MARKETING ETHICS & SOCIETY

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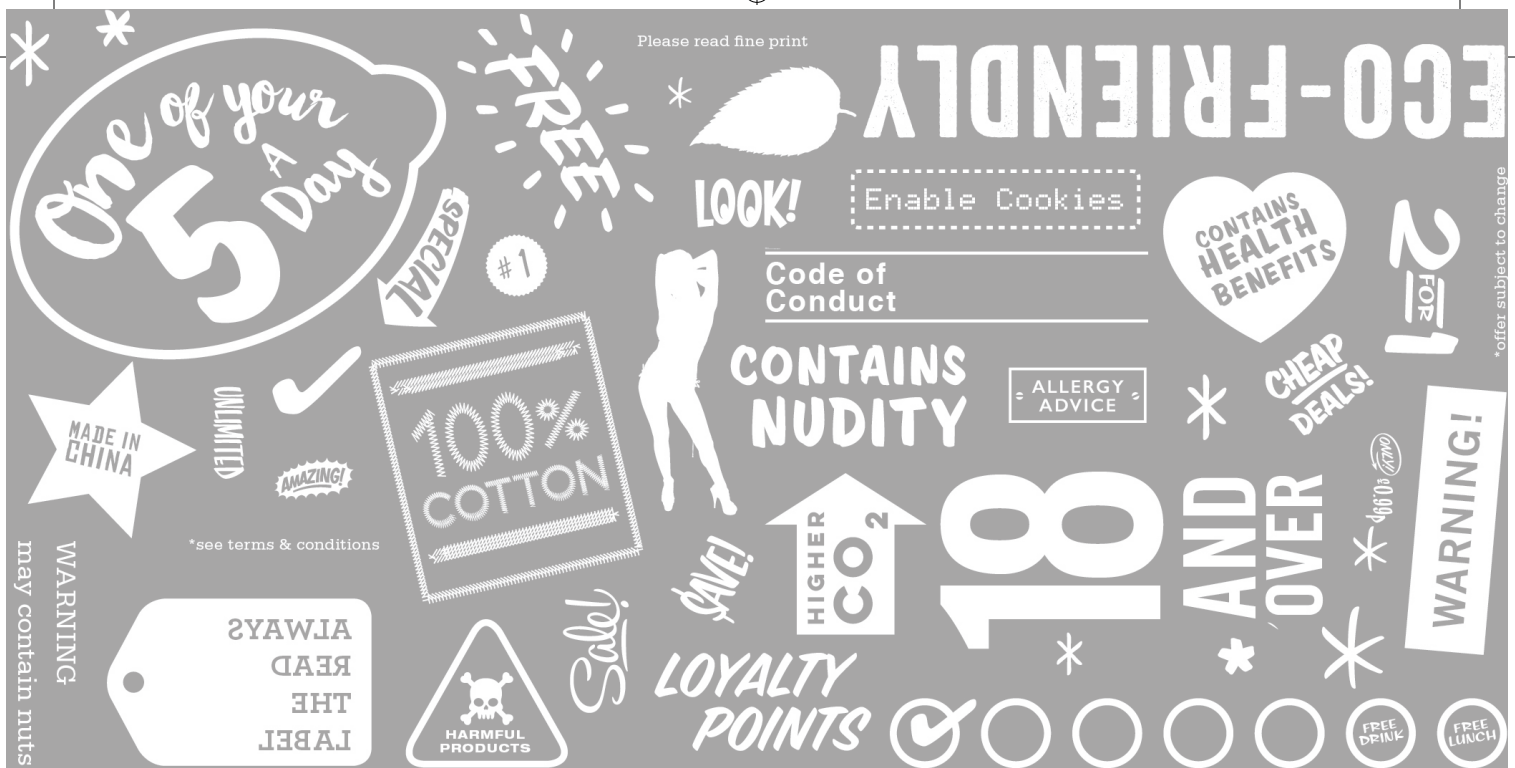
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1 Introduction to Marketing Ethics

Lynne Eagle

CHAPTER OVERVIEW

In this chapter we will discuss:

- The changing nature of ethical criticisms of marketing over time
- The scope of ethics overall, business ethics and marketing ethics
- The relationship between ethics, religious beliefs and values
- The relationship between ethical and legal or regulatory actions
- The range of ethical challenges facing marketers
- Key theories and frameworks that can be used to make ethical decisions

CHANGING NATURE OF ETHICAL CRITICISMS OF MARKETING

The main criticisms of marketing, often focused on marketing communication as the most visible component of marketing activity, have in the past centred on allegations that marketing was inherently deceptive, manipulative and caused people to buy things that they did not really need, including leading people into excessive debt (Rotfeld and Taylor, 2009; Shimp, 2003). In the last few decades, while these criticisms and others also addressed in the next chapter are still made, the focus has changed to include criticisms of marketing for contributing to unsustainable economic growth and accompanying problems of resource depletion, environmental damage and accelerated climate change effects due to increased levels of **greenhouse gases** in the atmosphere (Dietz and Stern, 2008). To provide a foundation for assessing the validity of the criticisms, we need firstly to be clear as to what the role of marketing is, then what is meant by ethics, business ethics and, specifically, marketing ethics.

Standard definitions of marketing

Consider the definitions of marketing found in many textbooks. It is suggested that 'the definition of our discipline shapes marketing's boundaries for practitioners (public and private), scholars and educators' (Sheth and Uslay, 2007: 305). A review of the definitions used by some of the principal organisations therefore follows. Interestingly, none of the definitions listed contain any specific reference to ethics. While they vary somewhat, the central theme has been that marketing's purpose is to 'create exchanges that satisfy individual and organizational goals' (Sheth and Uslay, 2007: 302). The definitions provided by the American Marketing Association (2008) have been adopted by associations in other countries, but changes in the AMA's definitions to reflect the changing business environment are not always picked up by other associations. For example, the AMA's 1985 definition was that marketing is:

> The process of planning and executing the conception, pricing, promotion and distribution of ideas, goods and services to create exchanges that satisfy individual and organisational objectives.

The definition changed in 2004 to:

> Marketing is an organizational function and a set of processes for creating, communicating, and delivering value to customers and for managing customer relationships in ways that benefit the organization and its stakeholders.

