaking toil of the agricultural labourer, the dirt and danger of mining coal—these do not seem to be things that we ought to want on behalf of our fellow human beings. And yet we hark back to the days when farming provided work on the land for whole villages, and sympathize with the miners when pits close and whole communities lose their *raison d'être*.

Traditionally work has been seen as a means of earning one's daily bread. I need food. It does not sufficiently grow on trees—even if I am a hunter gatherer I have to go out and gather my blackberries—and for most of us much labour is required if we are to have a tolerably comfortable existence. But the modern unemployed are not starving. Benefits, though not generous, do keep the fiercest wolves from the door. Rather, it is some question of status, of being someone of consequence, someone who matters, someone who makes a contribution.

There are many ways of making a contribution. Voluntary, that is to say unpaid, work entirely alters the aspect of society. The contribution made by most women is primarily in the home, and far more valuable than most of the work done in offices. But although voluntary work, in the home or outside, is what gives significance to many people's lives, many lack a clear vision of what they can do that is worthwhile, and many want to contribute to the economic life of the country and be entitled to some share of its benefits. Paid employment is for them the means whereby they can do something useful; the role of breadwinner is a meaningful one within their reach.

For these reasons it has been widely supposed that people have a right to work, which has been construed not as meaning that States should not prevent people from working, in the way that totalitarian regimes do, but that firms existed in order to provide employment, and that their duties to employees were paramount, and took precedence over everything else. That is a mistake. Jobs are not goodies to be given to people because they need them or deserve them. There is no natural right to work in that sense.

Work is essentially defined in terms independent of the worker. It is what other people want him to do, need him to do, or recognise it as worth doing, and it is well or ill done according to those standards, not according to his. Once that connexion is severed, we move towards the communist world, where people pretend to work and the State pretends to pay them. This is not to say that it is wrong either for the State or for an individual employer to try to provide work. But great clarity of thought and firmness of purpose are required, when talking about the right to work, and the right of the employer to hire and fire at will.

§6.7 Jobs

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Although jobs are not goodies, they are widely felt to be so. In sacking an employee a businessman is depriving someone of his livelihood, in not taking someone on he is failing to give him a good. These are considerations which may properly be borne in mind, but they are secondary, or even tertiary, considerations, which may well be overridden by the primary ones of ensuring the survival and maintaining the prosperity of the firm, though they may come into play when circumstances permit. The secretary is incompetent, losing letters, failing to enter engagements. But she is an unmarried mother going through an emotional crisis. To sack her will send her further down the slope: to keep her may well land the firm in costly litigation. What is the manager to do? It seems hard to say that he must sack her, or at least move her to a position where she can do no harm, but that is the hard decision he must take. His prime responsibility is to the firm, and it is its welfare he must consider first and foremost. In treating employees he should consider their interests generally, but he cannot give priority to the individual interests of each without failing to put the firm's interests first. It makes sense to give to each employee terms of employment that are in general beneficial to both parties, but not to give to a particular one terms that are tailored solely to her needs and altogether one-sided. What sort of terms are generally beneficial to both parties remains open to debate. To allow some latitude to sick employees or to those who have long given good service is, we have argued, fair: it is taking a wider view of employment, and not confining attention to a single week's work. Employees are people, and are sometimes ill, and in judging temporary inadequacy it is right to take into account a generally good record over a longer time. But there are

narrow limits to what can properly be required of employers along these lines, and much recent legislation to give employees further rights at the expense of employers is misconceived and counter-productive.⁹

A large employer may well be able to find room for small numbers of disabled people or those from ethnic minorities, because having many places to fill, he can find some that do not require able-bodiedness or complete command of vernacular English. It is good that he should, not as a duty towards existing employees, but as one to the locality or to the wider community in which his firm operates. But, once again, legislation to make employers take on certain categories of workers is misconceived and counter-productive. Doctrines of Equality of Opportunity rapidly become precepts of equality of outcome: if an employer does not have the target proportion of workers of the specified category in his work force, it will be taken as presumptive evidence that he has been discriminating, and the onus of proof will be on him to show that he has not, an onus that will become progressively harder to discharge. But that again strikes at the root concept of employment, that it is centred on performing certain tasks, and that jobs are not desirable things to be distributed to those who are deemed to deserve them, but themselves determine the relevant criteria for selecting the people who should have them. If an employer is biased, and discriminates unfairly against suitable applicants, he will be damaging his own interests. But his job is to discriminate. He has to choose, and in choosing also rejects. He should discriminate—against unsuitable applicants. However desirable it may be on general social grounds that certain categories should be able to obtain jobs, there are strict limits to what may be required of employers in furtherance of general social policies. Although there is, as we have argued,¹⁰ some indeterminacy in what counts as fair dealing, and correspondingly some room for legislative enactment, if the balance is tilted too much against one side, people will avoid entering into one-sided contracts, and the result of the legislation will be to damage the very people it was intended to help.

