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Proceedings

A monthly newsletter from McGraw-Hill Education

September 2020 Volume 12, Issue 2

Contents

Dear Professor,

Fall Semester 2020 is "off and running," although for many, the "race" may be in cyberspace! Welcome to McGraw-Hill Education's September 2020 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 12, Issue 2 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the September 2020 newsletter topics with the various McGraw-Hill Education business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. A new regulation recently announced by the United States Justice Department spelling out detailed nationwide requirements for sex offender registration;

2. The relationship between the United States Postal Service (USPS) and the U.S. Constitution;

3. An opinion piece regarding the Trump administration's recent actions regarding the USPS;

4. Videos related to Articles 1, 2, and 3 of the newsletter;

5. An "ethical dilemma" related to the social responsibility obligation of corporate chief executive officers (CEOs) to help lead society; and

6. "Teaching tips" related to the Ethical Dilemma ("CEOs Have a Responsibility to Help Lead Society") of the newsletter.

I wish all of you continued safety and well-being as our nation and the world continues to battle COVID-19.

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Of Special Interest

This section of the newsletter covers three (3) topics:

1) A new regulation recently announced by the United States Justice Department spelling out detailed nationwide requirements for sex offender registration;

2) The relationship between the United States Postal Service (USPS) and the U.S. Constitution; and

3) An opinion piece regarding the Trump administration's recent actions regarding the USPS.

Hot Topics in Business Law

Article 1: "Feds Release Nationwide Sex Offender Registry Regulation"

https://abcnews.go.com/Politics/wireStory/feds-release-nationwide-sex-offender-registry-regulation-72418254?cid=clicksource_4380645_1_heads_hero_live_headlines_hed

According to the article, the United States Justice Department announced a new regulation recently spelling out detailed nationwide requirements for sex offender registration under a law the U.S. Congress passed in 2006.

The regulation, which stems from the federal Sex Offender Registration and Notification Act, requires convicted sex offenders to register in the states in which they live, work or attend school. It details specific information that registered sex offenders across the U.S. must provide to officials.

While the law required that sex offenders provide personal information, the regulation codifies precisely what information must be provided, including name, birth date, Social Security number and specific information about travel, vehicles and professional licenses. The regulation also sets out the time required to remain on a sex offender registry, ranging from 15 years to life, depending on the offense.

Under the law, sex offenders must report any address changes and would be required to report any overseas travel. That requirement, officials say, helps law enforcement address concerns about global sex trafficking.

In passing the law, Congress left it up to the attorney general to decide how to apply the law's requirements to those convicted of a sex offense before the law was enacted in 2006.

The Supreme Court ruled in 2019 that Congress did not do anything improper when it gave the attorney general the ability to decide how to apply a sex offender registry law to more than 500,000 people convicted before the law was enacted.

The Justice Department says the regulation will help the federal government keep up to date with its national sex offender registration system.

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Assistant Attorney General Beth Williams said the regulation helps further a goal by the Justice Department and Congress "of ensuring that convicted sex offenders are accounted for under the law."

"These regulations will enhance the enforcement of registration and notification across the country and ensure that information about sex offenders in the community is available to law enforcement and the public," Williams said in a statement.

Discussion Questions

1. In your reasoned opinion, should a sex offender registry be maintained and monitored on a state level, on a federal level, or some combination of the two regulatory authorities? Explain your response)

   This is an opinion, so student responses may vary. Currently, the system is managed collaboratively, with both state and federal authorities working together to maintain and monitor the registry. With the latest development addressed in the article, the federal government is taking an even more active regulatory role regarding the registry.

2. The article references the timeline a convicted offender is to remain on the sex offender registry, ranging from fifteen (15) years to life depending on the nature of the offense. In your reasoned opinion, is this timeline reasonable and appropriate? Explain your response.

   This is an opinion question, so student responses may vary. Responses to this question will likely depend on what the student views as the primary objective of criminal law: 1) to punish the offender; or 2) to rehabilitate the offender.

3. As noted in the article, in passing the Sex Offender Registration and Notification Act, the United States Congress left it up to the attorney general to decide how to apply the law's requirements to those convicted of a sex offense before the law was enacted in 2006, and the U.S. Supreme Court ruled in 2019 that Congress did not do anything improper when it gave the attorney general the ability to decide how to apply a sex offender registry law to more than 500,000 people convicted before the law was enacted. Research and define what an *ex post facto* law is. In applying the law's requirements to those convicted of a sex offense before the law was enacted, is the law not, in effect, *ex post facto* and therefore unconstitutional? Explain your response.

   According to Article I, Section 9, Clause 3 of the United States Constitution, "No…ex post facto Law shall be passed." "Ex post facto" means "after the fact," and the term "ex post facto law" refers to a law that would criminalize (for the specific purpose of punishing the actual offender) an act that was legal when it was committed, or that would serve to increase the punishment (again, for the specific offender) for the commission of a criminal act that was already committed. The foundation for the constitutional prohibition against ex post facto laws is essential fairness; i.e., it is not fair to punish an offender for an act that was legal when it was

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committed, nor is it fair to increase the punishment for an offense above and beyond the punishment that was in effect when the act was committed.

