

Conflicts of Interest

Thomas L. Carson

ABSTRACT. This paper has two distinct objectives. (1) I defend an analysis of the concept of a conflict of interest. On my analysis the concept of a conflict of interest is broader than is generally supposed. I argue that a very large class of cases not ordinarily regarded as conflicts of interest should be so regarded. Conflicts of interest are an integral feature of many professional relationships and do not (as is often supposed) require the existence of "external" financial or personal relationships. (2) I defend and explain the common-sense view that conflicts of interest are *prima facie* wrong and argue that in ordinary cases it is wrong, all things considered, to allow an avoidable conflict of interest to occur. I attempt to establish these claims on the basis of weak and relatively noncontroversial assumptions.

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I. Analysis of the concept

Consider the following examples of conflicts of interest:

- (1) A mayor purchases insurance for city employees from his son's insurance agency.¹
- (2) A judge rules on a case involving a company in which he has a substantial financial interest.
- (3) An official of a company has inside information about a matter which affects the value of his firm's stock. He uses this information to his advantage in buying or selling that stock.²
- (4) A personnel officer in a corporation fills a position with the child of a close personal friend.

In all of these cases there is an actual or potential conflict between the interests of an individual (or the interests of his friends or family members) and the interests of the party for whom he works. This suggests the following definition of "conflict of interest":

A conflict of interest exists if, and only if, the interests of an individual (*I*) (or the interests of *I*'s friends or family) conflict (or have the potential to conflict) with the interests of *I*'s employer (or client).

This definition is too broad, as the following example makes clear. It would be in my personal interest for my employer to pay me \$1 000 000 a year, but it would not be in my employer's interest to pay me such a salary. This is a case in which the interests of an employee conflict with those of her employer, but it is not a conflict of interest.³

Conflicts of interest involve a clash between the interests of an individual (or those of her friends and family, etc.) and the interests of some other party for whom she works. But the existence of such a clash is

not sufficient for a conflict of interest. In order for there to be a conflict of interest, the conflicting interests must somehow hinder the individual from discharging the duties of her office or position. This feature of conflicts of interest helps to account for the moral significance which we attach to them. In all of the paradigm cases of conflicts of interest noted above, the conflicting interests in question hinder the individual from discharging the duties of her position.

Consider the following provisional definition of "conflict of interest":

A conflict of interest exists in any situation in which an individual (*I*) has difficulty discharging the official (fiduciary) duties attaching to a position or office she holds because either: (i) there is (or *I* believes that there is) an actual or potential conflict between her own personal interests and the interests of the party (*P*) to whom she owes those duties (her employer, client, or organization), or (ii) there is (or *I* believes that there is) an actual or potential conflict between the interests of her friends, family, or other clients and the interests of the party to whom she owes these duties.

Some complications

Conflicts of interest needn't involve a conflict between *I*'s own self-interest and the interests of *P*. As the case of Mayor Daley (see Note #1) makes clear, a conflict of interest can be created by a conflict between the interests of one's friends or family and the interests of the party to whom one owes official duties. Any definition of conflict of interest must specify the sorts of other parties whose interests can create conflicts of interest. My provisional definition says that this other party must be a friend, family member, or other client. This is too narrow. Consider the following case. Suppose I am in charge of hiring for a position in a corporation. One of the people who applies is a man who once saved my father's life. He is not a friend, family member or client. I am grateful to him and am tempted to hire him for that reason. This case is a conflict of interest. Another case: I am sorely tempted to hire someone simply because he is from the same home town as my grandfather or because he has the first name of "Elvis." One's desire to promote the interests of *any*

person or persons can create a conflict of interest. Moreover, there seems to be no *a priori* reason why this other party (whose interests create a conflict of interest) must be a human being. A person's desire to promote the interests of an animal could create a conflict of interest.⁴

Conflicts of interest can be created by one's desire to *promote* one's own interests or the interests of others. They can also be created by one's desire to *thwart* the interests of others.⁵ Suppose that a personal enemy is among those bidding on a contract with my company and I have the authority to determine who is given the contract. Or suppose that I review a book written by someone I dislike intensely. These cases would constitute conflicts of interest, provided that my desire (to thwart the interests of the individuals in question) makes it difficult for me to perform my official duties.⁶

How should the provisional definition be revised in light of these considerations? It seems that we must broaden the earlier definition to say that a conflict of interest is any case in which *I*'s official duties are compromised by *I*'s concern to promote or *thwart* the interests of any party. In cases of conflict of interest *I* has desires or divided loyalties which hinder her in the loyal discharge of her duties to *P*. I propose the following definition:

A conflict of interest exists in any situation which an individual (*I*) has difficulty discharging the official (conventional/fiduciary) duties attaching to a position or office she holds because either: (i) there is (or *I* believes that there is) an actual or potential conflict between her own personal interests and the interests of the party (*P*) to whom she owes those duties, or (ii) *I* has a desire to promote (or thwart) the interests of (*X*) (where *X* is an entity which has interests) and there is (or *I* believes that there is) an actual or potential conflict between promoting (or thwarting) *X*'s interests and the interests of *P*.

Some features of the proposed analysis

1. On my definition, it is not necessary that there be an *actual* conflict between the interests of the relevant parties. According to my definition, it is sufficient that *I* believes that there is an actual or potential conflict between the interests of the relevant parties. A person might be hindered in the

performance of the duties of her position because she mistakenly believes that her doing so is contrary to her own interests (or the interests of others whose interests she is concerned to advance). Consider the following case:

A lawyer works for a client. Her fiduciary obligations include protecting the financial interests of the client. The lawyer incorrectly perceives a conflict between her own financial interests and those of the client. As a result, she is tempted to act in ways that are harmful to her client.

This case constitutes a conflict of interest, even though there is no actual incompatibility between the lawyer's interests and those of her client. The justification for calling this a conflict of interest is that the lawyer's perception of a clash between her interests and those of her client can create just as great a hindrance to her successful performance of her official duties as an actual clash. An actual clash between the interests of *I* and *P* (or clash between *I*'s desire to promote the interests of some third party and the interests of *P*) is not sufficient to create a conflict of interest. This clash must somehow hinder *I* in the performance of her official duties.⁷

2. My definition does not require that the individual *fail* to perform her official duties in order for there to be a conflict of interest. It only requires that the situation makes it *difficult* for *I* to perform her official duties. Our ordinary concept of a conflict of interest is consistent with my definition on this score. Consider the following example. A business executive makes a hiring decision. Her official duties require her to hire the best person for the job. She hires her best friend for the position. This case could be a conflict of interest, even if the friend is the applicant best qualified for the job. Conflicts of interests can exist even when officials actually discharge the duties of their positions.

3. *I*'s desire to promote (or diminish) the welfare of members of particular ethnic or religious groups can create conflicts of interest if *I*'s desire conflicts with the interests of *P*.

4. Bribery is a special case of a conflict of interest.⁸ To be bribed is to be paid to do things that are incompatible with the duties of one's office, position, or role.⁹ The recipient's personal financial interest in accepting the bribery payments creates a

conflict of interest. One's interest in receiving the bribery payment creates a conflict between one's personal interests and the interests of *P*. For example, when a policeman is bribed to ignore a traffic ticket he is being paid to ignore his official duties. His official duties require him to issue traffic tickets to all who violate traffic laws. In order for the bribery offer to create a conflict of interest, the offer must be sufficiently large to *tempt* the officer to ignore his duties. An offer of ten cents would not make it difficult for the officer to fulfill his official duties and, therefore, would not create a conflict of interest. An extremely wealthy person is less likely to be tempted by (*monetary*) bribes than other people. There may be some truth to the adage that wealthy politicians are less likely to be corrupted than politicians of modest means.

