CONCLUSION

Toward Greater Humility

Historically, "business was simple—it was individual—it was done only in a limited area," began Owen Young, the charismatic chairman of General Electric, in his dedicatory address for the Harvard Business School on June 4, 1927. Young continued:

> Any infraction of the rules of the law, or of the church, or of the principles of business were quickly recognized and generally known. The community could and did, in those days, discipline the individual man of business effectively. No one could maintain his good will and profess one thing in church on Sundays and practice another thing in his business on week days.

Young offered the example of the wealthy Boston merchant Robert Keayne. In 1639, a court fined Keayne £200—an enormous sum at the time—for selling buttons, nails, and thread at excessively high prices, a crime known as oppression in colonial New England. Over and above Keayne's censure in court, he was berated and nearly excommunicated by his church. In an attempt to redeem himself, Keayne, once one of the wealthiest and most prominent merchants in all of New England, was forced to stand in front of his congregation and "with tears acknowledge and bewail his covetous and corrupt heart." For selling products at a 50–100 percent profit—not an atypical margin for a successful modern manufacturer like Apple—Keayne faced an admonishment that would weigh heavily on him for the rest of his life.

By the time of Young's speech, such public denunciations were far less effective. Businessmen were no longer limited to operating within a single small community surrounded by family and friends. Enterprising businessmen could reach new geographic areas far away from their humble origins. While such prospects created extraordinary opportunities for economic growth, they also dismantled a social process that supported accountability. Young anticipated the consequences of this widening reach of business:

> A man could not sell a spavined horse as sound in his own community without penalty, but he could sell a spavined motor as sound in some other community, perhaps indeed halfway around the world, without being quickly discovered at home. Even if discovered, the penalty was not so great. The sale of a spavined horse to one of his own community may have been a moral delinquency. The sale of a spavined motor to people quite unknown may have been regarded locally as a clever piece of business. . . . The widening area of business and the highly specialized character of the good outstripped all local sanctions and tended to leave the individual free from restraints.

Although Young spoke almost a century ago, he identified a sentiment held by many of the executives described in these pages: what might be morally disapproved of in one community might actually be applauded in another. Without any immediate reckoning, executives can feel a sense of pride in their actions and, in some cases, even be exalted by members of their insular business communities.

TODAY, MUCH EFFORT is spent reducing the consequences of corporate misconduct. While the aggregate costs are difficult to assess precisely, one estimate placed the annual cost of financial fraud in the United States at nearly $400 billion. With such significant consequences, it is not surprising that a diverse consortium of interested parties—including business schools, trade groups, corporations, and regulators—has sought to curtail this damage.

Teaching "business ethics" is one common means of trying to address this problem. It would be difficult to find a business school that

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lacks an ethics curriculum. Most corporations routinely mandate that employees undergo ethics seminars and training programs. And trade associations increasingly require members to take courses on appropriate professional conduct. The aim of all these efforts is to create managers who not only comply with the law but also steer away from its murky boundaries.

People participating in such programs are often given exercises of dilemmas requiring trade-offs. For example, the discussion might explore short-term boosts to profitability at the expense of long-term sustainable development or greater personal consumption at the cost of public well-being. Participants spend time discussing their views of an appropriate resolution that balances their legal, ethical, and economic objectives. The decisions made by many of the executives in this book could be discussed in this manner—and indeed they have been in classrooms around the world. The objective of such exercises is to help participants enhance their decision-making skills to become better leaders.

Yet such training, though well-intended, is often ineffective. Ethics cases are convenient tools for teaching and debate because they succinctly isolate trade-offs that have to be made. The problem is that the consequential decisions that can unwind a career are usually not so neatly isolated from the thousands of other decisions a person makes. By bringing a specific dilemma into focus for a discussion, it changes how we both think about and seek to resolve that dilemma. There is an implicit—and flawed—assumption that participants would employ the same decision-making process they used in the classroom if they faced the same predicament at some point in their own future.

To appreciate this disparity between thinking and doing, consider the decision of Rajat Gupta, McKinsey's former managing director, to provide inside information to the hedge fund manager Raj Rajaratnam. During a Goldman Sachs board meeting, Gupta learned about an upcoming quarterly earnings loss that the investment bank planned to announce. Only twenty-three seconds after the meeting ended, Gupta called Rajaratnam and divulged this news. Rajaratnam sold his position in Goldman the following day before the news was public and avoided almost $3 million in losses.

Viewed neatly in isolation, Gupta made an extraordinarily foolish decision. Participants in a classroom discussion would invariably agree that they would not similarly divulge this information if they were in Gupta's position. But Gupta, someone widely lauded for his thoughtful leadership and deep strategic mind, obviously made a different decision. In the short time before the call, he didn't undertake some elaborate calculation during which he reasoned that the benefits of providing this information to Rajaratnam outweighed the expected costs. Instead, Gupta proceeded with the call as guided by his imperfect intuition.