Article 2: "The USPS and the Constitution"

https://www.downsizinggovernment.org/usps-and-constitution

According to the article, in a *Washington Post* report on the United States Postal Service's (USPS's) continuing problems, Ed O'Keefe calls the USPS "a quasi-government agency enshrined in the U.S. Constitution but required by law to act like a business."

But there is no "quasi" about it: the USPS *is* a government agency. It may be different than the standard government agency because it operates like a business, but it's *Uncle Sam's business*. O'Keefe says that the USPS is "enshrined in the Constitution." It's true that Article 1, Section 8 says:

> [The Congress shall have the power] to establish Post Offices and Post Roads.

Thus, the Constitution allows the government to get involved in postal services, but that doesn't mean that it has to. If a better alternative came along, then Congress could kill the USPS completely if it wanted. Indeed, a better alternative has come along in the way of more efficient privatized post offices in some European countries.

In addition, the government monopoly over mail was *not* enshrined in the Constitution. In a 1996 Cato book, "The Last Monopoly," James I. Campbell writes the following in a chapter on the history of postal monopoly law:

The U.S. Constitution, in 1789, authorized Congress to establish "Post Offices and post Roads" but, unlike the Articles of Confederation, did not explicitly establish an exclusive monopoly. The first substantive postal law, enacted in 1792, listed post roads to be established, reflecting the traditional concept of postal service as a long-distance transport. It authorized the Postmaster General to enter into contracts for the carriage of "letters, newspapers, and packets" but limited the postal monopoly to "letter or letters, packet or packets, other than newspapers."

Today's 600,000 employee behemoth that delivers mail to every home in the country six days a week reflects the USPS's evolution as a government entity. It does not reflect some cherished institution dreamed up by the Founding Fathers. According to Campbell, the Post Office "first began delivery of mail to a small portion of the U.S. population" in 1863:

Until the Postal Act of 1863, the Post Office remained essentially a contracting office for intercity transportation services. In fiscal 1862, costs of intercity and foreign transportation constituted 63 percent of all expenses. Before 1863, intercity letters were either held at the destination post office for collection or delivered by a "letter carrier" who acted as independent contractor and charged the addressee two cents, one of which went to the Post Office.

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Then there's the issue of *intra*city mail delivery:

A person could drop letters at a post for delivery by a letter carrier within the same city, but that was a secondary service as far as the Post Office was concerned; even after the 1863 act, such "drop letters" were considered "not transmitted in the mails of the United States."

Delivery of local, intracity letters was pioneered by private companies such as Boyd's Despatch in New York City and Blood's Despatch in Philadelphia. One authority counted 147 private local postal companies. The "locals" introduced adhesive postage stamps at least as early as 1841. The Post Office did not introduce stamps until 1847 and did not require their use until 1851. Efforts by the Post Office to suppress the locals failed when, in 1860, a federal court ruled that the postal monopoly pertained only to the transportation of letters over "post roads" between post offices and did not prohibit the delivery of letters within a single postal district.

The Postal Code of 1872 extended the postal monopoly to the delivery of local letters, banning intracity private carries.

In arguing against ending the government's mail monopoly, proponents occasionally romanticize it as a special American institution that has been with us since the nation's founding. But the giant postal monopoly of today bears little resemblance to the limited postal service of history. And that's not because horses have been replaced with little white trucks.

Discussion Questions

1. According to the article, the United States Constitution "allows the government to get involved in postal services, but that doesn't mean that it has to." Do you agree or disagree with this statement? Is a federally-operated postal service a delegated discretionary right, or is it a delegated mandatory responsibility? Explain your response.

   According to Article I, Section 8 of the United States Constitution, "The Congress shall have power…(t)o establish post offices…" This is one of the delegated powers included in Article I, Section 8, powers that were an essential part of our Founding Fathers' establishment of a centralized (i.e., federal) form of government. Although student opinions may vary in response to this question, all of the powers listed in Article I, Section 8 should at least arguably be construed as both a federal right and responsibility. For example, how would students feel if the government elected to no longer maintain a navy or to no longer maintain federal district and appellate courts other than the United States Supreme Court (these are two other delegated powers listed in Article I, Section 8?)

2. According to the article, the United States Postal Service (USPS) is "Uncle Sam's business." Comment on the approach of running a governmental department/agency as a business. Do you favor or disfavor such an approach? Should the entire federal government be operated like a business? Explain your response.

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These are opinion questions, so student responses may vary. Technically, a business exists to make a profit, while traditionally, the government and its offices have been operated as non-profit organizations maintained for the "good of the people." For students, operating a government agency as a business may sound unusual, but there has been a discernible trend in the United States to, if not actually run the government as a business, at least apply business principles (for example, efficiency and effectiveness) to the operation of government.