5. My definition implies that a person can be involved in a conflict of interest only if he is employed by others (this includes those who work for clients) or has "official" duties in virtue of holding a position in an organization. Those who have no official duties as employees, professionals in private practice, or members of organizations cannot have conflicts of interest. Consideration of nepotistic employment practices supports this feature of my analysis. Such practices clearly constitute conflicts of interest when the person who hires his friends or relatives is himself an employee or officer of an organization. For example, a conflict of interest exists if I am a personal officer in a corporation and hire a close personal friend for a job with the corporation. Suppose, however, that my uncle hires me to work for a business which he owns. This would not be a conflict of interest, because he has no duties attaching to his job or position which conflict (or might conflict) with my interest in being hired.¹⁰ His position as owner of the business carries with it no obligation to hire the best people for positions within the business. To take another example, it would not be a conflict of interest if I were to hire my brother to paint my house, but it would be a conflict of interest if I were to hire him to do painting for my employer.

Two alternative definitions

1. *Black's Law Dictionary.* *Black's Law Dictionary*, (fifth edition) gives the following definition of "conflict of interest":

Term used in connection with public officials and fiduciaries and their relationship to matters of private interest or gain to them. Ethical problems connected therewith are covered by statutes in most jurisdictions and by federal statutes on the federal level. Generally, when used to suggest disqualification of a public official from performing his sworn duty, the term "conflict of interest" refers to a clash between public interest and the private pecuniary interest of the individual concerned.

This definition is unduly narrow in that it restricts conflicts of interest to cases involving public officials. Our ordinary concept of a conflict of interest is also applicable to officials of private businesses and to members of professions who are hired by clients. When reformulated so as to allow for this, the definition in *Black's Law Dictionary* comes to something like the following:

A conflict of interest exists in any case in which an individual having official or fiduciary duties "disqualifies" himself from doing those duties because of conflict between his official duties and a private interest of the individual.

We need to ask what is meant by "private interest of the individual." If this is taken to mean that the person's own self-interest must be in conflict with his official duties, then the modified definition is inadequate. For as we saw earlier, conflicts of interest can be created by *I*'s desire to advance or thwart the interests of third parties.

Another ambiguity of the definition in *Black's* is the reference to disqualifying oneself from performing the duties of one's position. If this is taken to mean that an official must actually fail to perform the duties of his position, then the definition is unacceptable for reasons that I gave earlier ("Some Features of the Proposed Analysis" — # 2). If this is taken to mean something weaker, then it may be consistent with my definition.

According to the definition from *Black's*, a conflict of interest cannot exist unless there is an *actual clash* between a *I*'s own interests and the interests of *P*. According to my definition, it is not necessary

that there be an *actual conflict* between *I*'s own interests (or *I*'s desire to promote or thwart the interests of third parties) and the interests of *P*. My definition is preferable on this score. (See "Some Features of My Proposed Analysis" — # 1.)

2. *John Boatright's definition.* John Boatright offers the following definition of "conflict of interest":

As a preliminary definition, then, a conflict of interest may be described as a conflict that occurs when a personal interest interferes with a person's acting so as to promote the interest of another *when the person has an obligation to act in that other person's interest*. This is equivalent to asserting that a conflict of interest arises when a personal interest interferes in the performance of an agent's obligation to a principal.¹¹

Boatright says that he only intends his definition to apply to conflicts of interest which occur in business. He does not claim that his definition is adequate for cases involving public officials or professionals such as lawyers.¹²

Boatright's definition differs from mine in several respects. (a) Boatright contends that in order for there to be a conflict of interest, the agent's personal interests must conflict with the interests of the agent's principal. According to Boatright, *I*'s desire to promote or thwart the interests of a third party cannot create a conflict of interest; it is not enough that *I* "take[s] an interest in" the welfare of a third party, it is necessary that *I* (herself) gain some "tangible" benefit or advantage ("usually restricted to a financial gain or some kind").¹³ This feature of Boatright's definition is highly counter-intuitive. (I refer the reader to the earlier discussion of this matter and the case of Mayor Daley.)

(b) Boatright claims that "improper use of one's position" can constitute a conflict of interest, even if such cases do not compromise one's duties as an agent. Boatright offers the example of a supervisor who suggests that a new subordinate who is looking for a house use the supervisor's wife as a real estate agent. This example is problematic in that there is a significant possibility that this action will be resented by the subordinate and thus affect the subordinate's morale. But, in that case, the supervisor's actions are at odds with the duties of his position. (His official duties include eliciting the best performance from subordinates.) Boatright's assumption that this is not

a case in which the official duties of the agent are compromised is open to question. He needs to find a better example to support his position. It seems to me that cases in which a person uses his position for "ulterior" purposes constitute conflicts of interest only if the discharge of his official duties is jeopardized. Consider the following two examples. Case #1 — a business executive uses personal contacts from his position to publicize the activities of the local garden club to which he belongs; this neither harms nor benefits his employer. Case #1 is not a conflict of interest. Case #2 — a business executive uses his position to make sexual advances on subordinates. Case #2 is a conflict of interest. Inasmuch as sexual harassment is usually deeply distressing to its victims it also hinders their job performance and thus is contrary to the executive's official duties.¹⁴ Given that the impairment of official duties seems to be part of all paradigm cases of conflict of interest and given the utility of using an evaluative term such as "conflict of interest" to point to a specific kind of moral problem or dilemma, there are strong pragmatic reasons for rejecting Boatright's proposal here.

(c) Boatright notes that his preliminary definition implies that there can be unavoidable conflicts of interest. He finds this unacceptable and proposes a modification in his definition:

It is necessary to qualify the definition that has been given to avoid cases of the following kind. Lawyers are regarded in the law not only as agents of a client but also as agents of the court. In this dual role, a lawyer might find that delaying a trial unnecessarily is to the advantage of a client. Doing so, however, would be an abuse of the court system and a violation of the lawyer's duty to the court. . . . I would be reluctant to say that cases of this kind involve conflict of interest, mainly because the term "conflict of interest" implies some wrongdoing that the agent has an obligation to avoid. The cases just described involve systematic features of situations that professionals, such as lawyers and accountants cannot alter. This kind of case can be excluded from the definition by stipulating that none of the agency obligations in a situation arise because of unavoidable systematic features of that situation.¹⁵

On my definition, unavoidable and systematic conflicts of interests are still conflicts of interest. Indeed, one of my main objectives in Part II is to show how frequently such conflicts of interest occur. This is an important point of disagreement. I will take this up

below and argue that, although Boatright's definition is closer to our ordinary use of the term "conflict of interest" in some respects, there are strong pragmatic reasons for accepting the broader definition which I propose.

Is my definition too broad?

My definition is considerably broader than most alternative definitions. Many would regard my theory as counter-intuitive in certain cases. Consider the following cases:

1. An employee is in a position to steal company funds without serious danger of being caught.
2. I have two beautiful children. My desire to spend time with them constantly tempts me to ignore my official duties and call in sick at the office.
3. A soldier has a strong personal interest in not being killed in battle. This makes it difficult for him to carry out his official duties in combat.
4. An SS guard in a concentration camp has difficulty following orders because his moral beliefs make him concerned to promote the welfare of all human beings, including the Jews and Gypsies he has been assigned to guard. He is strongly tempted to allow inmates to escape.

My definition does not count Case #1 as a conflict of interest. Refraining from stealing money is not a duty which one has in virtue of occupying an office or position. It is an obligation all people have independently of their roles or positions.

Case #2. Almost all working parents feel torn between their roles as parents and employees. The time and energy one devotes to one role limits that which one can devote to the other. Being a parent is incompatible with completely devoting oneself to one's career. However, this does not mean that all working parents are involved in conflicts of interest. One's *duties* as a parent need not conflict with one's *duties* as an employee. A parent who finds adequate child care and who works "reasonable hours" can fulfill both his duties as a parent and an employee. Almost every day I limit my professional activities in order to spend time with my children. But I almost never fail to perform the *duties* of my position on

that account. The *temptation* to ignore my duties and spend the extra time with my children is not a serious obstacle to my performing the duties of my position, particularly when I remember that supporting my children is also one of my most important duties as a parent. A parent whose desire to spend more time with his children created a serious obstacle to his fulfilling the duties of another office would be involved in a conflict of interest.