 In 2007, the AMA again changed their definition to:

> Marketing is the activity, set of institutions, and processes for creating, communicating, delivering, and exchanging offerings that have value for customers, clients, partners, and society at large.

The Chartered Association of Marketers in the UK also changed their definition in 2007 to:

> The strategic business function that creates value by stimulating, facilitating and fulfilling customer demand. It does this by building brands, nurturing innovation, developing relationships, creating good customer service and communicating benefits. By operating customer-centrically, marketing brings positive return on investment, satisfies shareholders and stake-holders from business and the community, and contributes to positive behavioural change and a sustainable business future. (Charles, 2007)

The Marketing Association of Australia and New Zealand continue with an (undated) definition more akin to the AMA's 2004 definition:

> Marketing consists of activities that facilitate and expedite satisfying exchange relationships in a dynamic environment through the creation, distribution, promotion and pricing of products (goods, services and ideas). (The Marketing Association of Australia and New Zealand, n.d.)

The European Marketing Academy (EMAC) does not have a formal definition; however, a definition was proposed by a prominent European academic in 2006, in response to the AMA's 2004 definition:

> Marketing is a customer focus that permeates organizational functions and processes and is geared towards making promises through value proposition, enabling the fulfilment of individual expectations created by such promises and fulfilling such expectations through support to customers' value-generating processes, thereby supporting value creation in the firm's as well as its customers' and other stakeholders' processes. (Grönroos, 2006: 406)

The pre-2007 definitions support the perception that marketing is successful if customers are satisfied, but what if that satisfaction ignores the potential for societal harm – such as the problems caused by excess alcohol consumption – or environmental harm?

Think points

Should marketing always give the customer what they want? What are the long-term consequences of 'consuming beyond the material and environmental limits of the planet's resources?'(Nahser, 2014: 127). What impact are the 2007 definition changes likely to have on marketing practice?

In noting the criticisms of marketing for its role in driving **consumption**, commentators have cautioned that if the growth of consumption patterns in developing countries mirrors that of developed countries, there may be further negative consequences as improved standards of living are linked to resource consumption (Peattie and Peattie, 2009).

Ethics are implicit in **Service-Dominant Logic (S-DL)** which holds that service is the fundamental basis for exchange, that service provision is a part of goods distribution, all economies are service economies and that customers co-create value (Williams and Aitken, 2011). However, the notion of engaging in exchange in order to gain value comes back to what wants and needs are satisfied by exchanges and whether S-DL should contain caveats regarding the social and environmental impacts of consumption decisions.

The wider economic focus on growth

The comments above illustrate a paradox for marketers which has its foundations in the way that economic growth and prosperity are measured, i.e. via **Gross Domestic Product (GDP)** which is usually defined as 'the total market value of all final goods and services produced in a country in a given year, equal to total consumer, investment and government spending, plus the value of exports, minus the value of imports' (Salvaris, 2013).

Think points

Think about the things that are included in this definition, such as production of weapons and cigarettes, and the things that are not included, such as air or water pollution and environmental damage resulting from production, and all the products and services that are produced but not sold through commercial markets.

The standard definition of a **recession** is 'a period of temporary economic decline during which trade and industrial activity are reduced, generally identified by a fall in GDP in two successive quarters' (Nunes et al., 2011). Thus if production decreases, there is a reduction in business profits and incomes, and thus individual and household spending reduces and unemployment rises.

Marketing is seen as playing a major role during periods of recession in stimulating demand for goods and services – but this can result in the original set of criticisms being levelled against marketing activity, i.e. that marketing manipulates people into buying things they do not need and potentially encourages individual debt, repayments for which may not be affordable through credit facilities.

The misuse of GDP data

The fact that GDP is not a good measure of economic growth, well-being or prosperity has been known for many decades:

> It is a great historical irony that no one was more aware of the limitations and the potential for misuse of the GDP than its chief inventor. For Simon Kuznets, American economist and Nobel Prize Laureate, GDP was never intended as a measure of overall social well-being.

> Kuznets famously remarked that 'the welfare of a nation can scarcely be inferred from a measurement of national income as defined by the GDP'. Nor was growth itself necessarily a good thing, he said: 'Goals for "more" growth should specify growth of what and for what' (Kuznets 1934, p. 7). Yet despite this clear warning, and by default over many years, GDP has come to be used as the key measure of national progress and political success, especially by politicians and economists. (Salvaris, 2013: 81)

Despite criticisms, GDP is still used to measure economic success or failure and thus national well-being. GDP trend data have political and social power, being reported in all major media and subject to detailed analysis in terms of national success or failure.

While a global movement to develop new means to measure sustainable well-being or composite indices that include economic, social and environmental measures does exist (Colman, 2010), GDP remains the predominant measure of prosperity. As part of this, marketers must consider the validity of the criticisms directed at marketing activity and consider how to reconcile the satisfaction of consumer wants and needs with long-term measures that include environmental and resource factors and the needs of future generations, i.e. **sustainability**. This is often framed as a '**triple bottom line**' approach as it incorporates economic, social and environmental impacts (Stuart, 2011). This is linked closely to **Corporate Social Responsibility (CSR)**, which will be analysed in more detail in the next chapter. This is a management approach designed to show an organisation's commitment to the social environment in which it operates, with the following assumptions:

1. Corporations *should* think beyond making money and pay attention to social and environmental issues;
2. Corporations *should* behave in an ethical manner and demonstrate the highest level of integrity and transparency in all their operations;
3. Corporations *should* be involved with the community they operate in terms of enhancing social welfare and providing community support through philanthropy or other means. (Banerjee, 2008: 62, emphases in original)

While the aims are laudable, critics dismiss CSR as nothing more than 'smoke and mirrors' (Prasad and Holzinger, 2013), given that its aim is to increase loyalty and brand reputation and thus ultimately achieve financial returns for the organisation. There is evidence that an increasing number of consumers will support firms that can demonstrate environmental and societal responsibility (Hoffmann and Hutter, 2012), and conversely, punish those that are seen to behave irresponsibly.

What the focus on sustainability means for marketers and marketing ethics

There are several dimensions to sustainability. Economic sustainability is important for the long-term survival of organisations. They must generate sufficient revenue to cover their current and likely future costs and provide a financial return for their owners or shareholders.