With the benefit of hindsight, it's easy to see decisions that deserved more attention. But the consequential nature of our decisions is not always clear at the time they are being made. In fact, when decisions are made intuitively, it's easy to largely ignore or even entirely overlook their possible consequences. The cues that tell us to slow down and think more deeply about the potential effects of a choice are often absent. It's only later, when the effects are revealed, that we appreciate that some decisions should not have been made so quickly.

In business ethics discussions, many of the most significant challenges associated with decision making have already been vastly simplified or even eliminated by identifying the salient issues and trade-offs for participants. Who are the parties affected? What are the likely consequences? Are our commitments toward others being upheld? What are the potential reputational effects? The very act of asking and seeking answers to these kinds of questions forces participants to engage in more deliberative reasoning. But in practice many, if not most, decisions are resolved intuitively. As a result, the judgments reached during a classroom discussion of an ethical dilemma often reflect a decision-making process that differs from how participants encounter and resolve such dilemmas if similarly faced with one in their own day-to-day life.

This discrepancy is one that Dennis Gioia appreciates. Gioia is now a management professor at Penn State, but in the 1970s he was the vehicle recall coordinator at Ford Motor Company. While Gioia was at Ford, the company confronted recurring instances of the popular Pinto car bursting into flames and incinerating passengers when the car was rear-ended.

As the coordinator of recalls, Gioia had the ability to pull the poorly designed vehicle from the road. "I now argue and teach that Ford had an ethical obligation to recall," Gioia explained. "But, while I was there, I

perceived no strong obligation to recall and I remember no strong ethical overtones to the case whatsoever." In fact, even when Gioia viewed photos of the charred remains of one Pinto inside which several people had died, what followed was merely a short lapse in proceeding as usual. "After the usual round of discussion about criteria and justification for recall, everyone voted against recommending recall—including me. It did not fit the pattern of recallable standards; the evidence was not overwhelming that the car was defective in some way, so the case was actually fairly straightforward. It was a good business decision, even if people might be dying."

Another way in which classroom dilemmas differ from real life is that they're resolved through argumentation among people with different opinions and viewpoints. Being exposed to varying and conflicting ways of seeing problems provides an opportunity to reason about, and revise, one's initial intuitive judgment. However, there are often fewer dissenting viewpoints in actual settings where decisions are made. In day-to-day life, people tend to rely on their initial and often unsatisfactory intuitive judgments.

The differences between discussing decisions in theory and making decisions in practice suggest that individuals may successfully resolve ethical dilemmas during, say, a company-mandated tutorial, yet fail to do so later when facing them in reality. Worse, the confidence created when individuals easily resolve ethical issues "on paper" can give them greater faith in their ability to successfully resolve dilemmas in real life. Perversely overconfident in their capabilities after such training, they may pay even less attention to their decisions out of the mistaken belief that they will be able to successfully resolve them in the future. These "blinds spots," as described by psychologists Max Bazerman and Ann Tenbrunsel, often contribute to people's tendency to act far less ethically in practice than they anticipate.

"What we all think is, when the big moral challenge comes, I will rise to the occasion," argued Steven Garfinkel, the former chief financial officer of DVI. Garfinkel believed that he would successfully handle difficult and complex situations when they came his way as an executive. But now, with the benefit of hindsight, he sees how this confidence was misplaced. "There's not actually that many of us that will actually rise to the occasion," lamented Garfinkel. "I didn't realize I would be a felon."

SUPPOSE THE FORMER executives described in this book viewed their fateful decisions at the time through the lens of an outsider. Would Sam Waksal have called his daughter and provided her inside information about the pending failure of a drug? Would Andrew Fastow have created elaborate illicit structured transactions to meet quarterly expectations? Would Marc Dreier have impersonated a client to create a fictitious note? If these executives had been yanked out of their offices at those moments and exposed to alternative perspectives and a careful consideration of the consequences, I suspect they would have made different choices. Their failure was one of relying on faulty intuitions rather than engaging in poor deliberative reasoning.

Framed differently, few if any of the enterprising young students sitting in elite business schools anticipate graduating, ascending the ranks of their firm, and becoming wealthy by designing an elaborate ruse. Similarly, no student graduates with a plan to become successful and then, later, to engage in some fraudulent behavior that could lead to prison and professional ruin. Yet, even at my own institution, Harvard Business School, where every student has the intellectual capacity to successfully resolve and avoid decisions that could lead to prison, there have been more than two dozen graduates who've engaged in white-collar crime.