3. Should the United States government "privatize" the USPS? In your estimation, would doing so be constitutional or unconstitutional? Explain your response.

These are opinion questions, so student responses may vary. Answering these questions depends in large part to the interpretation of the postal power included in Article I, Section 8 of the United States Constitution, particularly in term of whether such a power is merely a discretionary right, or instead a delegated responsibility. It is interesting to note that historically, all of the delegated powers included in Article I, Section 8, including the maintenance of a U.S. postal system, have been exercised as both federal rights and responsibilities.

Article 3: "Trump's Attacks on the Post Office Threaten Democracy"

https://www.theusconstitution.org/blog/trumps-attacks-on-the-post-office-threaten-democracy/

According to the article, in the weeks since the coronavirus (COVID-19) pandemic hit the United States, President Trump has waged war on one of our nation's oldest institutions: the United States Postal Service (USPS). For example, earlier this month, the President threatened to veto a coronavirus relief package if it included emergency funding for USPS. And this is not the first time the President has attacked this important federal institution; he has also called the Post Office Amazon's "Delivery Boy" and accused USPS of becoming "dumber and poorer." Trump's attacks come at a time when we need the Post Office most—our ability to hold elections in November and to fulfill our constitutional obligation to hold a national census depends on it.

The Post Office has a long history dating back to the founding era. It is one of a handful of institutions that is directly mentioned in the Constitution's text. Although our national charter left many details to be filled in, the Framers recognized that a postal system would be essential to unify the nation and encourage the spread of ideas across distant states.

Article I, Section 8 authorizes Congress "[t]o establish Post Offices and post Roads." In *The Federalist No. 42*, James Madison explained: "The power of establishing post roads must, in every view, be a harmless power, and may, perhaps, by judicious management, become productive of great public conveniency. Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care."

This important constitutional power did not stay dormant. Just a few years after the Constitution's ratification, Congress enacted the first substantive federal postal law. This 1792 law established a

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"general post-office" with "one Postmaster General, who . . . shall provide for carrying the mail of the United States." The law also established post roads, allowed the Postmaster General to enter into contracts, established postage rates, and set penalties for "neglecting, detaining, delaying, or secreting letters." Most importantly, the law subsidized newspaper circulation and allowed for the distribution of newspapers across the country. Notably, scholars have said that this "forged a communications revolution just as far-reaching as the later telegraph and internet revolutions."

Indeed, that is true, as the post office created a central communications system that allowed for a robust exchange of ideas, something that is core to our democracy. As Alexis de Tocqueville aptly commented in his famous study of American democracy, the post office was a "great link between minds."

As the United States continued to develop, USPS made changes to the postal system to ensure that the post office was accessible to everyone, no matter where they lived or how much money they had. For example, in the 1840s, after a study from a congressionally appointed Postal Commission found that mail was an essential tool for democracy, Congress altered the postage scale to be based on weight, which greatly reduced the cost of postage stamps. Around the same time, Congress also enacted laws to preserve the postal monopoly in cities in order to protect the rural cross-subsidy. At the turn of the twentieth century, Congress also appropriated money to authorize "rural free delivery," which expanded postal routes across 28 states and ensured free delivery for those in rural areas, and still exists today. Trump's attacks on the Post Office harm urban and rural dwellers alike.

The U.S. postal system has contributed to some of our most important debates about free speech in a democratic society. During the nineteenth century, abolitionists used the mail to circulate newspapers, books, and pamphlets in an effort "to show the horrors of the institution [of slavery,] . . . to develop sentiment against it . . . [and] to arouse the people to a realization of the evils of the institution." In addition, the principles of the American Anti-Slavery Society specifically stated that it would "circulate unsparingly and extensively Anti-Slavery tracts and periodicals," and William Lloyd Garrison, editor of the abolitionist paper, the *Liberator*, raised money to "provide for gratuitous distribution of anti-slavery publications" through the postal system.

The slave states in the South fought back by seeking to suppress abolitionist speech. In Maryland, for example, the legislature passed a law making it illegal for anyone to print or circulate material that could create discontent among enslaved persons. This proved the truth of Frederick Douglass's charge that "[s]lavery cannot tolerate free speech." With little to no communications technology at the time, the postal system made an extensive debate over slavery possible. The fight over censorship of the mails marks a key chapter in our First Amendment story and helped to crystalize the importance of protecting dissent in a democratic society.