According to my definition, there can be “unavoidable and systematic” conflicts of interest. (My Case #3 seems to be such a case.) Boatright finds this objectionable for reasons noted earlier. I agree with Boatright that no moral disapprobation ought to attach to agents in unavoidable conflicts of interest. But I see no reason to follow Boatright and revise the definition in such an *ad hoc* way. Given the firmness of our conviction that agents ought not to be blamed for unavoidable circumstances, no unwarranted disapprobation attaches to someone if we say that she was involved in an “*unavoidable conflict of interest*.” However, even if the agent is not culpable for the existence of unavoidable conflicts of interest, such conflicts are still morally problematic and need to be taken into account by all affected parties.¹⁶ Boatright and I both define “conflict of interest” in terms of *I*’s having desires or loyalties which hinder her in the discharge of her official duties. Situations which create such desires or divided loyalties can be either avoidable or unavoidable. This fact is most perspicuously expressed by allowing that either kind of situation can create conflicts of interest and distinguishing sharply between “*avoidable*” and “*unavoidable*” conflicts of interest.

Case #4. Some find it counter-intuitive to say that a conflict of interest exists when the desires (of *I*) which conflict (or might conflict with) the interests of *P* derive from impartial benevolence or other moral considerations. For my own part, I do not find this consequence of my definition to be counter-intuitive. Contested intuitions about these kinds of cases do not provide compelling reasons to make restrictions on the kinds of desires which can create conflicts of interests. It *would be* a matter of grave concern if my definition of “conflict of interest” committed us to the view that it would be wrong for the guard to permit inmates to escape. But by calling Case #4 a conflict of interest is consistent

with the view that the guard ought to allow the inmates to escape; it is also consistent with saying that he lacks even a *prima facie* moral obligation to fulfill his official duties (see below III.3).

I concede that my definition is at odds with some people’s linguistic intuitions about the proper use of the term “conflict of interest.” But since people have different intuitions about the proper use of the term, no definition can possibly be consistent with everyone’s linguistic intuitions. Further, in at least some cases the linguistic intuitions which oppose my definition can be attributed to a blindness of common opinion in failing to perceive serious moral problems. Many people are reluctant to count as conflicts of interest cases which they do not regard as morally problematic. Almost everyone can see the moral problems involved when a judge makes a ruling affecting a company in which he owns stock; and we would all acknowledge this as a conflict of interest. Many people fail to perceive the moral dilemmas created by the self-regulation of professions and are therefore reluctant to claim that conflicts of interest exist in such cases. Some uses of evaluative terms which presently seem counter-intuitive might not seem counter-intuitive to us in the light of heightened awareness of relevant moral considerations. For example, it might seem counter-intuitive to most people to call X a “sexist practice.” This fact about people’s linguistic intuitions would create some presumption against definitions of sexism which count X as a sexist practice. But this presumption could be overturned if those who find this use of the term “sexist” counter-intuitive were oblivious to certain morally relevant (and morally objectionable) features of X.¹⁷

I define “conflict of interest” in terms of a certain kind of conflict: a conflict between *I*’s interests (or his desire to promote or thwart the interests of third parties) and the interests of *P* which makes it difficult for *I* to discharge his official duties to *P*. This sort of conflict is a feature of all paradigm cases of conflicts of interest; it is also a little noticed feature of a large range of other cases which our linguistic intuitions are reluctant to call conflicts of interest. It is useful to extend the term “conflict of interest” to these other cases. This helps us to *point out* and take notice of the similar morally problematic character of a large number of other cases

which are not ordinarily taken to be problematic. (I defend this at length in the next section of the paper.)

II. The pervasiveness of conflicts of interest

Our ordinary picture of a conflict of interest is one in which some personal or financial relationship *external* to one's position makes it difficult for one to perform the duties of one's position. A conflict of interest is caused by some external factor which conflicts with one's *presumed* interest in advancing the interests of one's employer, client, or organization. This picture is, I believe, profoundly mistaken. It assumes a far greater harmony between the interests of individuals and those whose interests they are supposed to serve than is actually the case. The interests of employees are routinely opposed to those of their employers. Similarly, the interests of "self-employed" professionals are routinely opposed to those of their clients.

1. *Bureaucracies*. Almost any member of a bureaucratic organization has some interest in being promoted or advancing his/her career. In such organizations promotion and advancement are determined largely by one's experience and seniority relative to fellow workers. This means that almost all members of bureaucracies benefit from increases in the size of the bureaucracy. If one's department or division is enlarged by hiring new people, one's seniority and experience relative to that of fellow workers are thereby increased and one's chances of being promoted are also increased.¹⁸ A good illustration of how limitations on the size of one's organization can limit one's prospects for promotion is the fact that, as late as 1936, after having been in the US Army for more than twenty years, Dwight Eisenhower had only attained the rank of major. Eisenhower had shown himself to be an extremely able officer,¹⁹ but he had almost no chance for promotion given the small size of the Army and its policy of promoting officers solely on the basis of seniority. Eisenhower was very unhappy with his career prospects and seriously considered leaving the military.²⁰

Employees have a strong vested interest in the expansion of the size of the bureaucracies of which they are a part. However, those whose interests they are supposed to serve, e.g., the stockholders, owners of their companies, or the citizens or taxpayers, have

an interest in limiting the size of bureaucracies. Other things being equal, any increase in the size of the government bureaucracy increases the burden on tax payers. Unneeded bureaucrats in private businesses diminish returns to shareholders.²¹ Members of bureaucratic organizations are often in a position to influence decisions regarding the size of their organizations. (For example, the members of a bureaucracy typically submit reports evaluating the needs and performance of their own departments. Such reports can be slanted so as to suggest a greater need for continued or increased funding than is actually the case. This problem is particularly acute when the members of the bureaucracy possess special technical expertise which others lack, e.g., military officers.)²² The fundamental conflict of interest in (most) bureaucratic organizations consists in the following: in order to serve the interests of those they are supposed to serve, members of a bureaucracy must act so as to limit the size of the organizations of which they are a part; however, their own career interests require them to promote the expansion of the bureaucracy.²³ Many have noted a tendency for bureaucracies to expand almost without limit. This phenomenon is no accident. It is explained by the career interests of bureaucrats. Members of bureaucracies tend to act so as to expand the size of the organizations and departments of which they are a part, because it is in their own self-interest to do so.

An even more obvious point is that members of bureaucracies have a personal interest in not being dismissed from their positions. This means that it is generally in their interests to combat attempts to eliminate positions within the bureaucracy, even when doing so would best serve the aims of the larger organization.

2. *Hiring*. Sometimes individuals with a voice in hiring decisions will be in competition with the people who are hired in future decisions regarding retention and promotion. Thus, it may not be in one's own self-interest that one's employer hire the best possible people for openings within the organization. For example, if I am a junior member of an academic department with a fixed amount of money for salary increases and a fixed number of tenure slots, then it is likely to be contrary to my own self-interest for the department to hire anyone whose

credentials are superior to my own. For, in so doing, I am likely to obtain smaller salary raises in the future, diminish my relative standing within my department and university, and perhaps even lose my job. (The situation is no different for tenured faculty, except that their job security is not threatened by hiring colleagues who possess superior credentials.)²⁴ This type of case clearly constitutes a conflict of interest. One's official duties as a member of an academic department include trying to hire the best possible people for any openings that occur in the department. However, one's own personal interests are sometimes best served if one hires people with whom one fares well by comparison.²⁵

3. *The Self-Regulation of Professions.* The self-regulation of professions creates many possibilities for conflicts of interest. In self-regulating professions, members evaluate each other's work and hear grievances against other members. Conflicts of interest arise because the kinds of evaluations and judgments one makes about other members of the profession are likely to influence the way in which one's own work and conduct are evaluated and judged. A person who makes unfavorable judgments about other members of her profession is liable to be judged more harshly herself as a result. One's official duties as a member of a profession often require that one judge or evaluate other members of the profession in accordance with impartial standards. This often conflicts with one's personal interest in not antagonizing other members of one's profession. Consider just a few commonplace examples from the academic profession.