⁹ See below, ch.old5, §2, p.4 of Codes4.[CHECK more fully against Codes and Legislation][It might be better to have in this and the next paragraph only the point that an employer may take these points into secondary consideration, and leave legislation until the State.]

¹⁰ In ch.2, §5(Justice).

§6.8 Overmanning

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One traditional response to unemployment has been to foster a certain degree of overmanning. Often in the National Health Service doctors would get patients they wanted to keep an eye on appointed as orderlies. It got out of hand—in some hospitals there were six times as many orderlies as were really needed, and once the unions moved in the situation became intolerable, and hospitals now are under extreme pressure not to employ anyone they can manage without. But it is not clear that the previous practice was in principle wrong. Society as a whole is better off if five people are paid a little bit more than unemployment benefit, turn up in hospital and do some work, than if they are given only unemployment benefit, are made to feel useless, and do not do anything useful at all. Although overmanning can be dangerous and did in fact do great damage in Britain, it is not inherently wrong. Unemployment is a great evil, and overmanning is sometimes a lesser one.

Most overmanning occurs in the public services, and is an issue for politicians rather than businessmen. But the issue can arise for them too, particularly when questions of mass-redundancy arise. Businessmen do not like sacking people.

But sometimes there seems no help for it. A firm is in danger of being taken over. It must boost its dividends to persuade shareholders not to sell out. It can only do so by cutting costs so as to increase profits, and the wages bill can be cut. Otherwise, the predator will gain control, and will have no compunction in firing far more.

Managers often have to make hard decisions. That is part of the job. They may have to sack people who have given good service, simply in order to balance the books. The question is whether their reluctance to do so is simply squeamishness on their part, or is evidence of a perfectly proper concern on their part, even though it may be overridden in particular cases by other weightier considerations. Imaginary cases may illuminate. A firm has been chugging along happily for many years, the chief employer in a small town in Ohio, achieving a profit margin of 5% making electrical equipment for a variety of specialist purposes. It is taken over by a firm that requires its managers to achieve a 15% profit margin. This it can do if it withdraws from the lower end of its market, cutting its labour costs by 80%, and concentrates on the top end, where an aggressive pricing policy could hoist prices substantially. At the

end of the operation, 80% of the workforce will be unemployed, and the remaining customers will be paying much more for their equipment. We have doubts about the rightness of this course of action. It may raise profits for the parent company, but at a great cost to the employees and the remaining customers.

But it might still be for the best. It is no kindness to employees, it can be argued, to shield them from the cold winds of reality, and leave them living in a fool's paradise, while their industry slowly becomes obsolescent and finally moribund; far better to let them face the facts, and adjust while there is still time. In any case the reality may not be as bad as had been feared; there was great sorrow in Britain when various dying industries were closed down, but a few years later most of the former steel-workers in Wales had found new jobs, and fresh life was apparent where devastation had been feared. But in South Wales the Steel Board took great pains to help its former employees find new jobs. It is not to be supposed that the new holding company will be so solicitous, or that other employment will be easily come by in that particular Ohio town. Some employees are going to suffer quite badly, unemployment in that town is going to be greatly increased. But should that matter? Profits have increased; the firm is concentrating its efforts on the most profitable part of its business, and is not that all-important?

The short answer is No. Maximising profits, though important, is not all-important. The long answer is more difficult. Profits are important. We ought to make the best use we can of our resources. The individual firm cannot take on an indefinitely wide responsibility for providing employment. But how to balance these contrary considerations in actual cases is one of the most difficult decisions businessmen have to take.¹¹

¹¹ [Possibly incorporate here from Dick Taverne's letter: the American approach is to close [it] down. The Japanese, and generally the Continental approach is the opposite.]

§6.9 Full and Future Employment

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Although individual businessmen can do little, it has been thought that the State can provide jobs for all. Full employment has been one of the stated objectives of public policy in many countries since the Second World War. People had a right to work, and it was the duty of employers and the State to provide employment for everyone. Recently the pendulum has swung in the other direction, and it was seen as the duty of businessmen to raise productivity, avoiding overmanning and squeezing out unnecessary fat. The number of those recognised officially as unemployed has increased, and now there are 18 million in Western Europe.

Not everyone is happy. It is widely recognised that the post-war policies were misconceived, bringing about stagflation and economic decline, as well as industrial indiscipline and trade-union dictatorship. But the re-emergence of an underclass of people who neither have, nor are ever likely to have, a job adds to the spectre of the 1930s further fears of social unrest. At least when they had jobs young males were not joy-riding, thieving, or vandalising. If we do not employ them, can we really afford to keep them all in prison?