Today, the post office is as important as ever in maintaining our democracy. One in six Americans live in states that do not permit online voter registration. In light of COVID-19, citizens residing in these states need a functioning post office if they are to have a chance to exercise their fundamental right to vote without endangering health. Come November, millions of Americans hope to vote by

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mail. Given the ongoing public health crisis, these Americans do not want to sacrifice their health to enjoy their right to vote. While the President has gone on several tirades against mail-in ballots due to their potential for fraud, that claim is wholly without merit, and is just another attempt by the administration to suppress the vote and harm our democracy. We cannot forget what happened just recently in Wisconsin, when voters, primarily in communities of color, were forced to brave long lines and huge crowds, and put their health at risk, in order to exercise their right to vote.

Just as we prepare for a crucial vote, the nation is also conducting the Census, the constitutionally mandated count of all persons that sets the framework for our democracy for the next decade. In 2020, the Census can be filled out online for the first in history. But for those without ready access to a computer or the internet, Census forms need to be mailed, as they have been for decades. Without a functional post office, the Census count could be badly skewed. This would lock into place unequal representation and unequal allocation of federal resources for the next ten years.

Throughout our history, the Post Office has been a "great link between minds." Now, we need it more than ever for the sake of our democracy. If the history of the post office makes anything clear, it's that the postal service must be preserved in order to safeguard some of our most basic democratic freedoms, if not our democracy itself.

Discussion Questions

1. As referenced in the article, in *Federalist No. 42*, part of the so-called *Federalist Papers*, James Madison proclaimed:

   "The power of establishing post roads must, in every view, be a harmless power, and may, perhaps, by judicious management, become productive of great public conveniency. Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care."

   Mr. Madison published Federalist No. 42 on January 22, 1788. In your reasoned opinion, has the United States Postal Service (USPS) become an organization of "great public conveniency" as one of our Nation's founding fathers envisioned? Explain your response.

   This is an opinion question, so student responses may vary. In your author's opinion, it is both fascinating and empowering to know that I can still mail a letter from Hickory, North Carolina, addressed to Fairbanks, Alaska, and reasonably expect that the letter will make it to "The Last Frontier" for fifty-five (55) cents (the current postal rate!)

2. In follow-up to Article 3, Question Number 1 above, do you agree or disagree with Mr. Madison that "(n)othing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care?" Explain your response.

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This is an opinion question, so student responses may vary. In your author's opinion, both the facilitation of interstate commerce and interstate communications are more than worthy of "the public care."

3. Articles 2 and 3 of this newsletter have been juxtaposed to emphasize arguments both for and against the continued operation of the USPS as a public institution. Considering the arguments presented in both Articles 2 and 3, do you now favor or disfavor privatization of the USPS? Has your opinion now changed compared to the opinion you formulated after having read only Article 2? Explain your response.

   These are opinion questions, so student responses may vary. For further guidance, please refer to the answers provided in response to Article 2, Questions 1 through 3 included earlier in this newsletter.

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Video Suggestions

Video 1—Related to Article 1 ("Feds Release Nationwide Sex Offender Registry Regulation") of this newsletter: "Shawna: A Life on the Sex Offender Registry"

https://www.youtube.com/watch?v=eWPtAJS1kro

Discussion Questions

1. As the beginning of the video indicates, there are over 800,000 Americans on sex offender registries. If you were estimating that number prior to watching the video, would that estimate have been higher or lower than 800,000? Is the 800,000 number due to an eroding moral culture in the United States, overly strict criminal law related to sex offenders, or some combination of the two (2) factors? Explain your responses.

This is an opinion question, so student responses may vary both as to the estimate of the number of Americans on sex offender registries, and whether the high number is due to an eroding moral culture in the United States, overly strict criminal law related to sex offenders, or some combination of the two (2) factors.

2. One argument in favor of strict sex offender laws is that the recidivism (i.e., repeat offense) rate for sex offenses is extremely high. In your reasoned opinion, is Shawna a high risk, medium risk, or low risk in terms of recidivism? Explain your response.

According to the United States Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), sexual recidivism rates range from five (5) percent after three (3) year to twenty-four (24) percent after fifteen (15) years. In your author's opinion, it is difficult to imagine Shawna at anything more than an extremely low (if at all) risk of recidivism.

3. In your opinion, should Shawna be a lifetime registered sex offender? Why or why not?

This is an opinion question, so student responses may vary. As mentioned in response to Article 1, Question 2 included earlier in this newsletter, responses to this question will likely depend on what the student views as the primary

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objective of criminal law: 1) to punish the offender; or 2) to rehabilitate the offender.

Video 2—Related to Article 2 ("The USPS and the Constitution") and Article 3 ("Trump's Attacks on the Post Office Threaten Democracy") of this newsletter): "Constitution Calls for USPS Maintenance, Funding: Judge Napolitano"

Note: Judge Napolitano's discussion of the United States Postal Service (USPS) begins at 4:10 of the following video. His reference to a constitutionally mandated, federally operated postal service is from Article I, Section 8, Clause 7 of the United States Constitution:

https://video.foxbusiness.com/v/6182222176001/#sp=show-clips

Discussion Questions

1. Do you agree or disagree with Judge Napolitano's contention that the United States Postal Service (USPS) is "way below par" (in terms of performance?) Explain your response.