There is a much wider definition of sustainability, focused on environmental sustainability, which impacts on the way all enterprises, commercial or non-profit, operate and that has the potential to change the way in which enterprises operate. It is based on the recognition firstly that continued pursuit of economic growth based on the exploitation of finite resources is unsustainable (Burroughs, 2010; Kilbourne and Pickett, 2008). Secondly, there is increasing recognition that human activity has disrupted many of the ecological systems on which people depend. For example, it is estimated that '60 per cent of ecosystem services, involving climate regulation, fresh water provision, fisheries and many other services were either being degraded or used unsustainably' (Assadourian, 2010: 187).

There is not, however, recognition – let alone clear communication – of what action should be taken to address these issues and by whom. Closely linked to discussions of environmental sustainability is the concept of externalities. These may be positive or negative, and refer to the losses or gains to individuals, society or the environment as the result of economic activity, such as **production** of goods, by another party. Examples may be air or water pollution as a result of agricultural or industrial production. The producers do not 'pay' for the pollution created, but others, such as those with breathing difficulties suffer from the effects of poor air quality and swimmers (and marine life) suffer from the effects of water pollution. As noted in the previous section, these problems are not captured in GDP measures.

Consider the four definitions of sustainability below. The first two are focused on externalities; the third considers both inputs into production and externalities resulting from that production. The fourth definition encompasses economic sustainability as well as production inputs and externalities, including the effects on society as well as the environment.

> A way of doing business that creates profit while avoiding harm to people and the planet. (Centre for Sustainable Enterprise cited in Connelly et al., 2011: 86)

> Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. (World Commission on Environment and Development, 1987; cited in Chabowski et al., 2011: 55)

> Consumption that can continue indefinitely without the degradation of natural, physical, human and intellectual capital. (Costanza, cited in Crittenden et al., 2011: 72)

> Sustainability ... translates into a 'triple bottom line' responsibility, with the implication that assessment of business results should be based not only on economic performance but should take into account the environment and social impact as well. (Sheth et al., 2011: 21).

These definitions bring with them a number of complications that deserve careful consideration. Reducing the demand for products and services ('**demarketing**'), rather than encouraging this, presents a significant challenge for marketers, given its focus on meeting consumer needs. Widespread reduction of demand for products or services could trigger the factors that are usually seen during recessions, as discussed in the section 'Standard definitions of marketing' above.

Even if demand levels remain static or even increase, organisations must consider environmental sustainability in conjunction with economic sustainability, with implications for the sourcing of raw ingredients, production processes and overall market orientation. From the organisational perspective, there are several reasons for a company to support environmental sustainability. While some organisations still see the issue of sustainability as being at odds with profitability, there is ample evidence that a sustainability focus leads to both organisational and technological innovations that yield positive returns. For example, a commitment to environmental sustainability has resulted in companies such as General Electric with significant cost savings through greater efficiency, reduced waste and increased appeal to some market sectors (Connelly et al., 2011). There is also the added issue of changing consumer perceptions about sustainability as the following mini case study illustrates.

Mini case study 1.1 Consumer pressures on corporations

Consumer pressure has also forced companies to improve their environmental sustainability practices. For example, an integrated social media campaign evolved in 2010 in response to a Greenpeace article criticising Nestlé for sourcing palm oil (used in confectionery products such as Kit Kat) from non-sustainable sources and accused them of depleting areas of rainforest that were a habitat for orangutans (Coombs and Holladay, 2012).

An orchestrated protest campaign led by Greenpeace followed, including a spoof Kit Kat commercial highlighting the plight of orangutans. Several versions of the advertisement in different languages and coverage of protests outside Nestlé offices can be found on YouTube.

While Nestlé officially responded to the criticism by reiterating its support of sustainable sourcing and suspending the supplier whose actions were questioned, a badly managed response by Nestlé to criticism on their Facebook page significantly increased the campaign's publicity (Day, 2011), resulting in over 1.5 million viewings of the Greenpeace commercial and over 200,000 emails to the company demanding that they change to sustainably sourced palm oil. The attempts by Nestlé's Facebook page manager in deleting any negative messages not only increased anger, they also gained news media coverage which continues today.

While Nestlé changed its palm oil sources in response to the pressure, claiming that it had merely accelerated plans to move to sustainable supplies, its actions in initially trying to stifle criticisms led to scepticism and may have created reputational damage, the magnitude of which has yet to be made public.

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Pressure is being maintained by organisations such as Greenpeace and Sustainable Brands to get other major manufacturers to move to sustainable sourcing. In late 2013, Unilever pledged to change to traceable, sustainable sources of palm oil (1.5 million tons annually) for its products by the end of 2014 (Hower, 2013).

Questions to consider

How is the growth of consumer pressure groups likely to impact on the **supply chain** – i.e. all the organisations and individuals involved in the production and distribution of raw ingredients, parts and finished products – of other organisations?

What actions should organisations take to:

a) ensure the sustainability of their supplies?
b) ensure the organisation is able to respond credibly to any criticisms?

Consumers' roles in sustainability

There are two parties to a marketing exchange – the marketer and the customer or consumer. Consumers' perspectives are complex: if all things are equal, it is claimed that most consumers will select environmental sustainability, but the decision process becomes more complex when price, quality and status dimensions are considered (Sheth et al., 2011). If the comparison and purchase process is too complex, environmental sustainability criteria are likely to be disregarded (Jones et al., 2008). The issues surrounding consumer perspectives of ethical issues in relation to their own purchase and consumption habits are addressed in Chapter 6. Further research is needed into how these factors vary across population segments and in the types of potential programmes that will engage the public in the issues in order to change individual and community behaviours sufficiently to adapt to changing environmental conditions and more sustainable societies.

MARKETING ETHICS IN THE TWENTY-FIRST CENTURY

The preceding sections have illustrated the much wider extent of ethical issues facing marketers. At this point, we need to be clear regarding what we mean by marketing ethics. To answer this, we need to work through from a general definition of ethics, through to business ethics, and then finally to marketing ethics specifically. Unfortunately, there is no single definition of ethics – different disciplines have provided a range of definitions over time and the advent of the Internet has seen definitions multiply. Many of these definitions are either abstract or refer to 'right' versus 'wrong' decisions, but these latter definitions do not recognise that there may be different perspectives (Lewis, 1985).