While individuals can have the intelligence to effectively resolve dilemmas when they are explicitly presented "on paper," when these same people face dilemmas in their day-to-day life, they often make different—and decidedly worse—decisions. Several factors contribute to this discrepancy: relying on faulty intuition, not engaging in deliberative reasoning, and lacking exposure to differing viewpoints. The question is how to design mechanisms that bring some of the more attractive elements that arise within an organized classroom discussion to the settings in which actual decisions are made.

By understanding the particular ways misconduct arises, we can endeavor to anticipate these mistakes and design ways to preempt them. In particular, how can busy executives and other individuals become more likely to identify consequential decisions when they may be relying on faulty intuitions? How can they be encouraged to spend the necessary time engaged in deliberative reasoning? How can they be exposed to more contrasting and conflicting viewpoints during the decision-making

process? Addressing the issue of why successful resolution of ethics dilemmas often seems easy in the classroom but hard in practice is crucial to averting the types of failures described in this book.

The Need for Uncomfortable Dissonance

Recall the last time you were driving along a freeway. You may have been listening to the radio or talking with friends. If the car in front of you got too close, you switched lanes. You whizzed alongside other cars as you comfortably and uneventfully made it to your destination.

At some point during this journey, you may have glanced down and seen your speedometer reading 75 mph. You probably returned to humming along with the music or chatting with your companion and gave little thought to the fact that you were above the posted limit of 65 mph. Your speed raised little cause for alarm since the cars around you were going just as fast and you were simply keeping up. The fact that you were doing something illegal—speeding—probably never entered your mind. There was no instinctive feeling that you were doing anything potentially harmful to yourself or others.

There are a variety of influences that might cause you to slow down and drive at—or at least closer to—the posted speed limit. Your spouse might implore you to drive more carefully because it is getting dark or raining. You might slow down upon witnessing an accident ahead of you, thinking that moments earlier it could have been your car. And you would quickly decelerate if you saw a police car ahead. It takes some kind of uncomfortable dissonance, an external influence or event that conflicts with your intuition, to motivate a behavioral change.

Executives, like drivers along a freeway, also need to experience some dissonance to stimulate a reevaluation of their initial intuitive judgments. Dennis Kozlowski, the former CEO of Tyco, described how infrequently he experienced such dissonance as chief executive. "When the CEO is in the room, directors—even independent directors—tend to want to try and please him," Kozlowski explained. "The board would give me anything I wanted. Anything." Not surprisingly for Kozlowski, this created a feeling of entitlement. "We believed our own press. . . . With myself and others—even the board—you become consumed a little bit by your own arrogance and you really think you can do anything."

With little resistance from others at Tyco, Kozlowski rarely felt the need to double-check the appropriateness of his actions. Though one of the highest-paid CEOs in the country, he would later be convicted for embezzling nearly a hundred million dollars by inappropriately forgiving loans owed to Tyco. "I wasn't paying attention to the approvals and nonapprovals," Kozlowski noted. "What I really needed to do was to get a piece of paper and have the board sign off personally for me on every bonus—and make a big issue of it," Kozlowski explained with the benefit of hindsight. "It's something you don't think about, going through the course of building the company. You think about where's your P&L? What's working with your 260,000 employees? I mean, we were doing $250–350 million in sales a day. Those are staggering numbers and you're not sitting around thinking about what are the mechanics of the approval of your bonuses."

Kozlowski's expenditures included $6,000 for a shower curtain, $15,000 for a dog-shaped umbrella stand, and $1 million for his wife's Roman-themed birthday party in Sardinia. The disclosure of a $20 million payment—$10 million in cash and another $10 million to charity—to one of the board members for helping arrange an acquisition eventually served as the impetus for conflict between Kozlowski and Tyco's board of directors. After hearing about the payment during a cocktail party in Boca Raton, other board members were outraged that Kozlowski would proceed with such a transaction without their consultation.

Executives, like other individuals in positions of power, can neglect to take into account or imagine the sentiments of those around them. The $20 million discretionary payment to a single board member and the use of a million dollars of company funds for a family member's birthday party illustrate this lack of awareness that can accompany power in its most pernicious form. Inattentive to the opinions and judgments of others, executives can continue to make myopic decisions until they are eventually detected and contested. However, such latent after-the-fact exposure is too late to stave off the harmful effects of such decisions.

To the extent that intuitions fail to motivate more lawful behavior in business settings, executives would benefit from experiencing more uncomfortable dissonance at the time that decisions are being made, so as to avoid the most detrimental choices. This dissonance would force a slowing down, a consideration of alternative perspectives, and a change

in course when the situation merits such attention. The challenge is figuring out how the opportunities to create this discomfort can realistically arise.

