of life. Mandatory testing would give the states, and the parents, a way to ensure that the students are performing at a level consistent with their own abilities, and consistent with the abilities and performance of their public and private schooled peers. It would give the parents and the state a way to ensure that the children who should be college bound are being prepared for that path, or at least, it would ensure that the parents are aware of their children’s capacity for college level work. Periodic visits would open the door to college and career counseling, of benefit to both the children and their parents. They would give the state a window into the quality of home life, and a way to monitor signs of abuse as well as immunizations. The sanction for failure to comply with minimal curriculum, content, visitation, and testing requirements would simply be enrollment in a certified private or public school. The benefits of homeschooling are now protected through legalization of the practice. Deregulation, however, serves no one’s interests and harms many. Many of the most serious harms could be prevented through its responsible regulation.


### Insider Trading: A Moral Problem

Alan Strudler

Insider trading is a crime that can have sensational results. Its perpetrators risk finding themselves behind bars for many years and vilified in popular opinion, while their firms and the people heavily invested in them risk financial ruin. Even so, doubt may be raised about our understanding of insider trading, a doubt that should prompt concern about the justice of insider trading prosecution and about the harsh moral judgments people often make of insider traders. The doubt comes from trying to identify the moral wrong in insider trading.

Perhaps the most influential insider trading case is *SEC v. Texas Gulf Sulphur*, in which officers of Texas Gulf Sulphur learned of their company’s rich ore strike in Canada and traded on this information before the news became public. These officers, who engaged in securities transactions on the basis of material, non-public information, are paradigm insider traders. It is
clear that they committed a legal wrong. We will find more challenging the matter of identifying the moral wrong in their conduct.

Harm
The argument from harm maintains that insider trading is wrong because of the social harm it causes, given that we understand “causing harm” expansively, as causing a failure to attain optimal social welfare or social good.

In a securities market there are winners and losers, people who get good prices and people who get bad prices. Other things equal, the person with the best information about what is being bought or sold stands in the best position to find bargains and get the best price. Competing against corporate insiders, who possess superior information, thus increases the risk that one loses. Ordinary traders will balk at the risk of trading against insiders, and insider trading, then, will undermine confidence in securities markets and deter investment, increasing the price a firm must pay to raise capital and hindering both a firm’s development and a society’s economic growth more generally, according to the argument from harm. As a society, we have good moral reason to protect ourselves against this kind of economic harm, and laws prohibiting insider trading afford the relevant protection. On this view, insider trading is wrong because it fails a cost/benefit test, depriving us of a peculiar kind of benefit, a social good whose continued existence requires the cooperation of many people in maintaining a credible securities market.

An empirical claim forms the core of the argument from harm: that insider trading will significantly deter investment. Influential research lends some support to this claim. A leading article on insider trading compares the cost of capital (the price that firms must pay to raise money in a securities market) in (mostly developing) countries both before and after they begin enforcing insider trading laws, and concludes that because this cost generally decreases after insider trading laws are enforced, social welfare improves when insider trading diminishes. Does the article show that insider trading is socially harmful?

Its authors acknowledge that they locate no causal link between insider trading and changes in social welfare, but merely non-causal correlation. Even the best social science research, then, expresses no confidence about whether insider trading deters investment in ways that prove socially harmful. Moreover, there is good reason to wonder whether insider trading will deter investment. Securities traders are accustomed to the idea that other traders may possess advantages in information, even if it is not inside information, and hardly seem deterred by this idea. Most investors do not believe that the quality of their information is as good as Warren Buffet’s, or the stock market wizards at Goldman Sachs. If the investment public is willing to trade against Warren Buffet and the wizards at Goldman Sachs, perhaps it will not be deterred by the prospect of trading against corporate insiders, either.

In addition to doubt about the harm insider trading causes, there are other reasons for skepticism about the argument from harm: credible economic arguments purport to show that insider trading, if it causes some harm, also creates benefits; perhaps these benefits are more significant than any harms that insider trading causes. Some scholars find these benefits in the idea that insider trading facilitates getting insider informa-
tion to market quickly. Arguably when market information improves, so does market performance. One may also argue that insider trading benefits the firm and hence society more generally by providing a cheap compensation device: if a firm gives its employees the valuable perquisite of a right to trade insider information, it costs the firm nothing. An entirely different but equally plausible argument that insider trading is socially beneficial focuses on the costs of law enforcement. The argument is simple. If we as a society need not pay the costs of enforcing laws against insider trading, we save money.

There are, then, arguments both that insider trading harms us and arguments that it benefits us. Which, if any, of these arguments should prevail in our decision-making about insider trading? Scholars who examine the issue say that the economic considerations for and against insider trading seem both closely balanced and to rest on speculative assumptions. We should worry, then, about accepting either the idea that insider trading is generally beneficial or that it is harmful. There exists no measure for the magnitudes of alleged harms and benefits, and nobody knows that a reliable measure will ever emerge. So we do not know how to balance the good consequences of insider trading (if they exist) against the bad (if they exist).