Ethics definitions

In terms of ethical choices that may be encountered in everyday life, the following examples may help to illustrate the type of issues covered by ethical decision making:

> Ethics is about norms and values of a certain seriousness, about standards and ideas, i.e. ones that people cannot easily neglect without harming others. (Harvey, 1994: 15)

> [Ethics are] principles, norms and standards of conduct governing an individual or group. (Treveno and Nelson, 2004: 12)

A more expansive definition that captures some of the challenges within ethical dilemmas is:

> Typically defined as the study of standards of conduct and moral judgment. It is particularly useful to us when it helps us to resolve conflicting standards or moral judgments. It is not as simple as deciding what is right and what is wrong. The toughest ethical dilemmas arise when two seemingly right principles are in conflict. (Andreasen, 2001: x)

These definitions imply some sort of explicit governance mechanism, but this does not operate in the formal manner that the legislative system uses. Transgression of ethical norms may result in nothing more than mild criticism from colleagues – or it may result in major adverse media coverage, with potentially damaging effects on company and brand reputations.

Link between ethics and religion/values

While it is assumed that ethics and religion are related, past research has provided mixed conclusions about the exact nature of that relationship. Formal and informal norms, values and beliefs are contained in the teachings of most major religions (Conroy and Emerson, 2004; Parboteeah et al., 2008). Yet while these guides exist, some studies have found no difference between religious and non-religious people with regard to dishonesty or consumer purchasing behaviours (Vitell, 2009).

Business ethics

Business ethics are the values, standards and principles that apply within both commercial and non-commercial business activity. Non-commercial businesses include the not-for-profit/charity sector, governmental sectors, cause-related marketing and social marketing. The challenges confronting these sectors will be discussed in later chapters.

Commercial business ethics has a long history, with the Code of Hammurabi more than 1700 years ago often cited as an example of an early ethics code. The rulers of Mesopotamia (roughly modern day Syria and parts of its surrounding countries) attempted to set fair prices for the sale of goods. The Greek philosopher Aristotle wrote several texts on various aspects of ethics and many major religions provide guidance on business conduct (see, for example, the Christian Bible, the Islamic Koran and the Jewish Talmud) (Marcoux, 2006).

There is now increasing recognition of the difference in ethical perspectives across cultures regarding acceptable versus unacceptable conduct and also methods for dealing with

transgressors (Svensson and Wood, 2003). Cross-cultural perspectives will be discussed in more detail in Chapter 3; suffice it to say here that these issues are important and need to be understood within the context of marketing strategy decisions.

Ethical failures in business are frequently blamed on a lack of knowledge about ethical issues – and often educational institutions are blamed for not ensuring that students have an understanding of ethics. The expectation that ethics education provision can somehow result in a major reduction in corporate wrongdoing is, of course, unrealistic. A university is only one of the many institutions that students will encounter and 'no instruction can suffice to turn a scoundrel into a virtuous human being' (Bok, 1974: 7). The organisational environment in which graduates gain employment will have a substantial impact on their subsequent behaviour (Marburg, 2003), with the potential for conflict between personal ethical standards and those that might be perceived as acceptable or expedient within a specific organisation. Indeed, it has been noted that many of those responsible for recent corporate scandals hold MBAs 'from prestigious business schools' (McAlister, 2004: 55). This concept can be extended to suggest that an ethical individual will struggle in an amoral company, as will an ethical company in an amoral business environment (Spence and Van Heekeren, 2005).

Marketing ethics

Ethics are seen as an important part of marketing decision making. The perception of what was ethical to market has changed considerably over time. For example, some historical articles describe in detail the marketing of slaves and the way these 'human assets' were recorded in financial statements ('human capital accounting') (Steen et al., 2011). In the twenty-first century, we find the concept repugnant, but up until the mid-nineteenth century, it was an acceptable business practice in many countries.

More recently, tobacco advertising began to be restricted only in the mid-1960s, being totally banned in many countries only in the 1980s and 1990s – and many developing countries do not yet have such bans in place (see also the discussion in Chapter 3). Consider the examples of historical advertisements shown in Figure 1.1, in terms of the messages that can be conveyed by marketers versus what we now know about the negative health impacts of smoking resulting in marketing messages being restricted in some countries.

Figure 1.1　Historical tobacco advertisements

Source: From the collection of Stanford University (http://tobacco.stanford.edu)

Mini case study 1.2 Did predatory marketing tactics contribute to the global financial crisis?

There are those who suggest that aggressive or **predatory marketing** tactics by the financial sector contributed to (some would say directly caused) the Global Financial Crisis that began to impact on many economies in 2007. The problems began with an increase in subprime lending, i.e. lending via credit, especially via adjustable-rate mortgages, to people whose profiles indicated they were likely to have difficulty in making scheduled repayments of their loans. A high level of defaults on mortgages has been shown to have been a significant contributor to the Global Financial Crisis (Hawtrey and Johnson, 2010). After several years of steady increases, house prices began to fall. At the same time, interest levels increased, making it difficult for people to either refinance loans at what had been expected to be lower interest rates or to keep up with their monthly repayments.

While the problem started in the USA, global investors who had purchased securities backed by mortgages were impacted, leading to a reduction in the purchase of these securities and a tightening of credit around the world. Economic growth stalled and several countries went into recession, with substantial job losses, pushing families into poverty. Some pension funds were badly affected, impacting on current and future retirement incomes. Industry lost output both from the reduced workforce, and from reduced demand for products and services as people lost the ability to spend – or focused on reducing debt rather than spending income (Hawtrey and Johnson, 2010; McKibbin and Stoeckel, 2010).

Questions to consider

While many economies have recovered or are recovering, the question remains: Is it ethical for the financial sector to target consumers who may struggle to pay debts from credit card use or from mortgages?

What is the responsibility of the consumer in making the decision to take on debt?

THE RELATIONSHIPS BETWEEN ETHICS, LEGISLATION, REGULATION AND SELF-REGULATION

Legislation

We need to be clear about the relationship between **legislation**, **regulation** and ethics. Legislation refers to laws – these are universally binding and those who break laws will be prosecuted: penalties may involve fines, jail terms, or orders to cease specific activity which may prevent an organisation from continuing to trade.