Seeking Disagreement

In the fall of 1989, a biochemist named Mark Whitacre joined Archer Daniels Midland (ADM), one of the largest agricultural companies in the world. At ADM, which marketed itself as "Supermarket to the World," Whitacre held the prestigious position of president of the BioProducts division—a rapidly growing part of the company that manufactured amino acids like lysine, an important component of animal feed.

Whitacre's success at the BioProducts division led to a quick promotion to corporate vice-president at ADM, and with this advancement came numerous perks, including corporate-jet use and a sizable salary increase. It also entailed a new responsibility. By 1991, Whitacre would join the team of ADM executives negotiating with the company's Korean and Japanese competitors to rig the global markets for lysine and citric acid. Meeting in hotel suites and country-club golf courses, the executives negotiated how much of each product their companies would individually and collectively sell, raising global prices and pocketing higher profits at the expense of consumers.

One evening in November 1992, Whitacre spoke with his wife Ginger about his experience at ADM: "She asked several direct questions. . . . I explained how we were getting together with our competitors and fixing the prices of several key ingredients." Whitacre told his wife that "on our expense reports we had to put that we met with people other than who we're really meeting with because we wanted to hide the paper trail of who we were really meeting with."

"She was appalled," Whitacre remembers clearly. She said that "it was all deception." Ginger told Whitacre that he needed to confess to authorities. "It was a way for me to separate from a culture that I had fallen into. . . . She felt like she was losing me." Soon, Whitacre found himself describing the price-fixing to the FBI. In the process, he not only revealed one of the most significant corporate conspiracies in US history but became the most senior executive of any large firm ever to become a whistleblower. Over the next two years, Whitacre wore a microphone and tape

recorder for the FBI, collecting many hours of incriminating—and embarrassing—material for the prosecution.

FBI agents and prosecutors long wondered why Whitacre turned into an informant. He was making a significant amount of money from his salary at ADM, and few would have suspected these misdeeds. Meanwhile, he was also putting himself at enormous risk, since he was simultaneously embezzling millions of dollars from the company—a crime for which he eventually spent over eight years in prison. To Whitacre, his change in sentiment didn't arise from simply reflecting on his own conduct but, rather, from conversations with his wife. "If it was not for a thirty-four-year-old stay-at-home mom raising three young children at the time, the largest price fixing scheme in U.S. history never would have been exposed," Whitacre admitted.

Whitacre's experience speaks to a way in which people revise their intuitive judgments. Ginger was someone Whitacre deeply respected, and she was outside his day-to-day work life. She provided Whitacre starkly different views of what defines appropriate conduct and gave him the conflicting viewpoint needed to motivate a change in his behavior.

In popular mythology, we have little angels and demons hovering over our shoulders providing advice. The angel is our conscience guiding us to behave ethically, while the demon nudges us toward mischief. The two entities offer conflicting advice, each prodding our emotions in an effort to prevail.

Such figures are obviously fictitious, but so too are the deliberation and struggle that are envisioned to emerge during decision making. Instead, choices are often made in isolation or while we are surrounded by people with similar tendencies and incentives. Unlike the battle between the mythical angel and demon, there frequently is no genuine debate between opposing viewpoints. What might appear to be—and even feel like—reasoning might be nothing more than reflection to support a judgment that was already reached intuitively. Reasoning, as was pointed out by the psychologist Jonathan Haidt, is often much more like a lawyer defending a client than a scientist seeking the truth.

Some decisions that seem intuitively acceptable are masks for illicit practices that reflect emerging or prevailing norms within a particular

subculture or industry. The options-backdating scandal in 2006 that engulfed hundreds of firms, many of them technology- and Internet-focused, reflected just such a norm. Ben Horowitz, one of the most prominent venture capitalists in Silicon Valley, described how he would have become complicit in the backdating scheme had it not been for a discussion with an outsider.

In 2002, Horowitz hired a talented chief financial officer named Sharlene Abrams for Opsware, an enterprise software company he had founded. Horowitz was impressed by Abrams' early efforts to revamp Opsware's processes and procedures. One issue that Abrams brought to Horowitz's attention was a concern that the stock option incentives were not optimized to provide maximum benefit for its executives. Horowitz explained:

> One area where she thought we were less than competitive was our stock option granting process. She reported that her previous company's practice of setting the stock option price at the low during the month it was granted yielded a far more favorable result for employees than ours. She also said that since it had been designed by the company's outside legal counsel and approved by their auditors, it was fully compliant with the law. . . . It all sounded great: better incentives for employees at no additional cost or risk.

Before implementing the new plan, Horowitz decided to discuss it with someone else. "I told [Abrams] that a better stock granting process sounded great, but I needed Jordan Breslow, my General Counsel, to review it before making a decision. . . . [Abrams] was surprised, as her previous company had run this practice for years with full approval from PricewaterhouseCoopers, its accounting firm."