   This is an opinion question, so student responses may vary. As mentioned in response to Article 3, Question 1 included earlier in this newsletter, it is both fascinating and empowering for your author to know that I can still mail a letter from Hickory, North Carolina, addressed to Fairbanks, Alaska, and reasonably expect that the letter will make it to "The Last Frontier" for fifty-five (55) cents (the current postal rate!)

2. Do you agree or disagree with Judge Napolitano's contention that operation of the USPS is an obligation, rather than a discretionary right, of the federal government? Explain your response.

   This is an opinion question, so student responses may vary.

3. As indicated in the Video 2 heading, Judge Napolitano's comments are intended to be read in the context of Article 2 ("The USPS and the Constitution") and Article 3 ("Trump's Attacks on the Post Office Threaten Democracy") of this newsletter. Has your opinion now changed compared to the opinion you formulated after having read only Articles 2 and 3? Explain your response.

   This is an opinion question, so student responses may vary.

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Of Special Interest

This section of the newsletter addresses the social responsibility obligation of corporate chief executive officers (CEOs) to help lead society.

Ethical Dilemma

"CEOs Have a Responsibility to Help Lead Society"

https://www.forbes.com/sites/dougsundheim/2020/08/04/ceos-have-a-responsibility-to-help-lead-society/#4e1db05770d5

Note: This is an opinion piece written by Doug Sundheim, an executive advisor, consultant, and coach with 25 years of experience helping leaders and teams become more effective. A frequent speaker on leadership & strategy, Sundheim delivered talks at Columbia, NYU, and The Society for Human Resource Management. In 2005, he co-authored The 25 Best Time Management Tools and Techniques, translated into 5 languages. In 2013, he authored Taking Smart Risks published by McGraw-Hill. His clients include American Express, Citigroup, Morgan Stanley, Swiss Re, Chubb, Spectrum, the University of Chicago, Harvard Management Company, Weill Cornell Medicine, Publicis Group, and the United States Federal Reserve System.

According to the article, in his New York Times opinion piece last month, Harvard economist Greg Mankiw, argued that chief executive officers (CEOs) are qualified to make profits, not lead society, and that we should not expect the latter of them. His arguments are too simple, have significant holes, and read as if they were written in 1970 when economist Milton Friedman famously argued the same point.

Friedman's ideas came to be known as shareholder value theory. Its singular management goal was maximizing returns to shareholders. Conceptualized at a time of increasing global competition and slowing economic growth, the idea caught on fire. By the 1980s, shareholder value theory was at the heart of Ronald Reagan's and Margaret Thatcher's supply side economic policies, which spread throughout the world in the ensuing decades. By keeping business leaders solely focused on returns to shareholders, the logic went, benefits were supposed to trickle down to create prosperity for all. It sounded good in theory, but it's been problematic in practice, leading iconic CEO Jack Welch, a onetime staunch supporter of shareholder value theory in the 1980s and 1990s, to eventually acknowledge it as "the dumbest idea in the world."

Most troubling about Mankiw's article is that at time when ~70% of the largest entities on earth are corporations, not nations, he doesn't acknowledge the need for the executives running these corporations to help lead society. Following are three of his arguments which fail to grasp the world in which CEOs are now leading, and my thoughts in response.

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Mankiw's argument: Corporate management's mandate should be the narrow self-interest of achieving greater profits for shareholders, not broad social welfare.

To illustrate his point, Mankiw presents a scenario in which a company producing gasoline cars in Michigan considers closing it and opening one producing electric cars further south. He asks the reader to imagine they are an executive deciding whether to approve the plan. In his view, if you're concerned solely with profits for shareholders it will help "focus the mind." However, he continues, if you're concerned with a broader set of stakeholders, including customers, employees, suppliers, communities, and shareholders, it opens up a range of "dizzying" questions that will require CEOs to be broad social planners rather than narrow profit maximizers. He goes on to list several of the additional hypothetical questions that the broad social planners would have to consider:

- *How much will the closure of the old plant hurt its workers and their community?*
- *How do you weigh those losses against the gains to the would-be workers at the new plant?*
- *Given the nation's history of systemic racism, should you consider the racial makeup of the two groups of workers, in an effort to reduce economic inequality?*
- *Does it matter whether the new plant is in South Carolina, providing jobs for American workers, or in Mexico, providing jobs for Mexican workers?*
- *How should you weigh the benefit of electric cars in mitigating climate change? Should you consider the global impact of climate change or only the impact on the United States?*
- *How should you balance these concerns against the interests of shareholders, who entrusted you to invest their savings?*

Every corporate executive I've worked with over the past twenty years would have included some version of the above questions in their considerations. To exclude them is ridiculous. It's not broad social planning, it's basic business planning in the 21st century: Business has grown more interconnected and complex. Who, for example, seeing the potential devastation of a community they are leaving, would not spend considerable time, energy, and effort trying to find a cost-effective and innovative solution to stay put? Good CEOs are always weighing social costs that don't immediately show up on the bottom line. They will always have profit in mind, but they will also be considering the needs of a variety of stakeholders. In this day and age if these questions seem too "dizzying" for a CEO to consider, the answer is not to lower the bar on expected qualifications, but rather to raise it and find or train CEOs who can balance the demands of multiple stakeholders.