Few organisations deliberately violate laws as the penalties, both legal and reputational, are clear. There are exceptions such as major corporate financial failures, for

example WorldCom and Enron (Conroy and Emerson, 2004). These scandals illustrate the international financial and reputational costs to the organisations, their employees and their investors. The situation is not so clear with respect to regulation where industry itself is responsible for drafting, maintaining and enforcing regulations as the next section will show.

Regulation takes several forms, but is always subservient to legislation, being used to implement legislation and is usually 'local' in focus, such as applying only to a specific industry sector. Regulation can never be used as an alternative to law, or to supersede legal rulings. It may be enforceable by a governmental authority, or by industry bodies, i.e. self-regulation.

Self-regulation effectiveness

Many industries, including marketing, are self-regulating through the various industry associations that set desired standards for the behaviour of their members. In addition, the marketing communication/advertising sectors are self-regulating, setting their own rules. However, unlike more established professions, there is no means of taking action against those who transgress. For example, an accountant or doctor found to have committed a major breach of ethical provisions could be barred from practising.

The merits of **self-regulation** have been vigorously debated for decades. It has been noted that 'it is too readily assumed that if the market fails, only government regulation can correct its shortcomings' and that 'there are readily observable limits to what regulation, as a form of societal control, can achieve' (Boddewyn, 1989: 20). This raises questions, however, regarding what self-regulation can potentially achieve, whether it is, in reality achieving what can be reasonably expected of it, and if not, what changes to prevailing self-regulatory models should be investigated. Table 1.1 summarises the main arguments put forward for and against self-regulation principles within the context of marketing communication.

The example of advertising and obesity

There is agreement that most countries face a growing 'obesity' epidemic with substantial associated health problems (Stein and Colditz, 2004). Despite considerable debate, there is little agreement regarding the exact causes of the problem, let alone possible solutions; however, restrictions or outright bans on advertising to children are regularly proposed (Jones et al., 2003). There is a growing body of evidence that the influence of marketing activity on dietary and lifestyle choices is small in relation to a number of other factors such as family influence and socio-economic factors (Livingstone, 2005) and that banning advertising of foods perceived to be of low nutrient value and/or foods targeted at children would be ineffective in reducing childhood obesity.

In spite of this, there remain lobbyists who maintain that such bans are central to any serious strategy to reduce the incidence of advertising-related chronic diseases such as obesity, diabetes and cardiovascular diseases. Given the current environment in which policy makers are pressured to be seen to act to remedy increasing obesity levels, it could be expected that marketers would ensure marketing communication programmes

Table 1.1 Overview of arguments for and against self-regulation (adapted from Schumacher et al., 2005)

For	Against
Industry-specific expertise.More effective than legislation which lacks 'nuances derived from an intimate knowledge of business problems and concerns'.	Many decisions come too late, for example, if an advertisement is ordered withdrawn after a campaign is completed, there is effectively no sanction effect at all.
The letter, but not the spirit of legislation, can be observed – self-regulation allows for both. Marketers cannot use technicalities to evade action.	Penalties are often minor, if they are imposed at all; the regulatory provisions are a 'toothless tiger' (Howarth, 2004).
Lower implementation costs and higher effectiveness (public goods).Costs are met by industry with no costs to the complainant or taxpayers.	Cost to industry members will be too high. Free riders as not all marketers/advertisers fund the system; also no penalties on media or advertising agency in the event of a complaint being upheld.
Less adversarial.	Certain factions within the industry will hijack the process for their own ends including using the process against competitors.
Allows members of the public and small companies (for whom litigation may not be economically viable) to challenge the actions of larger companies.	Expertise of experts is used for the benefit of industry rather than the public.
Forestalls more onerous government-imposed regulation.	Operates only when there is a real threat of imminent legislation.
Flexible – can be adapted to deal with new media and easily revised/updated to accommodate new issues.	Danger of collusion.
Protects the right of free speech.	

that demonstrated exemplary responsibility and adherence to self-regulatory principles in order to ensure that their right to self-government was preserved. Given that breaches of the regulatory provisions would indicate that behaviour, albeit from a small number of advertisers, it might be suggested that the existing regulatory provisions be reviewed and strengthened to ensure compliance is obtained – and punitive action against attempted offenders made possible. The alternative for industry is that self-regulation will no longer be a privilege afforded to them and legislative action to restrict their activities may therefore be imposed (Howarth, 2004).

Self-regulatory structures: the example of marketing communication

The advertising industry in many countries is governed by numerous consumer protection laws that apply to all sectors of society. Below the 'layer' of broad legislation,

the industry is, in such countries, self-regulating. In these countries, the various communication industry sectors, including advertisers, advertising agencies and the media, have co-operated in drafting Codes of Practice. A major regulatory body, usually titled as an 'Advertising Standards Authority', is established to oversee the processes by which advertising conforms to both the letter and the spirit of the relevant codes.

Supporting this structure, joint industry bodies may exist to maintain advertising standards across specific media such as television. These organisations provide an advisory service, interpreting both relevant statutes and industry codes and applying them to the scripts for proposed commercials as well as 'vetting' final completed commercials prior to their being screened for the first time. Additional restrictions may also apply. For example, commercials that are accepted for screening are given classifications that determine their time placements within programme schedules (e.g., a specific commercial may not be screened before 8.30pm). However, we will show in later chapters that this system lacks accountability.

An additional indirect restriction on advertising is the quota of advertising on electronic media. In many countries, no advertising is permitted in programmes aimed at pre-school aged children; advertising in other children's programmes is restricted to 10 minutes per hour – a move some critics see as an arbitrary restriction on the right of commercial free speech and inconsistent with the total absence of quotas in print media.

Based on an extensive review of the literature, some have contended that self-regulation is the most efficient tool for curbing excesses (Abernethy and Wicks, 2001). However, it should be stressed that programme content is not subject to the same level and type of regulation, and given the concerns noted regarding food portrayal in programmes versus commercials, this is an aspect the media could very well address. This is problematic for countries buying the bulk of their television programmes from overseas.