(i) A member of an academic department sits on a grievance committee which hears a student's complaint against a colleague. If she sides with the student she is likely to antagonize her colleague and his friends. Unless she is in an unusually strong position within the department, this would be contrary to her own self-interest. The people she antagonizes will later sit in judgment on her in decisions regarding her promotion and tenure, salary, leaves of absence, and (possibly) grievances filed against her.

(ii) I am in charge of an academic conference for which papers are submitted to be read and chosen competitively. The papers have been blind-reviewed by others, but I am aware of the identity of the authors. One of the papers submitted was written by

the editor of a major journal in which I am *dying* to publish. It will be difficult, if not impossible, for me to choose impartially between this paper and the work of an obscure philosopher.

The tendency of members of professions to tolerate the incompetence and misconduct of colleagues is well-known and widely acknowledged.²⁶ These phenomena are in large measure explained by the conflicts of interest inherent in self-regulation.

4. *Payment of Professionals.* Michael Bayles argues that there exists a "fundamental conflict of interest" in any relationship between a client and a professional person. This conflict of interest is created by the professional person's interest in income and leisure. When professionals are paid on a fee for service basis they have an interest in providing more services than are either necessary or desirable for their clients. For example, when physicians are paid according to how much work they do for their patients, many physicians succumb to the temptation to provide their patients with unnecessary, even dangerous treatments. Bayles continues:

Alternative systems of paying professionals do not remove this conflict but merely reverse the effect on the client. In a capitation payment system, professionals have an interest in having as many clients as possible to maximize their income and in performing as few services as possible to minimize their costs. On a salary system or flat fee for a case, professionals receive the same income no matter the number of clients or services performed, so they have an interest in minimizing clients or services. These payment systems thus encourage professionals not to perform useful services. . . . This fundamental conflict of interest between professional and client cannot be removed. It is inherent in the professional-client relationship.²⁷

5. *Technological Change.* It is often in a person's own self-interest that her employer continue to use certain technologies or adhere to certain plans, irrespective of the actual merits of those technologies or plans. Most employees have a strong interest in resisting new technologies which would render their skills and knowledge obsolete. Few of us are willing to suggest or consent to changes which would cost us our jobs.

Military history provides many striking examples of officials who continued to support outmoded technologies in which they were proficient. After the First World War Poland fought a series of wars with

the Soviet Union and a short-lived Ukrainian state. Polish Cavalry played a major role in these campaigns. Between the two world wars the Polish military continued to rely heavily on mounted troops and resisted the efforts of those who sought to modernize it. The combat on the western front during the First World War took place on a static front with deep entrenchments and involved the massive use of artillery. After the war the French military anticipated a similar situation in the next war and spent enormous sums of money on the heavily fortified Maginot Line. The French military establishment bitterly opposed De Gaulle's proposals to create a corps of six mobile tank divisions.²⁸ Some historians contend that French military authorities were motivated by concern for career advancement in their decisions about armored units.²⁹ It is reasonable to suppose that these considerations also influenced the deliberations of the Polish military. (I will have more to say about both of these cases below [II.6].)

6. *Intangible Interests.* We desire certain things not for the sake of any tangible benefits which they afford anyone, but because they bolster our pride or sense of self-esteem (or the pride or self-esteem of those dear to us). Intangible interests can create conflicts of interest. Let me give a few brief examples of this. Case # 1: I created and implemented a set of policies and procedures followed by my employer. I am extremely proud of these policies and would view any departure from them as a repudiation of my efforts on behalf of the organization. My interest in the perpetuation of what I have done seriously distorts my judgment regarding alternative policies. I would be involved in a conflict of interest if my official duties required me to assess the merits of alternative policies proposed by others. Case # 2: I am seriously deficient in self-confidence and self-esteem. As a consequence, I am unwilling to tolerate any serious criticism from subordinates. Yet the duties of my position require me to solicit and heed the criticisms of subordinates.

Pride, reluctance to admit error, and other intangible interests probably played more of a role in the calamitous decisions of the French and Polish armies (alluded to above [II.5]) than did the concern for individual career advancement. Marshall Pilsudski led the Polish Army in its wars with Russia after the First World War. Pilsudski and other leaders of the

Polish Legion greatly exaggerated their achievements during these wars. They created a popular mythology about the spirit of the Polish military and its cavalry units. This blinded them to developments in military technology which rendered cavalry obsolete. Pilsudski was virtual dictator of Poland from 1926–1935, and he and his comrades from the earlier wars succeeded in opposing attempts to modernize the Polish Army.³⁰ Similarly, the French military had spent so much money on the Maginot Line that it was unwilling to consider seriously the need for alternative strategies. In 1934 Charles De Gaulle published a book *Toward a Professional Army* in which he advocated the creation of six tank divisions within the French Army. This would have given the French Army offensive capabilities which it lacked. This was crucial in view of France's system of alliances with countries in Central and Eastern Europe. In order to provide assistance to its eastern allies, France had to be prepared to attack Germany in case the Germans marched east. (In 1939 when Germany invaded Poland, the German forces opposite France consisted of only 25 second rate divisions; the French and British had 110 divisions, but did not attack Germany.)³¹ A mobile armored force was also needed in order to repel a German attack through Belgium. (The Maginot Line did not extend along France's borders with Belgium. Germany invaded France through Belgium during both world wars.) In 1935 Paul Reynaud made an unsuccessful attempt to persuade the French Parliament to adopt De Gaulle's proposal for the creation of armored divisions. General Maurin spoke against this measure. His statement before the Parliament is extremely revealing:

How can anyone believe that we could think again of taking the offensive when we have spent milliards [billions] to establish a fortified barrier? Are we to be so mad as to advance in front of this barrier? That, Gentlemen, shows you the mind of the government. For the government, at least as far as I am concerned, knows perfectly what the plan of the next war will be.³²

III. The moral status of conflicts of interest

- 1) *If it is Wrong to be in a Conflict of Interest, What Should One Do in Order to Avoid Doing Wrong?* Whenever one claims that another person acted wrongly, one must be able to point to some alterna-

tive course of action that the agent should have taken. "Ought not" implies "should do otherwise." Thus, when we criticize someone for acting so as to create a conflict of interest (or so as to allow one to occur) we must be prepared to specify what it is that the person in question should have done instead. Often individuals have no responsibility for the existence of conflicts of interest in which they are centrally involved. A judge does not act wrongly simply in virtue of the fact that a friend or a relative appears before her in court. However, the judge would probably be acting wrongly if she failed to eliminate the conflict of interest by disqualifying herself and allowing someone else to try the case.³³ Often, conflicts of interest can be avoided if I ask someone else to assume her official duties. Sometimes one should not reveal the existence of the conflict of interest, but simply turn over the decision to some other party without giving a full explanation of the circumstances. For example, suppose that I am a corporate executive. The daughter of a personal friend applies for a position in the company. I am the person who has the power to make hiring decisions concerning the position for which she has applied. It would constitute a conflict of interest for me to decide on the merits of her application. I should ask a subordinate to make a decision in my stead. If he were aware of my connection with the applicant, the subordinate might feel some pressure to hire my friend's child; this itself could create a conflict of interest. I should ask the subordinate to make the decision without explaining my connection to the applicant. If she is applying for a position in which she would be my subordinate and would be evaluated by me, then hiring her would *create* a conflict of interest regardless of the manner in which she is hired. (It would be a conflict of interest for me to evaluate her work.) In that case, there is a strong presumption for thinking that I should try to persuade my friend's daughter to withdraw her application, or failing that, refuse to consider her application.

There are cases in which an individual finds himself in a conflict of interest which he can neither remove nor avoid short of resigning his position. For example, one might be the only person in an organization with the authority to decide a case affecting the interests of a close friend. Instead of immediately resigning it would usually be permissible for one to inform all of the affected parties and try to obtain

their informed consent to the situation.³⁴ (I will have more to say about this sort of case later.)