Mankiw's argument: It's unlikely that corporate executives, with their business training and limited experience, have the skills to be broadly competent social planners rather than narrowly focused profit maximizers.

Related to points above, this distinction doesn't accurately reflect the world in which CEOs now find themselves. Corporate executives can and should play a variety of leadership roles that move beyond narrow profit maximization. This is social responsibility, not broad social planning. The soul has been ripped out of business over the past 50 years as we've come to view every decision through the

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myopic lens of short-term earnings. We're starting to find our way back to a more balanced view and we need CEO's leadership in the process.

How should CEOs approach leadership on important issues where they can make a unique and lasting impact? Former Unilever CEO, Paul Polman talks about creating collective courage. He rightly points out that it's tough for one industry player to impact an issue like reducing greenhouse gases because of the loss of competitiveness. But in his experience, if at least 20% of industry players can come together to move on an issue, they can reach a critical mass and begin tipping the scales. In this way, corporations, governmental agencies, and NGO's can partner to lead society. Where does this sort of collective leadership live in Mankiw's simplified model? Unfortunately, nowhere.

Mankiw's argument: The world needs people to look out for the broad well-being of society. But those people are not corporate executives. They are elected leaders who are competent and trustworthy.

This is perhaps the most troubling of Mankiw's arguments. He claims that our elected leaders, not corporate executives should be looking out for the well-being of society. On the surface, it's a fair argument: But he fails to acknowledge just how much influence our corporate executives have over our elected officials and the legislative process. Forty years ago, business, labor, and public interest group lobbying was on relatively equal footing. Today, large corporations and their associations outspend labor and public interest groups 34 to 1 on lobbying efforts, totaling upwards of $2.6 billion in 2014. To put that number in perspective, in 2014 the US spent $2 billion on all congressional (House and Senate) operations. That means that business lobbyists had more operational firepower than the entire elected legislative branch of the US government. That's not a thumb on the scale, that's an elephant on the scale crowding out everyone else.

In sum, CEOs cannot simultaneously be unqualified to lead society and yet be exerting such immense influence behind the scenes. If they're qualified, they should step up and help lead on the thorny economic issues of the day. If they're not qualified, they should take significant weight off the scale. They can't have it both ways. With great power, comes great social responsibility. We must demand the latter of our corporations, their boards, and their CEOs.

Discussion Questions

1. Critically assess Harvard economist Greg Mankiw's first argument regarding the social responsibility obligation of corporate chief executive officers (CEOs):

Mankiw's argument: Corporate management's mandate should be the narrow self-interest of achieving greater profits for shareholders, not broad social welfare.

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Do you agree or disagree with this assessment? Explain your response. The answer to this question depends on whether the student supports the traditional, economic view of social responsibility or the progressive, socioeconomic view of social responsibility.

This is an opinion question, so student responses may vary.

2. Critically assess Mr. Mankiw's second argument regarding the social responsibility obligation of corporate CEOs:

Mankiw's argument: It's unlikely that corporate executives, with their business training and limited experience, have the skills to be broadly competent social planners rather than narrowly focused profit maximizers.

Do you agree or disagree with this assessment? Explain your response.

This is an opinion question, so student responses may vary. The answer to this question depends on whether the student supports the traditional, economic view of social responsibility or the progressive, socioeconomic view of social responsibility.

3. Critically assess Mr. Mankiw's third argument regarding the social responsibility obligation of corporate CEOs:

Mankiw's argument: The world needs people to look out for the broad well-being of society. But those people are not corporate executives. They are elected leaders who are competent and trustworthy.

Do you agree or disagree with this assessment? Explain your response.

This is an opinion question, so student responses may vary. The answer to this question depends on whether the student supports the traditional, economic view of social responsibility or the progressive, socioeconomic view of social responsibility.

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Of Special Interest

This section of the newsletter will assist you in addressing the Ethical Dilemma ("CEOs Have a Responsibility to Help Lead Society") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to the Ethical Dilemma — "CEOs Have a Responsibility to Help Lead Society"): "Milton Friedman on Corporate Social Responsibility"

https://lucidmanager.org/management/milton-friedman-corporate-social-responsibility/

Note: For an outstanding article describing noted economist Milton Friedman's view regarding the social responsibility of business and contrasting Friedman's view with the socioeconomic view, please refer to the following article and its accompanying video at the above-referenced internet address:

"Milton Friedman on Corporate Social Responsibility"

According to the article, the question of how ethics and morality can be applied to human experience is a vexed one. Though philosophers have discussed abstract ethical dilemmas for most of recorded history, there appears to be no universal answer to resolve ethical problems. The varied works of philosophers have led to the development of ethical frameworks that may be applied to any particular situation. This essay discusses the views of Milton Friedman on corporate social responsibility.