There is an apparent contradiction between advertising practitioners' acknowledgements that they engage in various forms of **stealth marketing** coupled with, at times, actively seeking to breach regulatory provisions in order to garner publicity and practitioners' apparent disbelief that tighter regulation might be warranted (Cronin, 2004). At best, self-regulatory provisions may be extended to cover evolving media forms. A reality that must be faced is that self-regulation will be replaced by more stringent legislative action likely to restrict marketing activities for specific product categories and/or consumer groups (McAlister, 2004). The potential inadequacy of current self-regulatory systems to adequately oversee and regulate hybrid media activity (Thompson, 2005) is acknowledged in the practitioner literature. Research in related areas such as **advergames** (Dahl et al., 2008) has shown that marketing communications activity in media not subject to formal advertising codes lacks the responsible approach that could reasonably be expected, and that much of this activity would be substantially in breach of the codes that apply to mass media should those codes be extended to other media forms.

It has been observed that marketers engaged with youth-oriented products readily criticise the overall industry but fail to recognise or challenge potential ethical issues stemming from the actions of their own organisations. It is also suggested that this, while not an indicator of deliberate attempts to deceive, has led to a failure to even consider

the ethical dimensions of marketing activity (Geraci, 2004). This lack of perception has resulted in inaction on key ethical issues such as the link between food and beverage marketing and childhood obesity.

COMPETING THEORETICAL FOUNDATIONS AND FRAMEWORKS

Think points

How might we use Aristotle's practical wisdom (**phronēsis**) to help understand how, when, where and in what way (Messikomer and Cirka, 2010: 58) to apply theories, frameworks and other factors in our ethical decision making?

Common frameworks

There are several competing ethical frameworks available, including **deontology** (focused on intentions) and **teleology** (focused on outcomes), each with different values (Carter et al., 2011). The frameworks most commonly cited focus either on intentions (often termed deontology, from the Greek word for 'duty') or consequences (often termed teleology, from the Greek word for 'ends', but also referred to in the literature as **consequentialism**). Teleology is also frequently broken down into **utilitarianism** and **egoism** options (Hoffman et al., 2001), with the latter not used in the business context (see the definitions that follow this section). The selection of an ethical framework will impact on the development of marketing strategy. For example, activity that was driven by good intentions without potential negative consequences being considered would be acceptable under deontological reasoning but not under teleological reasoning. While space prevents a detailed analysis of all possible frameworks, the next section gives a brief overview of the main provisions of commonly used frameworks, together with a short commentary on the implications for marketing interventions of the adoption of the different frameworks.

Overview of common ethical frameworks (based on Eagle et al., 2013; originally adapted from Ferrell and Fraedrich,1994: 54)

Deontology (based on the work of eighteenth-century philosopher Immanuel Kant)

This framework focuses on intentions and holds that there are ethical 'absolutes' that are universally applicable, with the focus on means or intentions. Under deontology, it is accepted that actions intended to do good may have unintended negative consequences, such as creating fear or distress. This is contrary to teleological beliefs that interventions should do no harm, particularly to vulnerable groups who may not be the target of the activity.

Teleology/consequentialism

Teleology/consequentialism focuses on the outcomes or effects of actions and is usually divided into two sections:

a) *Utilitarianism* in which behaviour is ethical if it results in the greatest good for the greatest number, with a recent suggestion that utilitarianism could also be interpreted as the least harm for the greatest number of those affected (Payne and Pressley, 2013).
b) *Egoism*, in which the benefits to the individual undertaking action are stressed and the impact on other people is deemphasised.

Utilitarianism presents challenges when comparing alternative courses of action with different levels of potential impact, for example, a programme that provides minor benefits to all, versus one that provides major benefits to many but no impact or negative impact on others. It also raises questions in relation to who has a mandate to decide whether any harm, or what level of harm might be acceptable. While stigmatising some groups would be unacceptable for many, it is suggested that it can legitimately be used for activities such as reducing smoking rates (Bayer, 2008).

Relativism

Under this framework, there is no universal set of ethical principles as individual cultures, societies or social groups may have their own ethical frameworks; no set of principles is superior to others and no group should judge the ethical standards of other groups. Reasoning under this framework ignores the possibility that:

a) a group's principles are based on incorrect information; and
b) the implications of a group's principles being repugnant to other groups (e.g. sexism or racism).

Two closely related, but less widely used frameworks are:

Social Contract Theory (Kimmel et al., 2011) – this framework posits that an implicit contract exists between the state and/or organisations and individuals or groups regarding rights and responsibilities as a member of society.

Distributive Justice – proponents of this framework hold that there should be assignments of benefits and burdens from all activity according to some standard of fairness.

Given that contracts are implied rather than stated explicitly, there is no shared understanding of which rights and responsibilities and fairness measures apply to the various parties. An additional framework covered in the academic literature is:

Stakeholder theory – holds that there are groups beyond shareholders to whom an organisation has obligations; however which groups should be included as stakeholders is open to debate. Few would argue that workplace conditions for those employed by an organisation should be included, and many high profile brands, including Nike and some major retailers have been heavily criticised for contracting the manufacture of their products to countries where the

working conditions and wage rates would be totally unacceptable in developed economies, or where child labour is used in their manufacture (Bair and Palpacuer, 2012; Gilbert and Rasche, 2008). Whether a 'socially responsible' label on clothing would be supported by consumers, or whether consumers would be prepared to pay a premium for items that could be certified as having been made in factories that provided non-sweatshop working conditions has yet to be determined. Additionally, exactly how an organisation can and should take into account the interests of other potential stakeholders remains open to debate. (Gilbert and Rasche, 2008)

Some authors suggest there is no universal set of ethics that can apply across all sectors of society due to the increasing diversity of society and different perspectives may be held within cultures or groups and therefore each group's ethical perspective should be held to be equally valid. The implications of cross-cultural ethics will be discussed further in Chapter 3. A further problem is the lack of a clear and unambiguous interpretation of the frameworks. For example, fear-based interventions, commonly used within social marketing activity such as road safety campaigns, would be acceptable under deontological reasoning given their positive intentions. If they caused distress, teleological principles would render the approach unacceptable. Indeed, as several social advertisers have found to their cost, marketing communication regulators in many countries appear to operate under teleological principles, resulting in the advertising component of an intervention being withdrawn from the media entirely, or requiring modification before being able to be rescheduled (see, for example Advertising Standards Authority, 2012).