2) *The Moral Presumption Against Allowing "Avoidable" Conflicts of Interest Which Result in One's Failing to do One's Official Duty.* In this section I consider conflicts of interest in which one fails to do one's official duty. Later on (in Section III.6) I will take up cases in which one fulfills one's official duties and acts in the interest of one's employer or organization, in spite of the existence of the conflict of interest. I shall argue that, except in unusual cases, it is *prima facie* wrong to allow oneself to become involved in an avoidable conflict of interest which prevents one from doing one's official duty. I understand the expression "*prima facie* wrong" in the sense that it is explained by Ross in *The Right and Good*.³⁵ An act's being *prima facie* wrong constitutes a reason (a moral reason) not to do it. If an act is *prima facie* wrong, then it is wrong, all things considered, unless there is an even weightier reason or justification for doing it.

Suppose that someone fails to perform the duties of her position because of a conflict of interest. Two sorts of arguments can be given to show that this is *prima facie* wrong. First, it usually results in bad consequences when one fails to perform the duties of one's office. Organizations have objectives which require the coordination of the actions of many different individuals. Creating offices with carefully defined duties attaching to them helps organizations to coordinate the actions of different individuals. Organizations rely on individuals to fulfill their official duties. Anything which prevents one from carrying out the duties of one's office is likely to hinder the organization in the pursuit of its objectives. Most organizations have morally acceptable ends; the frustration of these ends is usually bad (see III.3). Similar kinds of considerations apply to professionals who work for individual clients. Failing to carry out one's duties to clients tends to frustrate the clients in the pursuit of their (morally acceptable) goals.

Conflicts of interest are often impossible to keep secret. A person who allows herself to be involved in a conflict of interest risks being found out. The appearance of a conflict of interest can create substantial harms. It can arouse resentment and undermine trust and morale within an organization and often greatly detracts from the reputation and credibility of those involved. It is often said that

people not only have a duty to avoid conflicts of interest, but also a duty to avoid the appearance of conflicts of interest. I will not pursue this issue in the present paper. My argument here is that any considerations which weigh against creating the appearance of a conflict of interest also weigh against allowing actual conflicts of interest. (By allowing an actual conflict of interest, one risks *appearing* to be in a conflict of interest.)

Offices within organizations and relationships between professionals and their clients carry with them special duties. A person who voluntarily assumes an office within an organization (or who voluntarily takes on a client) tacitly agrees or promises to fulfill those duties.³⁶ If we allow that it is *prima facie* wrong to break promises, it follows that avoidable conflicts of interest that cause one to fail to perform one's official duties are also *prima facie* wrong on account of being instances of promise breaking.

It is a matter of controversy whether breaking promises is *prima facie* wrong; most consequentialists would deny this. It is far beyond the scope of this paper for me to try to settle this issue. However, the view that it is *prima facie* wrong to harm others is not open to serious question. This principle alone creates a strong moral presumption against (unavoidable) conflicts of interests. If promise breaking is also *prima facie* wrong, then the presumption against allowing avoidable conflicts of interest is even stronger.

3) *Positional Duties Can Be Overridden. Duties Attaching to Offices or Positions Within Immoral Organizations or Professions May not Even Generate Prima Facie Moral Duties, but Such Cases Are Unusual.* The "positional duties" which are compromised in conflicts of interest are only *prima facie* duties and can sometimes be overridden by other, more important, duties. It is not difficult to imagine cases in which such duties would be outweighed by other more important duties. A person who has very weighty financial obligations, e.g., feeding his children, which he cannot otherwise meet, might be justified in being involved in an avoidable conflict of interest. The duties of one's position, carry little, if any, moral weight unless the goals or purposes of the employer or organization are morally permissible. This condition is not satisfied if one is an employee or official of a criminal gang, a government bent on wars of

conquest, or a tyrannical government. All things considered, it is not wrong for a member of a criminal gang to gather evidence against the gang in return for a grant of immunity from criminal prosecution. The offer of immunity is tantamount to a bribe and creates a conflict of interest.

The great majority of businesses, government agencies, and professions in our society pursue morally permissible ends. The goods and services provided by these entities satisfy wants of individual human beings (wants which are consistent with the demands of morality) and thus afford benefits to those to whom they are provided. Special problems are posed by cases involving government officials. Consider the following argument: in non-tyrannical governments which are not engaged in aggressive wars, government officials have a *prima facie* duty to avoid conflicts of interest, because by allowing conflicts of interest to exist, they prevent agencies of government from functioning as they were intended (and thereby harm the general public).

The foregoing argument assumes that the agencies of government promote the general welfare when they fulfill their intended functions. Libertarians would reject this assumption. There is a great deal of controversy about the proper functions of government. I will not be so foolish as to enter into this controversy in the present paper. I would be happy if my arguments succeeded in showing that it is usually wrong, all things considered, for business people and members of professions to be involved in avoidable conflicts of interest. However, let me briefly outline an argument for the stronger conclusion that in ordinary cases it also is wrong (all things considered) for government officials to allow themselves to be parties to avoidable conflicts of interest. Suppose that we grant the libertarian's claim that, at present, most government employees in the United States perform functions which should not be performed by government. It doesn't follow that these employees have no reason to perform their official duties or that those officials who faithfully perform their duties do not thereby promote the general welfare. The libertarian must distinguish between the following:³⁷ (1) useful goods and services presently provided by the government which she thinks should be provided by private organizations, e.g., education, postal service, housing, health insurance, inspection of food and drugs, and support for the

arts, and (2) things which the government does which she thinks should not be done by any party, e.g., licensing of professions, laws mandating minimum safety standards for food, drugs, automobiles and other potentially hazardous goods. Clearly, all government officials whose responsibilities fall under the first heading promote the general welfare when they do their jobs well. A similar line of argument could be given to show that those who oppose private ownership of the means of production are not thereby committed to the view that employees of privately owned businesses have no moral obligation to fulfill their official duties. Whatever one's views about the merits of private ownership of businesses, it is clear that most workers in private industry contribute to the production of useful goods and services.

4) *Obtaining the Consent of Affected Parties.* Sometimes conflicts of interest can be avoided only if *I* resigns from her position. This often constitutes a serious hardship for the individual in question and it might also be harmful to those she serves. Many would think it unreasonable to require that *I* resign in such cases. An alternative to resigning would be to inform all of the interested parties of the conflict of interest and ask them to either: (i) remove one from one's position (or request one's resignation), or (ii) consent to one's continuing in one's position in spite of the conflict of interest. From a consequentialist perspective this seems preferable to simply resigning one's position. Suppose that I inform my employer of a conflict of interest in which I am involved. As a result, the employer will either (i) remove me from my position, or (ii) consent to the conflict of interest. If (i) occurs then the consequences of my informing the employer are just the same as those of my resigning. But if the employer consents to the conflict of interest (and if there are no third parties whose interests are significantly affected), then there is a strong reason to think that this outcome is preferable to my resigning. An outcome preferred by *all* the parties whose interests are at stake is very likely to be a better outcome than the one to which it is preferred.³⁸

5) *In Ordinary Cases it Would be Wrong, All Things Considered, for One to Permit and Fail to Report Conflicts of Interest which Result in One's Failing to Perform the Duties of One's Position.* I will begin my argument by

offering a typology of the kinds of *prima facie* duties that apply (*or might apply*) in such a case.

1. The duty to benefit others and avoid harming others.
2. The duty not to lie or deceive others.
3. "Special duties" to promote the interests of (or act in accordance with the wishes of) people to whom one has made promises and others to whom one stands in morally significant relations, e.g., family, friends, those from whom one has received benefits, and people one has wronged. (If there are special duties of this sort, then they can sometimes override utilitarian considerations.)

Ross distinguishes between the obligation to keep promises and obligations of gratitude and reparations. All these count (or can count) as "special duties to others." They can all be the basis of obligations to help particular parties (or act in accordance with their wishes), even to the detriment of the general welfare. The duty not to lie or deceive others can also constitute a justification for failing to bring about the best consequences.