The answer to an ethical question may differ depending on which moral framework is used. For this reason, taking complex and abstract ethical theories and applying them to the decision-making processes of company directors can lead to unresolvable arguments in boardrooms, restaurants, shareholders' meetings, scholarly journals and, of course, the media. Milton Friedman proposed a guiding principle for business ethics in a New York Times article, provocatively titled: "The social responsibility of business is to increase its profits":

… there is one and only one social responsibility of business to use its resources and engage in activities designed to increase its profits so long as it stays in the rules of the game, which is to say, engages in open and free competition, without deception or fraud.

This statement raises the question of whether directors can act in any way to increase profits. Although Friedman is clear that directors as agents of the

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business have to play within the rules of the game, this still leaves room for unethical behavior. Does this mean that directors can act in any way to increase profits?

A further question raised by his article is whether corporations should engage in socially responsible activities. In this essay, Milton Friedman's view is discussed and contrasted with the socio-economic view of Corporate Social Responsibility. It will be argued that directors cannot act in any way to increase profits and that corporations should engage in socially responsible activities as it can be shown that they at least have an indirect positive effect on organizational performance.

Milton Friedman and Corporate Social Responsibility

Friedman argued for a direct form of capitalism and against any activity that distorts economic freedom. Socially responsible activities conducted by a corporation are, according to Friedman, distorting economic freedom because shareholders are not able to decide how their money will be spent. Friedman thus argues that corporations should focus on those activities that are causally related to company profit, effectively excluding charitable activities that do not directly generate revenue:

…[there] has been the claim that business should contribute to support charitable activities and especially to universities. Such giving by corporations is an inappropriate use of corporate funds in a free-enterprise society.

Another principle expressed by Milton Friedman is the need to stay within the rules of the game, explicitly avoiding deception and fraud. This principle is further clarified when he writes:[4]
A corporate executive … has direct responsibility to conduct business in accordance with[shareholder] desires …[i.e.] to make as much money as possible while conforming to their basic rules of the society, both those embodied in law and those embodied in ethical custom.
This quotation implies that Friedman does not proclaim that directors can act in any way to maximize profit as they have to abide by the law and follow ethical custom. He, however, excludes explicitly charitable activities as they do not directly contribute to profit. A good corporation in Milton Friedman's view is not one that undertakes activities only because they are ethically sound, but because they are economically viable. One of Friedman's main arguments for excluding Corporate Social Responsibility from business stems from his views on the ethical spending:

- Your money on yourself—spent wisely;
- Your money on others—spend wisely but challenging;
- People's money on yourself—little incentive to economize;
- People's money on other people— the role of government and Corporate Social Responsibility programs.

Friedman argues that it is not appropriate for a corporate executive or director to embark on socially responsible programs because there is little incentive for prudent expenditure, mainly when one is spending money owed to the shareholders through dividends.

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Friedman proclaimed that a corporation is a morally neutral legal construct with maximizing returns for shareholders as its single purpose. Directors and executives of a corporation are employed to achieve this sole objective. The only moral responsibility of directors and executives is to meet shareholder expectations, which is to maximize their return on investment.

Friedman's view is akin to social Darwinism, applying the survival of the fittest principle to the market to ensure the best of all possible outcomes. Friedman interprets this principle as the corporation with the highest return to shareholders. When the issue of an electric company that cut supply to a customer for non-payment upon which the customer died as a consequence was presented to Friedman, he applied the Kantian view to justify their actions. He argued that a utility company that does not cut off electricity to non-paying customers would perish as there is no reason for customers to pay their bills. In Friedman's view, disconnecting non-paying customers has to be regarded as a universal maxim, regardless of the specific outcomes. He considers this as ethical because the directors have a moral duty to ensure the survival of the corporation.

Socio-economic School

The counterpoint to Friedman's view is developed in the socio-economic school of Corporate Social Responsibility. One of the leading proponents of this view proposed the Iron Law of Responsibility, which holds that the “social responsibilities of businessmen need to be commensurate with their social power”, which was further built upon by Frederick:

… businessmen should oversee the operation of an economic system that fulfils the expectations of the public. And this means in turn that the economy's means of production should be employed in such a way that production and distribution should enhance total socio-economic welfare.

The socio-economic view is a utilitarian argument as emphasizes that the total socio-economic welfare of society should be enhanced, rather than focusing on the well-being of shareholders, as Friedman proclaimed. Companies that operate exclusively for the sake of maximizing shareholder return and thus do not engage in socially responsible activities are considered unethical in the utilitarian point of view. Following the utilitarian adage of providing the greatest good for the greatest number of people, companies are ethically obliged to participate in socially responsible activities that maximize the total welfare of all stakeholders. There is, however, a problem with applying standard consequentialist theories where we are required to maximize agent-neutral value.