CODES OF ETHICS

We note the recent call for a 'transcendental code of ethics' for all marketing professionals (Payne and Pressley, 2013) but suggest these authors grossly oversimplify the magnitude of the task as they merely list broad principles and present an authoritarian approach, including 'the inability of the marketing decision maker to understand that there may be ethical components to a decision being made must be overcome' (2013: 69) without considering what ethical resources might be needed, how support for development and implementation of appropriate resources, and what outcomes might be achieved as a result. Codes of Ethics (CoE), together with support from professional associations, possibly including specific ethics training, may thus help educate inexperienced practitioners and sensitise them to issues they may face in the future (Eagle et al., 2013), but they are not panaceas – there is substantial evidence that the existence of a CoE will not of itself prevent unethical behaviour.

One of the challenges for marketing is that, unlike for members of an established, recognised, profession, there is no mechanism whereby members potentially could lose the right to practise in their profession if found guilty by their peers of a significant transgression of professional ethics. Marketers are not subject to the same level of peer control; there is no requirement that they be licensed and membership of sector organisations is voluntary. The lack of overarching codified legislation and thus the inability to enforce standards or codes in the way that established professional groups are able to do are missing (Hunt and Vitell, 2006).

We have included the links to a number of marketing industry codes of ethics as additional resources at the end of this chapter; they are useful in terms of comparison of how useful they might be for a marketer facing an ethical dilemma. Further research is needed into which types of ethical resources would be most useful to practitioners at all levels in marketing strategy and tactics decisions.

SUMMARY

The discussion in this chapter has highlighted the complexity of ethics within marketing, and their link to wider social, economic and environmental factors. The focus on 'giving the customer what they want' may be at odds with the increasing impetus towards a greater sustainability focus in all spheres of activity impacting on consumers and organisations. The greater awareness of sustainability issues among consumers and their willingness to both reward companies who act responsibly and to punish those that do not will impact on future marketing activity.

There are thus increasing reasons for organisations to act ethically in all aspects of their operations, not just marketing. Unfortunately, breaches of ethics and of consumer trust reoccur, with the ability of the industry to effectively self-regulate itself in an increasingly complex communications environment being increasingly questioned.

While there are a number of ethical frameworks that are frequently cited in both academic and practitioner literature, guidance on which framework should be applied under specific circumstances is lacking and many frameworks remain statements of hope and good intent rather than offering clear guidance for the resolution of specific ethical problems. The lack of enforceable codes of ethics for the industry also remains problematic and this represents an area in which further research is needed.

Case study   Product recalls in the auto and other industries

A test of an organisation's ethical stance occurs during times of crisis. The 'gold standard' of exemplary ethical behaviour is the action of Johnson & Johnson (J&J) in the USA in its handling of the recall of its Tylenol (headache remedy) product in response to a cyanide-poisoning crisis in 1982. The then CEO of J&J had focused on crisis management provisions to ensure that active commitment to the company philosophy statement and the ethical principles it implied would be maintained even in the event of a major crisis situation. This made the subsequent swift and effective product withdrawal, coupled with full, honest discussion of the company's actions in the media, an uncontested course of action (Anonymous, 2003), which, while it cost the company some $US100 million in lost earnings in

the short term, allowed it to rebuild and increase its market share in the long term and 'reinforce the company's reputation for integrity and trustworthiness' (Pearson and Clair, 1998: 61).

This case stands in marked contrast to the actions of the automobile industry, starting with the now infamous Ford Pinto case where Ford rushed the Pinto into production in 1971 to try to combat strong competitive pressures from other brands, even though they were aware that rear-end collisions would rupture the car's fuel system, potentially causing the gas tank to explode. Several deaths from rear-end collisions and resultant fires lead to the first ever criminal homicide charge against an American company. Documents produced in court showed that Ford had actually conducted a cost-benefit analysis, weighing likely damages claims due to injury or death against the cost of modifying all cars (at $11 per car). While the criminal homicide charge was dismissed, Ford subsequently paid out millions in out-of-court settlements and mandatory safety standards were eventually introduced despite intensive lobbying to prevent or delay their introduction (Hoffman, 1984).

More recently the case of Ford/Bridgestone (Govindaraj and Jaggi, 2004; O'Rourke, 2001) erupted in 2000, although first reports of problems with Bridgestone tyres had surfaced in 1996. In 2000 Ford unilaterally recalled 13 million tyres, at a cost of US$2.1 billion, after pressure mounted on the company to investigate increasing reports of faulty tyres. The affair lasted for more than five years after the product recall, and resulted in both sides blaming each other publically for the faulty tyres, which resulted in more than 270 deaths and over 800 injuries (BBC News, 2005). The affair finally came to an end in 2005, but not after a massive loss in confidence in both companies.

In early 2010, Toyota announced a number of recalls, totalling over 8.5 million cars across a wide range of models, due to several mechanical problems that were linked to road accidents, some of which were fatal (BBC News, 2010). It remains to be seen as to what the long-term impact on the company will be.

Volkswagen incurred a considerable amount of negative media coverage during 2009–2013 and adverse customer sentiment for differing responses across countries in response to gearbox problems and diesel injectors. For example, Volkswagen Australia refused to issue recalls when Volkswagen of America had done so (Fyfe, 2013). A worldwide 2.6 million vehicle recall in late 2013 for possible fuel leaks, electrical faults and gearbox problems has been attributed in the news media to Volkswagen 'taking shortcuts in its bid to overtake Toyota to become the world's biggest car maker by 2018' (Dowling, 2013: 1). Toyota subsequently made a US$1.32 billion payment to the US Justice Department in early 2014 after admitting it misled consumers, concealed safety issues and made deceptive statements about them (Cowan, 2014).

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Questions are being asked about why the auto industry is subject to these types of ongoing problems, and why European and American producers have recall rates that are nearly three times greater than those of their East Asian counterparts (Bates et al., 2007).

Product recalls are not exclusive to the automotive industry. Recent recalls have included toys (Freedman et al., 2012). A 2013 'horsemeat scandal' involving deliberate mis-description of beef burgers and ready meals in the UK led to major product recalls by supermarket chains including Tesco, Iceland, Aldi and Lidl, as well as catering companies, hotel and fast food chains, with similar problems being subsequently found in several European countries. The problem has led to calls for greater food traceability provisions and tighter regulation of food supply chains (Van Vark et al., 2013).