My argument is as follows: (1) in typical cases in which one fails to do one's official duty because of an unreported conflict of interest the net balance of good and bad consequences (benefits and harms) that results is less favorable than it would have been had one avoided or reported the conflict of interest. (2) Allowing a conflict of interest to occur (and keeping it secret) makes it more likely that one will lie or deceive others. (3) If consequentialism is mistaken and there are "special duties" in the sense that I have just explained, then in ordinary cases the special duties to one's employer or organization are at least as weighty as any conflicting special duties that one might have. Given these three assumptions, it follows that in typical cases it is wrong, all things considered, to allow and fail to report an avoidable conflict of interest which prevents one from discharging the duties of one's position.

This result holds independently of the truth or falsity of utilitarianism as a theory of right and wrong. (This is important, since I am in no position to either defend or attack utilitarianism in the present paper.) My argument that there is a substantial, but possibly overridable, moral presumption

against conflicts of interests is compatible with either utilitarianism or a view such as Ross's according to which there are several ultimate *prima facie* moral principles. But my argument is not compatible with the view that any of the duties which are violated in conflicts of interest are absolute or exceptionless duties. For example, if it is always wrong to break a promise no matter what the consequences, then there is an absolute prohibition against allowing avoidable conflicts of interest which cause one to violate (implicit) promises to one's employer or client.³⁹ I have said nothing about rule or indirect consequentialism. However, if successful, my arguments to show that allowing and failing to report conflicts of interest generally has bad consequences provide strong reasons to think that optimific moral codes will provide for strong prohibitions against conflicts of interest. The results of the second section of the paper strengthen this contention. Conflicts of interest are a very pervasive phenomenon and need to be seriously addressed by any acceptable public code of morality.

A defense of assumptions 1 and 3⁴⁰

In ordinary cases, allowing and failing to report conflicts of interest which result in one's failing to do one's duty results in more bad than good. The kinds of bad consequences noted earlier (III.2) are typically not outweighed by countervailing good consequences. The economic or other tangible goods gained by an individual or her connections as a result of the conflict of interest are goods which otherwise would have been enjoyed by someone else. Conflicts of interest generally redistribute wealth and other goods, but they rarely promote the creation of goods or benefits. Clearly, there will be cases in which the benefits obtained by the individual or her connections as a result of a conflict of interest exceed the benefits that would have been realized (by someone else) had there been no conflict of interest. But this is not generally the case. In ordinary cases, the benefits brought about as a result of a conflict of interest are no greater than the benefits that would have been enjoyed by other parties had there not been a conflict of interest. For example, the benefit which a person enjoys when she is hired on the basis of

personal considerations is, on average, no greater than the benefit that would have been enjoyed by the person who otherwise would have received the job. Most conflicts of interest which result in one's failing to do one's official duty also have other bad consequences (thwarting the aims of one's employer or organization) which tip the balance of consequences against the conflict of interest.

In most cases the consequences of unreported conflicts of interest which cause one to be derelict in the performance of one's official duties are worse than the consequences of avoiding them. I shall now argue that in ordinary cases of conflicts of interest the special duties (if any) that one has to friends, family members, and others which might provide one with reason to violate one's official duties do not outweigh one's special duties to one's employer or organization. (I should like to stress that I am not assuming that there are any "special duties" to help others. I am only claiming that if it is reasonable to suppose that such duties are created by friendship, "favors," and family ties, then it is also reasonable to suppose that there are special duties created by one's implicit and explicit agreements with one's employer, client, or organization.)

One's special duties to one's own children are as weighty as any that one might have. So, if we can show that these duties do not outweigh one's special duties to one's employer, client, or organization in ordinary cases of conflicts of interest, we can be reasonably sure that special duties to friends, family, etc., rarely outweigh one's duty to fulfill the duties of one's position. Consider a case in which an employee is in a position to benefit his own child as a result of a conflict of interest, e.g., the case of Mayor Daley of Chicago. Let us grant that parents have some special duty to provide financial assistance to their adult children. Mayor Daley could fulfill this duty to his son by giving him the insurance contract with the city. But the mayor could do other things to help his son which do not violate his official duties. The mayor could give his own money to his son or he could devote his own time and expertise to helping the son to manage his business. Daley's duty to help his son does not require him to violate other important duties. Similarly, although my duty to provide for my children is much more important than my duties to the neighborhood grocer, I am not justified

in stealing from the grocer in order to provide for my children.⁴¹ Finally, if we depart from consequentialism and allow for such special duties as a parent's duty to help his own children, it also seems plausible to posit a special duty to keep promises. The obligation to keep promises clearly weighs against allowing conflicts of interest which causes one to fail to fulfill one's official duties.

To sum up the foregoing argument, in ordinary cases the consequences of allowing and failing to report conflicts of interest which cause one to violate one's official duties are worse than the consequences of avoiding or reporting them. The duty not to lie or deceive others (if there is such a duty) generally weighs against allowing and failing to inform people of conflicts of interest. In ordinary cases, one's special duties (if any) to friends, family members, or others who might benefit from the conflict of interest, can be fulfilled in other ways. Further, any such special duties are largely counter-balanced by one's obligation to keep implicit promises to one's employer.

6) *Cases in Which Officials Perform the Duties of Their Offices in Spite of Unreported Conflicts of Interest.* Suppose that in spite of an unreported conflict of interest one discharges one's official duties and acts in the interest of one's employer.⁴² For example, suppose that I hire the son of a friend and it turns out that he is the person best qualified for the job. Suppose also that no one finds out about his connection with me so that the morale of his department or section is not adversely affected by speculation about favoritism. In this case I fulfilled my duty to hire the best person for the job.⁴³ But my conduct is still objectionable on other grounds. I am guilty of having knowingly *risked* failing to do my duty. When I considered my friend's son for the position, I knew that (1) I might deceive myself into thinking that he is the applicant best qualified for the job, even if he is not, and (2) I might be tempted to hire him, even if I judge him not to be the best qualified applicant. I knowingly did things which might have caused me to fail to do my duty. This itself is morally objectionable. Here I would appeal to the following principles:

1. It is usually wrong to allow and fail to report conflicts of interest which result in one's failing to perform the duties of one's position (this was defended above III.5).

2. Other things equal, it is morally wrong to risk doing something which is morally wrong (all things considered).

Note that #2 is perfectly consistent with consequentialism. If consequentialism is true, then an act is morally wrong if it fails to result in the best consequences. From this it follows that, other things equal, it would be wrong to risk failing to bring about the best consequences. Here, I am assuming that the consequentialist assesses the rightness or wrongness of actions in terms of their *expected consequences* (as opposed to their actual consequences). This raises controversial issues within the utilitarian tradition — issues which I cannot hope to resolve here. "Actual consequence" versions of act-consequentialism, entail that it is permissible to allow (and fail to report) conflict of interest in some cases in which "expected consequence" versions of consequentialism entail that this is not permissible. (The cases in question are ones in which the actual consequences of allowing and failing to report conflicts of interest are no worse than the consequences of avoiding or reporting them, but the "expected consequences" of allowing and failing to report conflicts of interest are worse than those of avoiding or reporting them.) But note the following: (a) In such cases, the "actual consequence consequentialist" would still say that the agent's choice was rationally indefensible under the circumstances, and (b) from the point of view of the agent deliberating about what to do the difference between actual and expected consequence versions of (act) consequentialism is of no practical significance. There is no difference between trying to do what will have the best consequences and trying to do what will have the best expected consequences. On either version of act-consequentialism, the difference between the goodness actually achieved by an action and the goodness which one can reasonably expect to achieve by it is relevant only to the retrospective assessment of actions.