Our present high rate of unemployment is in part the result of bad practices in time past. Many strikes were called in the 1960s and 1970s despite warnings from managers that if deadlines on exports were not met, orders would be lost. Orders were lost, and factories closed down. But in any case competition from South East Asia would have made many traditional industries no longer profitable. Coal seams were bound to be exhausted. And technological change would have altered patterns of employment radically. Only an adaptable workforce can maintain employment in the face of change, and most Western workforces are not sufficiently adaptable. It is partly a lack of training, partly the legal framework and social expectations. By imposing various rigidities, we have improved the position of the haves—those who have work—at the expense of the have-nots.

Inflation does not work. Although in the short term we can produce a boom by stimulating demand, wages and costs begin to rise too, and inflationary expectations build up, and stifle economic initiative. Economies that have tried to cure unemployment by Keynesian methods have deteriorated over the years, and not

avoided unemployment either. Other remedies are needed, more closely adapted to the problem facing us.

The demand for labour has changed greatly with mechanization and automation. At the beginning of the century a hundred agricultural labourers went out into the fields to gather the harvest, to reap, to bind, to stook, and to carry: now three or four men with a combine harvester can clear a field in a few hours. In the middle years of the century mass production lines needed thousands of hands to perform their separate functions: now much skill goes into making and maintaining automatic machines that replace the human eye and hand. The able and intelligent work harder than ever before, but there are far fewer things we want done by the unskilled.

We could want more. We could, as a matter of social policy, develop a public taste for certain labour-intensive products. We could become a high-gardening society, which set great store by gardens, both public and private, and employed many men to garden them. Gardening, though at its best highly skilled, can be done by the unskilled, with considerable job-satisfaction. It would make our cities pleasanter places to live and work in, improving the quality of life as well as easing unemployment.

We have many unsatisfied wants, which could be met if only we could match supply with demand. Many old people, many sick people need someone to fetch and carry for them. Our present taxation system makes it difficult for any but the very rich to afford such services. If we had a wider spread of wealth, we should greatly increase the demand for the sort of work the present unemployed could do. Egalitarians think it wrong that one person should serve another, or that one old woman should be able to afford the services of a butler, a footman, a chauffeur, a cook, and a parlour-maid, when others cannot. But once we abandon prejudice, we should have no more objection to one person's spending money on domestic service at home than to another's spending it on chamber-maids, waiters and ski-instructors abroad.

We should go further in eschewing egalitarian dogma. It is people with money to spare who find ways of satisfying wants not previously noticed. They can afford to devote quite a lot of money to having things just as they would like them, whereas people on tight budgets learn to be content with what they have, and put out of mind the wants they know there is no serious possibility of satisfying. Often the rich pave the way for others being able to

acknowledge and satisfy their hitherto unrecognised wants too. But even if they do not, even if very few can ever have private yachts which go for Caribbean cruises, still, new employment is being generated. And even egalitarians might concede that inequality was less bad than unemployment.

Future patterns of work are likely to be very different, and much more flexible. Commuting makes a sharp break between work and the rest of life. It was not always so, and in some walks of life still is not; the owner of a corner-shop, the priest and the academic do not fence off their leisure from their work. But mostly now we expect work to occupy working hours most days of the week. This suits factory production and what is done in some sorts of offices, but is not necessarily or universally what is needed. There may be no jobs of this type available in time to come, but work none the less. The job-sharing schemes adopted by some women are a pointer to one new approach. In the North East of the United States of America some junior academics are “long-vac peasants”. During the summer they live in log cabins in New Hampshire or Vermont, writing their theses and cultivating their plots of land, and in the winter they go back to Boston, and earn money writing software. They are not excluded from the variety and fulness of modern life, but are not constrained by the unremitting pressures of continuous employment. In Rio de Janeiro there are millions without jobs, but far fewer totally without work. We should envisage the same happening here in time to come, as computing commuting takes over from the conventional kind, and more people can be gainfully employed in their own time at home.

The pendulum swings. At one time too little concern was given to the problem of unemployment, then too much, and now again, too little. The most important lesson is that there is not much we, either individually or collectively, can do. Full employment, engineered by the State, is nearly always full pretend-employment, which may stave off trouble for a season, but is ultimately subversive not only of economic health but even of the self-respect of those paid to do non-jobs. And some people are unemployable. To be employed demands a certain degree of self-discipline, in the way of turning up on time, and paying attention to what one is being told to do, and this is more than some people can manage, and more than others will manage unless there is a realistic threat of their being unemployed unless they take a grip on themselves. But though we cannot abolish unemployment, we can do some things to reduce

or ameliorate it. Not all firms are fighting for survival. Some can afford to take on some extra hands, not to do useless tasks, but to improve the general appearance and surroundings of the firm: performing tasks which are not essential, but which may enhance the firm's standing and thus its ultimate profitability. Often there are choices to be made between cost-cutting and long-term improvement: sometimes cost-cutting is imperative; but not always. And where there is a choice, the fact that one will provide more employment than the other is a perfectly proper consideration to take into account.