Utilitarianism does not distinguish between people whose utility should be maximized and thus requires a deontic constraint to ensure that maximisation of the welfare of all stakeholders does not jeopardize the long-term prospects of the business. A deontic constraint is a principle that assigns a value to individual agents over others, and in the case of corporate social responsibility, it could be argued that the rights of the shareholders should be protected in preference of the rights of the whole of society.

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Analysis

If corporate social responsibility is detrimental to business, as suggested by Friedman, then shareholders will tend to avoid investing in companies that act socially responsible. There is, however, empirical evidence that this is not the case. Firstly, Friedman fails to acknowledge that acting ethically can be a valuable marketing proposition. By understanding the desires of consumers, a corporation can offer products and services that match their ethical thresholds, thereby adding value to both shareholders and consumers, thus avoiding marketing myopia as described by Theodore Levitt.

Consumers prefer products and services that make claims of social responsibility on product labels. Herzberg's Motivator-Hygiene Theory theoretically supports this research. Hygiene Factors are minimum conditions that must be met in the workplace to prevent work dissatisfaction. Meijer and Schuyt examined the role of Corporate Social Responsibility in purchasing behavior and found that for Dutch consumers, corporate social performance serves more as a Hygiene Factor than as a Motivator. Interestingly, this behavior was not related to household income.

Secondly, the growth of ethical investments demonstrates that some investors prefer organizations that do not seek profit maximisation by imposing ethical constraints on their operations.

There is also a clear case to be made that Motivator-Hygiene Theory can be applied to shareholders. Executives and directors that behave unethically create significant shareholder dissatisfaction, as demonstrated by the many recent examples or corporate misbehavior.

Lastly, a meta-study undertaken by Griffin and Mahon showed that there is no consensus on a causal relationship between the level of socially responsible spending and business performance or shareholder satisfaction.

Milton Friedman on Corporate Social Responsibility

Milton Friedman argued vehemently against spending shareholder's money for anything that does not directly contribute to increasing shareholder wealth. He took the Kantian view that directors must look after the interests of shareholders, which seek wealth maximisation. As socially responsible activities, in the opinion of Friedman, reduce wealth, companies should not engage in any charitable activities.

The socio-economic view claims that companies should maximize the good for the greatest number of people. Following a utilitarian strand of thought, this view holds that companies should engage in socially responsible actions because it maximizes the wealth of all stakeholders. However, to ensure that financial sustainability of the corporation is not eroded, deontic constraints that recognize the right of shareholders to a reasonable return, need to be put in place.

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In conclusion, directors do not have total freedom to maximize profit as they have to act within both the legal and ethical rules of the game. Furthermore, for companies to be genuinely ethical, they should engage in a reasonable level of socially responsible activities as this maximizes the wealth of all stakeholders.

Teaching Tip 2 (Related to the Ethical Dilemma — "CEOs Have a Responsibility to Help Lead Society"): "Corporate Social Responsibility and Its Role in Community Development: An International Perspective"

For a scholarly article addressing corporate social responsibility from an international perspective, please see the article included at the following internet address:

https://pdfs.semanticscholar.org/af3d/e57362384ddebec54726273eb99192e32e30.pdf

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Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 4 and 5	Chapters 4 and 5	Chapter 3	Chapter 3
Bennett-Alexander & Hartman, Employment Law for Business	N/A	N/A	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 5 and 7	Chapters 5 and 7	Chapter 2	Chapter 2
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 5 and 6	Chapters 5 and 6	Chapter 2	Chapter 2
Liuzzo, Essentials of Business Law	Chapters 3 and 5	Chapters 3 and 5	Chapter 2	Chapter 2
Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3 and 5	Chapters 3 and 5	Chapter 4	Chapter 4
McAdams et al., Law, Business & Society	Chapters 4 and 5	Chapters 4 and 5	Chapter 2	Chapter 2
Melvin, et al., Business Law and Strategy	Chapters 3 and 45	Chapters 3 and 45	Chapter 2	Chapter 2
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2 and 22	Chapters 2 and 22	Chapter 5	Chapter 5
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 6 and 13	Chapters 6 and 13	Chapter 2	Chapter 2
Sukys, Business Law with UCC Applications	Chapters 2 and 5	Chapters 2 and 5	Chapter 1	Chapter 1

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This Newsletter Supports the Following Business Law Texts:

Barnes et al., Law for Business, 14th Edition ©2021 (1260354660)

Bennett-Alexander et al., Employment Law for Business, 9th Edition ©2019 (1260031691)

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Kubasek et al., Dynamic Business Law: The Essentials, 5th Edition ©2020 (1260354717)

Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17th Edition ©2019 (1260118827)

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