7) *The Obligations of Other Parties.* To this point, our discussion of the moral status of conflicts of interest has focused on the conduct of the individual *I* whose duties are compromised by the conflict of interest. It is appropriate that our discussion should pay special attention to the conduct of this party. From the moral point of view, the most salient

feature of conflicts of interest is the compromising of "positional" duties. The wrongness of what others might do in cases of conflicts of interest derives from the wrongness of a person compromising the duties of her position. But we should also consider the conduct of the other parties involved in conflicts of interest, in particular, those who act so as to bring about conflicts of interest or who act so as to make it difficult for others to avoid conflicts of interest. I am thinking particularly of cases in which the interests of one's friends, (or family members) conflict with one's official duties. For example, suppose that my nephew applies for a position in my firm. In so doing he creates a conflict of interest. He and other family members might also do things which make it difficult for me to escape from the conflict of interest. Suppose further that I ask him to withdraw his application because of the conflict of interest. He might refuse and he and his parents might bring various sorts of pressures to bear on me. What they do in this case is *prima facie* wrong (perhaps very wrong). I think that the following variation on Principle 2 (from Section III.6) can be defended:

2'. It is *prima facie* wrong to attempt to pressure someone else to do something that is wrong all things considered.⁴⁴

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Notes

¹ Such a case occurred in Chicago during the early 1970s. The city purchased a substantial amount of insurance through Mayor Richard J. Daley's (Richard P's) son John (brother of the current mayor). John Daley received more than \$100 000 in commissions from the city contracts. The mayor is reported to have said that his critics could "kiss my ass" if they thought that it was wrong for a father to help his sons (Len O'Connor, *Clout: Mayor Daley and His City* [Chicago: Contemporary Books, 1984, pp. 238-239]).

² In 1963, exploratory drilling by the Texas Gulf Sulfur Company indicated the presence of a rich body of mineral ore. The ore was located on land to which the company owned the mineral rights. This discovery promised to increase dramatically the value of the company's stock. In a

press release of April 12, 1964 company officials tried to minimize the value of the discovery by describing it as a "prospect." On April 16 a second company press release described the results of the drilling as "a major discovery." In the four day interim, several company officials purchased large amounts of Texas Gulf Sulfur stock and realized a large profit. Those stockholders who sold their stock after the first press release lost a great deal of money. Vincent Barry, *Business Ethics*, first edition (Wodsworth, 1979), p. 196.

³ Cf. Joseph Margolis, "Conflicts of Interest and Conflicting Interests," in *Ethical Theory and Business*, Tom Beauchamp and Norman Bowie, (eds.) first edition (Prentice Hall, 1979), pp. 361-372 and John Boatright, "Conflict of Interest: An Agency Analysis," in *Ethics and Agency Theory*, Norman Bowie and R. Edward Freeman, eds. (Oxford, 1992), pp. 187-203.

⁴ One might wish to go further and say that one's desires regarding buildings and other inanimate objects can create conflicts of interest. I don't think that the definition should be broadened in this way, since that would be inconsistent with the root meaning of the term "conflict of interests." Inanimate objects do not have interests (which can conflict with those of *P*).

⁵ This is almost entirely overlooked in discussions of conflicts of interest.

⁶ One might object that, inasmuch as I desire to harm someone (or promote someone's welfare), it is in my own self-interest to harm (benefit) her. But the ill-fare (or welfare of others) does not by itself (apart from its consequences such as giving me pleasure) contribute to my own welfare. It is not analytic that (other things equal) my welfare is enhanced when a state of affairs that I desire obtains. Among other things, this would make it logically impossible for one to desire or prefer actions which are contrary to one's self-interest and thus logically impossible for there to be genuine acts of self-sacrifice. (See Mark Overvold, "Self-Interest and the Concept of Self-Sacrifice," *Canadian Journal of Philosophy* 10, 1980, pp. 105-118.) The satisfaction of other-regarding desires does not necessarily contribute to one's own personal welfare.

⁷ In order for the conflict between the interests of one's employer or organization (etc.) and the interests of one's friends or family (etc.) to make it difficult for one to fulfill one's official duties, one must have some desire or preference to the effect that the interests of one's family or associates be advanced. Consider the following case: a person has no special interest in or attachment to her third cousin. Her official duties conflict with the interests of the cousin. The conflict between the interests of her cousin and those of her organization will not create any difficulty for her in fulfilling her official duties. On my view, such a case would not constitute a genuine conflict of interest. Less probably, suppose that *I* is completely indifferent to the welfare of his

own daughter. Cases in which his daughter's best interests conflict with those of *P* would not constitute conflicts of interest, because they would not make it difficult for him to discharge his duties to *P*. I would describe such cases as apparent, but not actual, conflicts of interest.

⁸ Cf. Joseph Margolis, "Conflicts of Interest and Conflicting Interests," p. 364; Neil Leubke, "Conflicts of Interest as a Moral Category," *Business and Professional Ethics Journal*, Spring 1987, p. 70; and John Boatright, "Conflict of Interest: An Agency Analysis," p. 189.

⁹ I have defended this analysis at some length in "Bribery, Extortion and 'The Foreign Corrupt Practices Act,'" *Philosophy & Public Affairs*, 1985, pp. 66–90. Also see my "Bribery and Implicit Agreements: A Reply to Philips," *Journal of Business Ethics*, February 1987, pp. 123–125.

¹⁰ It is permissible for my uncle to engage in nepotistic hiring. However, if he does so he should not advertise the position or interview other people for the job, since that would give others the false impression that they are competing with others and that they will be judged on their merits.

¹¹ "Conflict of Interest: An Agency Analysis," pp. 191–192. Boatright calls this a "preliminary definition." He qualifies the definition later on (I discuss this below), but never reformulates the definition in light of these qualifications.

¹² "Conflict of Interest: An Agency Analysis," pp. 187–188.

¹³ Boatright, p. 192.

¹⁴ Sexual harassment is wrong primarily on account of the harm it causes those who are harassed. It can also be wrong on account of the harasser's failure to discharge his duties to third parties (his employer or client, etc.).

¹⁵ Boatright, p. 193.

¹⁶ See Part III where I argue that agents involved in unavoidable conflicts of interest are still usually obligated to inform their principals about the existence of such conflicts.

¹⁷ I am not imagining a case in which people come to regard *X* as objectionable as a result of revising their basic moral principles. Rather, I am thinking of a case in which certain facts about *X* are brought clearly to light, and we come to see that *X* is objectionable.

¹⁸ In most European and American government bureaucracies, a bureaucrat is rewarded for simply increasing the number of people she supervises. Gordon Tullock cites a case in which an engineer invented an automatic shell loading machine. Installation of this machine in major arsenals would have resulted in a substantial savings for the government. But plans to install the machines were rejected by officials at the arsenals because installation of the machines would have jeopardized their civil service grades. Gordon Tullock, *The Politics of Bureaucracy* (Public Affairs Press, 1965), pp. 134–135.

¹⁹ During 1925, the US Army sent 275 of its best junior officers to the Army Command and General Staff School for

a year of intensive training. Eisenhower was one of the officers chosen and he graduated first in his class. (*Eisenhower*, Volume I, Steven Ambrose, 1983, pp. 83.)

²⁰ *Eisenhower*, Volume I, pp. 101 and 113–118. During this time he was offered several civilian jobs. One of the positions offered him would have paid him five times his military salary, another would have paid him twenty times his military salary.

²¹ Harms to organizations resulting from the growth of bureaucracies are not confined to the costs of paying bureaucrats. Tullock argues that increasing the size of a bureaucracy often complicates control and communication within the organization so that the organization is, other things equal, less able to achieve its goals (Tullock, p. 150–151).

²² Cf. Gwynne Dyer, *War* (Crown, 1985), p. 218.

²³ We might imagine a very different sort of situation in which divisions within a bureaucracy are assigned a fixed amount of money and given considerable discretion as to how they spend that money. In that case, members of the bureaucracy would not have a personal interest in expanding the size of their own divisions. But there is still a serious potential for conflicts of interests. The members of any particular division might have a personal interest in cutting essential positions within the division (in order to increase their own salaries).

²⁴ In order to avoid this kind of situation, universities need to give above average raises to strong departments. Otherwise, it will not be in the financial interests of department members to hire the best possible job candidates.