Breslow came back to Horowitz with his opinion. "I've gone over the law six times and there's no way that this practice is strictly within the bounds of the law. I'm not sure how PwC [PricewaterhouseCoopers] justified it, but I recommend against it." As a result, Horowitz soon decided against implementing the more competitive options dating plan suggested by Abrams.

Two years later, regulators began investigating the practice of backdating options. Abrams was implicated for incorrectly recording the date

that she and other executives received their options during her prior employment. Eventually, she would serve nearly four months in prison for tax evasion related to the fraudulent backdating and be barred from serving as an officer or director of a public company. Horowitz reflects on the experience as one in which he considered himself quite fortunate for avoiding more serious consequences himself. "The only thing that kept me out of jail," Horowitz explained, "was some good luck and an outstanding General Counsel, and the right organizational design."

Horowitz had certain routine procedures in place that led him to consult with an outsider he trusted before reaching a decision—especially on an arcane accounting topic that lay outside his own expertise. He set up a system that prepared him to deliberate. Notably, it wasn't because Horowitz had any exceptional values or principles as a leader that he avoided prison. In fact, Horowitz's initial intuitions suggested approving the options scheme. It was only through discussing dilemmas with people on the outside, a spouse in the case of Whitacre and an attorney-confidant for Horowitz, that both of these men revised their initial judgments.

Since morally questionable decisions are often made in relative isolation with few outsiders expressing opposing viewpoints or judgments, some firms have created hotlines that employees can call to discuss dilemmas they encounter. For instance, at a call center set up by the Institute of Chartered Accountants in England and Wales, one member called the hotline after finding out that staff purchases of goods manufactured by the company were being used to fund the firm's Christmas party. These purchases were not being logged in the firm's financial system, as would be expected by the accounting rules. The caller sought external advice from someone unconnected with the firm who might be able to offer advice on how to respond.

Although ethics hotlines can provide helpful guidance for those who call, they also presume that individuals are capable of identifying the dilemmas that require additional discussion and contemplation. However, many of the people who would benefit most from such discussion don't call because they don't identify the moral dilemma in the first place. Once individuals become more senior within an organization, they tend to be more susceptible to overconfidence and trust their own ability to successfully

navigate challenges when they arise. In the process they become even less likely to encourage external viewpoints that can encourage dissonance.

If any of the former executives discussed in this book imagined the younger version of himself peering into the future to observe his later conduct, he would likely be surprised to see the person he had become. But "nobody is ever the villain in their own narrative," noted the behavioral finance scholar David Solomon. "So if someone takes actions that threaten to paint them as a bad person, they are more likely to change their opinion of what's right and wrong, rather than change their opinion of themselves. It's like a frog in a pot of water that dies by being slowly brought to a boil. People can make poor decisions by getting gradually worse without realizing how far they've shifted."

People naturally try to disavow and dismiss information that contradicts their worldview. They often continue as if nothing is wrong even when something is seriously amiss. This continues until eventually "they come across a piece of evidence too fascinating to ignore, too clear to misperceive, too painful to deny . . . forcing them to alter and surrender the worldview they have so meticulously constructed," explained sociologist Diane Vaughan.

As uncomfortable as it is to have our beliefs questioned, the process of defending a viewpoint can often lead us to reevaluate and improve our judgments. We need this confrontation if we are to surrender and reevaluate our worldview. Constructive argumentation engages the reasoning process and improves the quality of reasoning itself. It's when beliefs go unchallenged because they are shared among like-minded individuals that judgments are most likely to reflect naïve or ill-suited intuitions—as many of the former executives discussed in this book would attest.

Just imagine these executives trying to persuasively defend their conduct at the time they were making their decisions. How successful would they have been in making a compelling case? I suspect that many would have found it very difficult to reasonably defend their choice of action and would ultimately have decided on another course.

All people, even those most senior within an organization, need other people who can probe their judgments and advise caution when they see trouble approaching. These warnings might come from a spouse, a

friend, or a trusted colleague outside their immediate circle. Knowing who these other people are and having them in place can foster more effective leadership. Put more simply: poorly adapted intuitions need not be the final arbitrator of decisions. Overriding our initial impressions requires the opportunity to engage with contradictory viewpoints. Unfortunately, executives all too often surround themselves with sycophants who do not seek to deeply challenge them. The opportunities for dissent do not exist.

Ineffectual Compliance

The best way to reduce the incidence of white-collar crime—argue many prosecutors, judges, and scholars—is through vigorous enforcement. Through the imposition of lengthy prison sentences and large fines, according to this theory, executives ought to be dissuaded from engaging in illicit conduct. An important survey by scholars at Yale Law School found that judges agree, viewing deterrence as the most important goal of white-collar sentencing. Although there is much enthusiasm about the supposed deterrent effect of imprisoning executives who commit wrongdoing, evidence demonstrating the efficacy of this approach is far more elusive.