Apart from the direct costs in a product recall, there are also substantial direct and indirect costs associated with such a crisis (Jarrell and Peltzman, 1985); indirect costs will be substantially higher than the direct costs of a product recall, particularly as a result of the negative impact on a firm's goodwill, to the extent that negative externalities for competitors may be larger than those of the company producing the recalled product. These financial strains can be so severe that many companies will need to seek bankruptcy protection when faced with both the direct recall costs and the resulting fines and product-liability claims and/or lawsuits as a result of faulty products (Kwon, 2000).

Often consumers will react to a product recall with total product avoidance, often beyond the affected products. This product avoidance may well last substantially longer than the crisis itself, and therefore remain a major obstacle long after the recall is finished. As a result, after a recall, a company may well struggle to recover its lost market share (Dawar and Pillutla, 2000; Siomkos and Kurzbard, 1994). However, despite these potentially devastating effects of reactive crisis communication, most firms remain ill-prepared to handle a potential crisis effectively – and some argue if most companies face a crisis at best they react ambivalently (Dawar and Pillutla, 2000).

Consumers' interpretations of a firm's response to a product recall crisis are heavily dependent on their prior expectations about the firm (Siomkos and Kurzbard, 1994); a company that is regarded as generally a 'good' company may well find it easier to communicate their point in a crisis situation than a company that is perceived as deceptive or has a poor rapport with the public. Firms with weaker consumer expectations may also have to undertake more brand support either during the crisis or after the immediate crisis is over, for example with extensive advertising and sales promotions, in order to maintain or restore consumer brand equity and **trust** (Kwon, 2000). Recovery rates are an indicator of the success of strategies and tactics put into place to deal with a crisis (Kabak and Siomkos, 1992), as seen via Tylenol. Unfortunately, data from the automotive industry regarding the impact of their recalls are not available.

Brand equity is a term that is frequently used, but often in different ways. There are two distinct ways in which brand equity is measured. The first is financial – the

value of a brand as a specific asset when it is sold or included on a balance sheet. The second way in which the term is used relates to customer perceptions and is more relevant here. Consumer-based brand equity is a measure of the strength of consumers' attachment to a brand. Coupled with this are descriptions of the associations and beliefs people have about a brand, brand loyalty and willingness to pay the same price or more than for other brands. Brand equity is therefore closely linked to measures of past satisfaction and intentions to repurchase and can be adversely affected by crises or prolonged negative publicity.

Questions to consider

How should companies develop ethical procedures to be implemented in the event of a product recall or other crisis?

How should they monitor, and respond to, media and consumer comments on any such activity?

Further Reading

Philosophy

You may want to go right back to original philosophies, although some of these are very 'heavy' reading! They are also listed in the supplementary resources at the end of the text.

Aristotle (approx. 350 BCE) *The Ethics of Aristotle* (available as a free ebook from sources such as Project Gutenberg)

Kant, I. (1785) *Groundwork for the Metaphysic of Morals*. Available at: www.justiceharvard.org/resources/immanuel-kant-groundwork-for-the-metaphysics-of-morals-1785/ (accessed 29 June 2015).

Mill, J.S. (1863) *Utilitarianism* (available as a free ebook from sources such as Project Gutenberg)

Rawls, J. (1972) *A Theory of Justice*. Oxford: Clarendon Press.

Business ethics-focused readings

Craft, J. L. (2013) 'A review of the empirical ethical decision-making literature: 2004–2011', *Journal of Business Ethics*, 117: 221–59.

Elm, D.R. and Radin, T.J. (2012) 'Ethical decision making: Special or no different?', *Journal of Business Ethics*, 107(3): 313–29.

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Marketing ethics-focused readings

Harrison, P. and Gray, C. (2010) 'The ethical and policy implications of profiling "vulnerable" customers', *International Journal of Consumer Studies*, 34(4): 437–42.

Rodford, P. (2009) 'APACS response to "irresponsible lending? A case study of a credit industry reform initiative', *Journal of Business Ethics*, 86(4): 535–9.

Schlegelmilch, B.B. and Öberseder, M. (2010) 'Half a century of marketing ethics: Shifting perspectives and emerging trends', *Journal of Business Ethics*, 93(1): 1–19.

Van den Bergh, J.C. (2011) 'Environment versus growth—A criticism of "degrowth" and a plea for "a-growth"', *Ecological Economics*, 70(5): 881–90.

Websites

Sustainable Brands: *http://www.sustainablebrands.com/about*

Codes of Ethics (this is not a comprehensive list – we have selected a range of marketing organisations to illustrate the differences in the format, content and detail within their various codes).

American Marketing Association: *http://www.marketingpower.com/AboutAMA/Pages/Statement%20of%20Ethics.aspx*

Business Marketing Association: *http://www.marketing.org/i4a/pages/index.cfm?pageid=3286*

Chartered Institute of Marketing: *http://www.cim.co.uk/about/mktgstandards.aspx*

European Marketing Confederation: *http://www.emcq.eu/index.php?page=code-of-ethics*

European Society for Opinion and Marketing Research (ESOMAR): *http://www.esomar.org/publications-store/codes-guidelines.php*

Market Research Society: *https://www.mrs.org.uk/standards/code_of_conduct/*

Mobile Marketing Association: *http://www.mmaglobal.com/node/1563*

Sales and Marketing Executives International: *http://www.smei.org/displaycommon.cfm?an=1&subarticlenbr=16*

The Incentive Marketing Association: *http://www.imaeurope.com/code-of-ethics/*

The Marketing Association of Australia and New Zealand: *http://www.marketing.org.au/esomar.aspx*

You may also want to search for corporate codes of ethics from a range of organisations.

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American Marketing Association (2008) *The American Marketing Association Releases New Definition for Marketing.* Available at: http://www.marketingpower.com/aboutama/documents/american%20marketing%20association%20releases%20new%20definition%20for%20marketing.pdf.

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BBC News (2005) *Bridgestone ends Ford recall row.* Available at: http://news.bbc.co.uk/1/hi/business/4335324.stm.

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