²⁵ Hiring the best qualified candidates tends to enhance the prestige of academic departments and thus indirectly enhances the prestige of all their members. In this respect, the often excessive concern of academics with professional prestige is beneficial.

²⁶ Michael Bayles defends his view and offers empirical evidence to support it in *Professional Ethics* (Wodsworth, 1981), pp. 130–132.

²⁷ Michael Bayles, *Professional Ethics*, second edition (Wodsworth, 1989), p. 89.

²⁸ See Alden Hatch, *The De Gaulle Nobody Knows* (Hawthorn Books, 1960), p. 74.

²⁹ Duncan Grinnell-Milne alleges that the French Army rejected De Gaulle's plan to create an armored corps of six tank divisions because it would have dramatically reduced the number of troops in the French Army and thus harmed the career prospects of the officer corps. See *The Triumph of Integrity* (The Bodley Head, 1961), pp. 63–64.

³⁰ See *Politics in Independent Poland*, Antony Polonsky (Oxford, 1972).

³¹ Brian Crozier, *De Gaulle* (Scribners, 1973), p. 84.

³² The reply is cited in *De Gaulle*, by Aidan Crawley (Bobbs-Merrill, 1969), pp. 75–76.

³³ Cf. Margolis, "Conflicts of Interest and Conflicting Interests," p. 363. Several distinctions made by Davis are helpful in this context. He distinguishes between "having a conflict of interest" and "acting in a conflict of interest." He also distinguishes between "avoiding" a conflict of interest and "escaping" from one.

³⁴ Cf. Luebke p. 72 and Davis p. 20. Michael Bayles raises a serious problem for this kind of resolution. Sometimes revealing the existence of a conflict of interest to all of the parties whose interests are at stake would violate obligations of confidentiality.

³⁵ W. D. Ross, *The Right and the Good* (Oxford, 1930), Chapter 2.

³⁶ See my papers "Bribery, Extortion, and 'The Foreign Corrupt Practices Act'" and "Bribery and Implicit Agreements: A Reply to Philips" for a defense of this.

³⁷ This distinction is not intended to be exhaustive.

³⁸ Sometimes the existence of a conflict of interest is obvious to all parties. In such cases the failure of other parties to protest or request one's resignation can be tantamount to consenting to the conflict of interest.

³⁹ I cannot fully defend this assumption here. However, I make two observations in support of this. (1) The view that there is an absolute moral prohibition against promise-breaking or lying is extremely counter-intuitive. Among other things, it implies that one could not be justified in breaking a promise or lying, even if doing so were necessary in order to save someone's life. (2) Kant is the most important philosopher who holds that there is an absolute prohibition against lying or promising breaking. But, contrary to Kant's intentions, his theory does not support the view that there is an absolute prohibition against promise-breaking. Kant's theory does not support the view that it is always wrong to break a promise. At most, Kant's theory only supports the view that there is a strong moral presumption against breaking a promise. I will now defend this at considerable length.

The categorical imperative does not commit one to the view that there is an absolute prohibition against breaking a promise. Kant proposes the "categorical imperative" (CI) as a criterion or test for the rightness or wrongness of actions. He states the CI as follows:

Act only according to that maxim though which you can at the same time will that it should become a universal law (*Groundwork for the Metaphysics of Morals* (Harper and Row, 1964), Paton Trans., p. 88.)

Kant gives two other formulations of the CI: (i) "always treat humanity, whether in your own person or in the person of any other, never simply as a means, but at the same time as an end" (p. 96), and "A rational being must always regard himself as making laws in a kingdom of ends" (p. 101). Kant

claims that the other two formulations of the CI are equivalent to the first.

there is therefore only a single categorical imperative and it is this: "act only on that maxim through which you can at the same time will that it should become a universal law" (p. 88).

The universal law formulation of the CI is equivalent to the following:

An act is morally right if, and only if, the person who performed it would be willing to have everyone else follow the same principles which he employed in performing the act.

Kant argues that it is always wrong to make a promise that one does not intend to keep. His argument constitutes what is probably the most well-known illustration of his notion of a "perfect duty." I will argue that Kant's argument does not succeed and cannot be modified to show that it is always wrong to break a promise. The relevant passage in Kant reads as follows:

Another [man] finds himself driven to borrowing because of need. He well knows that he will not be able to pay it back; but he sees too that he will get no loan unless he gives a firm promise to pay it back within a fixed time. . . . [T]he maxim of his actions would run thus: "Whenever I believe myself short of money, I will borrow money and promise to pay it back, though I know that this will never be done. . . . I see straight away that this maxim can never rank as a universal law of nature and be self-consistent, but must necessarily contradict itself. For the universality of a law that everyone believing himself to be in need can make any promise he pleases with the intention not to keep it would make promising and the very purpose of promising, itself impossible, since no one would believe he was being promised anything, but would laugh at utterances of this kind as empty shams (pp. 89–90).

According to Kant, the CI commits us to an absolute prohibition against making promises in bad faith. The duty not to make promises in bad faith is a perfect duty. Not only are we *unwilling* to have everyone else follow maxims which permit making promises in bad faith, but such a state of affairs (everyone's following maxims which permit them to make promises in bad faith) is impossible. For universal adherence to such maxims would destroy the background of honesty and trust necessary for the existence of the institution of promise-keeping.

Universal adherence to such maxims such as "let me

make a promise which I do not intend to keep whenever doing so would be to my advantage" might destroy the background of trust necessary for institution of promise keeping to be viable. But this doesn't show that the CI commits us to an absolute prohibition against making promises which we do not intend to keep. Making a promise in bad faith can be described by maxims the universal adherence to which would not so greatly undermine trust between individuals as to threaten the institution of promise keeping. Consider the following maxim:

M. Let me make a promise in bad faith when and only when doing so is necessary in order to save the life of an innocent person.

Universal adherence to M. would not threaten the institution of promise keeping. Our present experience demonstrates that the existence of promise keeping is compatible with a far greater incidence of making promises in bad faith than would prevail if M. were universally adhered to. Further, most of us would be *willing* to have everyone else follow the policy of making promises in bad faith when doing so is necessary in order to save lives.

Following Kant, we could construct an analogous argument to show that breaking promises is always wrong:

Not only are we *unwilling* to have everyone else follow maxims which permit promise breaking, but such a state of affairs is impossible. For universal adherence to such maxims would destroy the background of trust necessary for the institution of promise keeping and without this background the institution of promising could not exist.

The reply to this argument follows what I said above. "Let me break a promise whenever doing so would be to my advantage" is a maxim the universal adherence to which might very well threaten the very existence of the institution of promise-keeping, but it is not the only maxim that sometimes permits promise breaking. Maxims of the follow-

ing sort also permit one to break promises on certain occasions:

Let me break a promise when and only when doing so is necessary in order to save the life of an innocent person.

⁴⁰ Assumption #2 is rather obvious and I will not bother to defend it here.

⁴¹ Of course, if I were desperately poor and stealing were the *only* way in which I could feed my family, I might be justified in stealing. It is extremely unlikely that an official could justify an avoidable conflict of interest on grounds such as this. Almost any official who possesses sufficient power to help a child by means of a conflict of interest is also sufficiently well-paid to help the child from his/her own private resources.

⁴² Another interesting case is one in which one fails to do one's official duties, but does not harm the party to whom the duties are owed. The following case is an example of this. I am in charge of purchasing bolts to be used in an aircraft factory and purchase bolts which do not meet the specifications of my employer. However, no harm comes from this since the substandard bolts never cause any problems with safety or maintenance.

⁴³ This assumes that there is no formal company policy forbidding officials to deal with personal friends. If company policy prohibits officials from hiring people with whom they have personal connections, then my offering the job to my friend's son violates the duties of my office, even if he is the person best qualified for the job.

⁴⁴ For a defense of this principle see my paper "Bribery, Extortion, and 'The Foreign Corrupt Practices Act,'" pp. 84-89.

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