To appreciate why vigorous enforcement is not always effective in creating lasting deterrence, consider the consequences of greater policing on speeding behavior. With the cooperation of a police department, researchers posted police cars on a set of highways to observe how drivers responded to seeing additional police presence. As expected, drivers slowed down upon seeing the police. However, once the drivers managed to get a little physical distance between themselves and the police, the drivers accelerated. In fact, their speed rose exponentially in proportion to their distance away from the police car. Enforcement had an effect, but it was localized.

To investigate whether increased police enforcement had a lasting behavioral impact on drivers, the researchers tracked the license plates of cars over subsequent days to see how long the reductions in drivers' average speed lasted. The researchers found that, after seeing a police cruiser for the first time, drivers would return to their old ways within three days. When the police car was posted on the same stretch of highway for five consecutive days, drivers slowed down for a longer period, but this

reduction, too, would vanish within six days. Ultimately, greater enforcement did not cause lasting changes in driving habits since speeding continued to feel like the appropriate norm for most drivers.

It's not that lasting deterrence is impossible to achieve, it's just more difficult than many people expect. For deterrence to directly impact behavior, the aversion to engaging in particular conduct needs to become so salient that individuals are overtly concerned. In 1974, Sweden established random roadblocks across the country that stopped drivers and screened them with a breathalyzer to assess their blood alcohol level. Those who exceeded the limit were immediately charged with driving under the influence and hauled into the police station for additional blood testing. The costly and intrusive program was effective in reducing drunk driving, but within a few months after this ambitious enforcement effort ended, drivers returned to their prior habits, having figured out that the likelihood of being caught was no longer so high. Thus, even very expensive enforcement efforts, like this one in Sweden, are not effective in maintaining lasting deterrence. The effect lasts only as long as people are consciously aware of the threat.

The difficulty of effectively deterring criminal acts, including those committed by executives, through greater regulatory sanctions and enforcement leads to a disconcerting conclusion: from an economic perspective, the "optimal" frequency of corporate malfeasance may not actually be zero. To be clear, this doesn't mean that misconduct is desirable. Naturally, the eradication of fraud from the financial system would be beneficial for consumers, shareholders, and investors. However, as the University of Chicago accounting professor Ray Ball pointed out, it's costly to deter fraudulent activity, and at some point it simply becomes uneconomical to create further deterrence and enforcement mechanisms. Imagine an economy with multiple auditors for every firm and redundant regulators to check each transaction that every executive has made. Although a system with double and triple checks would render fraud largely detectable and thus untenable, the negative externalities and associated costs of such a regulatory regime would be so onerous that more harm than good would be done.

This does not mean that we ought to simply resign ourselves to accepting the status quo of white-collar criminality; rather, my point is that fraudulent activity cannot be eliminated by solely relying on regulatory

deterrence or enforcement efforts. Creating the type of provisions that would make the deterrent effect salient might be so intrusive that doing so would not be socially optimal. China once doled out the death penalty for white-collar convicts, but even with this ultimate punishment looming, executives continued to engage in corporate mischief.

Sanctions, even when incredibly severe, are often just too far removed and remote to become relevant to executives in their everyday decision making. It is only when the sanctions begin to influence everyday norms that avoiding certain types of undesirable conduct becomes ingrained within business culture. For example, regulators can endeavor to make penalties seem more relevant by widely publicizing cases of corporate misconduct and the resulting sanctions. However, instead of viewing this publicity as explicitly deterring future executive misconduct—a claim that relies on executives making their criminal decisions through an analytical process—it would be more appropriate to view these announcements as efforts to improve and strengthen business norms. Such efforts can slowly inculcate better values and nudge intuitions toward improved legal compliance by helping people better appreciate the undesirable and detrimental nature of certain actions.

It is possible that by helping to enforce particular values, individuals improve their conformity to those norms themselves. For example, when a member of the Orthodox Jewish community is sanctioned by a rabbinical court, the sanctions are enforced not only by a regulatory body but, more critically, by other members of the Orthodox community. In particular, members are asked to avoid socially interacting with or even supporting the business of the offender. By calling on the entire community to act, these norms are reinforced within members of the community while simultaneously punishing the offender.

In contrast to this rather stringent and public disciplining of norm violators in some Orthodox communities, white-collar offenders often face a starkly different—and notably weaker—set of sanctions by peers. Executives engaging in misconduct may be castigated by the press, but they often receive far less criticism within their own social communities. Letters sent on behalf of former executives by other distinguished individuals during sentencing frequently suggest more communal support than condemnation. It appears that, with the exception of some egregious cases of

malfeasance, executives are often not deeply shamed by their immediate community. George Bernard Shaw once eloquently drew a similar distinction by comparing the treatment of common "street thieves" to elite offenders who steal during the course of business:

> The thief who is in prison is not necessarily more dishonest than his fellows at large, but mostly one who, through ignorance or stupidity, steals in a way that is not customary. He snatches a loaf of bread from the baker's counter and is promptly run into jail. Another man snatches bread from the table of hundreds of widows and orphans and similar credulous souls who do not know the ways of company promoters; and, as likely as not, he is run into Parliament.

Although there is "no soul to be damned and no body to be kicked," corporations can be held criminally responsible for the misconduct of their employees in the United States and several other countries. Corporate offenders can be fined—in some cases, very heavily—for their misdeeds, but unlike people, they do not face incarceration or many of the life-long effects of being a felon. For instance, the day after settling criminal charges with federal prosecutors for helping wealthy individuals evade taxes, executives at Credit Suisse held a conference call to reassure analysts that the criminal conviction would have "no impact on our bank licenses nor any material impact on our operational or business capabilities." And, ironically, fines levied on offending firms are ultimately paid by shareholders rather than by the executives or employees who actually engaged in the misconduct. Without the specter of the full justice system hanging over them as is the case with individual defendants, labeling firms as criminal often has surprisingly weak, or even misdirected, effects.

When a plane crashes, a team from the aerospace firm that built it is immediately dispatched to investigate and to work alongside governmental investigators and regulators. There's a genuine desire by aerospace executives and employees to understand the root causes of the failure and, if equipment is found to be at fault, to make appropriate changes to prevent future catastrophes. But unlike an aerospace firm trying to understand the failure of one of its planes, many industrial and financial executives have little interest in understanding the causes of destructive behavior within

their own firms. Instead, it seems as though they would prefer to quietly pay fines, move on, and, in many cases, carry on business much as before. Given this disinterest in understanding the root causes of malfeasance and making genuine changes in response, it's not surprising that firms that are found liable or enter deferred prosecution agreements are often reoffenders in the future.

When regulators in the United Kingdom questioned Douglas Flint, chairman of HSBC, about the aiding of tax avoidance in his firm's private banking operations, he argued that: "I don't feel that proximate to what was happening in the private bank." But when the chairman who oversees a firm doesn't deeply relate to his firm's problems, who will seek to instill different norms? If the potential for criminal sanctions do not make senior leaders feel sufficiently proximate to take action to prevent failures, we must consider other ways to bring the firm's failings to the forefront of their attention.

While there are sensible reasons to avoid permanently impairing firms based on mistakes made by individual employees, offending firms should also not enjoy all of the same benefits as nonoffending firms. Companies that cultivate better norms of conduct and whose employees avoid malfeasance ought to have some advantages compared to those that do not. One path to consider in creating such advantages is through the firms' ability to attract and recruit the best talent.

Suppose that firms convicted of recent criminal offenses—firms that are felons in the eyes of the law—were not permitted to recruit on university campuses. Such a prohibition could be voluntarily implemented by individual schools and enforced during the time that the firms are implementing better systems. While this might appear to be a small penalty, temporarily banning these firms from campuses—a choice instituted by schools, not regulators—could instill an urgency to better address the roots of misconduct that might exceed even the largest fines.

Recruitment by criminal organizations on university campuses is not merely a hypothetical, either. During the 2015–2016 academic year, ten firms recruiting at Harvard were found to have had a criminal conviction or a deferred prosecution agreement in the previous year. Several firms were even on court-ordered probation—the closest they can get to "doing time"—while recruiting on campus.

In the case of firms that rely heavily on recruiting from university campuses, inhibiting their ability to attract new talent could have a profound impact on their competitiveness. Creating this impediment to attracting the kind of employee firms seek to hire would also motivate boards of directors to take greater accountability for the actions of all employees. To the extent that some firms are sanctioned for not consistently upholding the values that are cherished by institutions of higher learning, these firms would temporarily lose their license to use school resources to recruit for their organizations. Capturing the attention of students on campus would no longer be a preordained right but, rather, would represent a privilege that firms earn.

In some of the most lauded and valuable organizations in the world, deviance has seemingly become normalized. The remarkable frequency of such conduct isn't a state that we should accept. Endeavoring to create better norms shouldn't be something simply discussed as an ideal in classrooms or textbooks. Instead, it ought to be practiced through the policies that institutions create.

A Humble Conclusion

With ever-growing psychological distance separating people engaged in commerce, our antiquated moral intuitions are not well designed for the modern business world. And, unfortunately, there are no courses or preparatory materials that can immediately update and adapt intuitions for all the challenges that managers may confront during their careers. Even forty or fifty hours of training to cultivate stronger intuitions would be little more than a blip in time compared to all the other influences one is surrounded by in just a few weeks in any profession.

Even at places like McKinsey, KMPG, and Deloitte, which genuinely endeavor to promote a set of principled norms, some senior leaders have engaged in practices that are in direct opposition to their firms' values. Such deviations underscore the fact that newly created norms are neither natural nor permanent. Practicing and even "living" these values for decades within one of these firm cultures is insufficient to avoid the corrupting influence of encountering new and different norms. Maintaining new intuitions requires continual renewal and reinforcement. For these moral intuitions, there is no such thing as permanence.

There's a fine distinction between being confident and displaying hubris. The successful financiers Lloyd Blankfein of Goldman Sachs and Bill Ackman of Pershing Square Capital have both expressed how they believe their firms are doing "God's work." Even if stated in jest, this belief in the righteousness of their ambitions and the lack of any sense of fallibility is precisely the sentiment formerly held by many executives prior to faltering.

Nitin Nohria, dean of Harvard Business School, described an assignment he gives to new CEOs to complete during a training program for senior leaders. The CEOs are asked to rank a list of ten responsibilities—setting their firm's strategy, getting a new management team, and working with the board of directors, among others—from the item they feel most to least prepared to take on as they begin leading a multibillion-dollar organization.

Invariably, new CEOs rank "setting the right moral tone" as one of the easiest aspects of management. "They all feel deeply secure in their own moral compass," Nohria explained. "They have a sense that they are a people of extraordinary moral character and that it is very unlikely that they are going to do anything in their organization to lead either the organization astray or do something that will get them in the front pages of the newspapers." Yet, as Nohria pointed out, it is exactly many of these same leaders who later appear on the front pages of newspapers for engaging in precisely the egregious conduct that they once insisted they would never do.

The simple fact is, most of us think that we are better and more moral than we actually are. No one, especially those who have achieved success, believes that they are likely to stumble and err. It is this sense of invincibility that has felled leaders across a range of fields—including the cyclist Lance Armstrong, the writer Jonah Lehrer, and the NBC news anchor Brian Williams. It's only after faltering that people humbly ask, as observed by the psychologist Max Bazerman, "How could that have happened? and Why didn't I see that coming?"

One of the things that I've found especially fascinating during my conversations with the former executives discussed in this book is how strongly people hold on to the notion that it wasn't really their actions that were all that deceitful or destructive. Their actions are not that bad,

they argue, when compared with what others have done. According to the executives who committed insider trading, it's the ones who committed financial fraud who really damaged the integrity of financial markets. According to those who engaged in financial fraud, it's the executives who built Ponzi schemes that lacked an underlying business who are the real culprits. And for those who created pyramid schemes, it's the investment bankers who went unpunished during the financial crises who are the real villains. Virtually every one of the former executives I spoke with pointed out, even complained, that it was not he who was the true villain—it was always someone else.

Beneath the irony of this defense, there is an interesting truth. We all confidently believe that we would have behaved differently if placed in the shoes of an executive engaging in malfeasance. However, this confidence is artificial.

We don't get to reevaluate executives' decisions using our current beliefs, the norms we're instilled with now, or our current perspectives on what matters most. Likewise, we don't get to bring along any finely tuned intuitions that we've acquired in our own lives to avoid this kind of behavior when we place ourselves in these executives' shoes. Instead, we have to imagine ourselves surrounded by their norms and immersed in their culture—not just in the present but in the past as well. We have to see ourselves as being shaped by the experiences they faced throughout their careers, not by those we face in our own.

If we see ourselves as experiencing the world as many of these former executives did, I don't believe we can actually know how we would act if placed in their shoes. If anything, maybe we ought to humbly recognize that we might have behaved as they did. Yet, we can still hope, wish, and believe that we would act differently. Frankly, however, we just can't know.

Perhaps Marc Dreier, the former graduate of Harvard and Yale who engineered a Ponzi scheme, actually had it right when he reflected on this conundrum. "It is easy to say you would never cross the line, but the line is presented to very, very few people," Dreier explained. "How many could say for sure that they would never do what I did if they had the opportunity and thought they wouldn't get caught?"

Appreciating our lack of invincibility—our inherent weakness and frailty—offers us the best chance of designing the appropriate mechanisms

to help manage these limitations. If we learn to be more suspicious of our gut feelings when placed in new or difficult situations, we can acknowledge the need to create more opportunities for reflection and to bring in the viewpoints of others to question us. If we humbly recognize that we might not always even notice the choices that will lead us astray, we are more likely to develop ways to identify and control those decisions. But it's only when we realize that our ability to err is much greater than we often think it is that we'll begin to take the necessary steps to change and improve.