Deception

Courts have always seen insider trading as a kind of fraud, viz., securities fraud. Historically, wrongful deception forms the heart of fraud. Hence, we might look to the wrong in wrongful deception as the explanation of the wrong in insider trading. Recall *Texas Gulf Sulphur*. On the deception account, they deceived shareholders by buying stock from them while concealing material, non-public information relevant to the valuation of the securities. Deception can be understood as inherently wrong, apart from any harm it causes.

The deception account of insider trading has its problems. Most salient is the elusiveness of any deception that occurs in insider trading. Recall, again, the Texas Gulf Sulphur officers. As a matter of fact, these officers were responsible for a number of mis-statements that appeared in the press and misled the trading public about their discoveries of ore, and these statements were used at trial against the officers. Yet insider trading law requires no false or misleading statement for a finding of liability. The law is clear that if corporate insiders trade on material, non-public information while silently failing to disclose the basis of their trade, their silence may ground a conviction. Even if Texas Gulf Sulphur officers had made no false or misleading statements about their ore find, they might nonetheless have been convicted of insider trading. But on what grounds? If deception is at the core of insider trading, whom do silent officers deceive and how do they do it? How can silence, saying nothing, be deceptive?

Suppose that officers have a moral obligation to inform shareholders of significant firm developments before they trade on firm stock. Then before making a trade, they have an obligation to say, if true, that there has been an important strike. By their silence, they license the inference that no new strike occurred. Had the officers discharged their obligations, shareholders would have had very different beliefs — fewer relevantly false beliefs — about the firm. Perhaps that suffices to shows that they deceive shareholders. We may distinguish between deception as it ordinarily occurs, which involves a discrete deceptive act, and a failure of candor, which need involve no discrete deceptive act. We may then criticize a firm’s officers for their failure of candor. We may say that sometimes minimal decency requires not merely that one not conceal the truth, but instead that one reveal the truth.

In a competitive business environment, however, one need not always be entirely candid. Suppose that you work for The Walt Disney Company, which assigns you the task of purchasing land for a new theme park. You need to acquire one more plot of land to complete your assignment. On that plot sits the home of a savvy used car salesman. Should you disclose to the homeowner what Disney intends to do with his land, or even that you work for Disney? If you disclose, you risk that the home owner, knowing how valuable the land is to Disney, will insist on an unfairly high price, and you will have no choice except to pay it. I suggest that although it would plainly be wrong for you to lie to the homeowner about what you will do with the land, morality does not require you to be forthcoming. Honesty does not require full disclosure in a competitive business environment, even when a failure to disclose denies benefits to others. How, then, do we know how much information a firm’s officers should disclose?

The judgment that the officers’ stock sale is deceptive, even in our expansive interpretation of that term, makes little sense unless one also finds that they fail in some duty to disclose the truth. So the deception account leaves us with a crucial but seemingly unanswerable question: what is the moral basis for this duty to disclose?
Unfairness

The argument from unfairness contends that insider traders get an unfair advantage over people with whom they engage in securities transactions and that their trades are therefore wrong on grounds of justice. The supposed unfair advantage is in their use of insider information, which stock market competitors lack. The unfairness argument looks at the comparative position of buyer and seller of stock and declares these positions unacceptable on grounds of justice.

The unfairness argument against insider trading identifies the relevant unfairness in terms of an acute inequality of information separating buyer and seller in a securities transaction. There are certainly cases, outside the securities realm, in which an asymmetry casts doubt on the legitimacy of a sales transaction. Typically, these cases involve dishonesty. Hence, if you have a car that has a massively defective engine, or if your house has a cracked foundation, it seems wrong not to disclose the fact to a prospective buyer. One might think that the asymmetry of information that separates insider traders and parties on the other end of a securities transaction is similarly problematic.

But not all asymmetries of information are unacceptable. Suppose that Edna, an engineering genius, studies internal combustion engines for years, and finds a deep design flaw in Toyota’s favorite engine. She alone knows that soon most Toyotas in the world will cease functioning abruptly, as their engines melt, creating billions of dollars of liability for Toyota, and ruining its name and stock value. So Edna short-sells the stock. Even though there is an acute asymmetry of information between Edna and those at the other end of her securities transactions, she does nothing wrong. Not all acute asymmetries of information in securities transactions present unfairness. Why, then, should one think that an acute asymmetry arising from inside corporate information in a securities transaction is a problem?

One might try to bolster the unfairness argument by identifying the unfairness in insider trading not in terms of a simple asymmetry of information between the buyer and seller of a security, but instead in terms of an asymmetry stemming from wrongly unequal access. Put more simply, the argument is that insider trading is unfair because one party trades on information stolen from the firm. The argument relies on the idea that inside information is owned by the firm. When Texas Gulf Sulphur officers use their inside information about an ore strike to get a bargain in Texas Gulf Sulphur stock, they use valuable information that belongs not to them, but to their firm. They steal something valuable, information that belongs to the firm, and hence to its shareholders. They have no right to use the information. When they do so, they act unfairly and hence wrongly.

The soundness of the argument depends on contingencies regarding certain contracts. Suppose that a firm’s board of directors, operating in a different legal regime from the U.S., legally tells managers that as a reward for their excellent performance, it grants them the right to trade on insider information. Indeed, the firm might even warn prospective shareholders of its policy to grant employees this right. It would seem that these managers do not steal anything when they trade on inside information: the owners agree to their use of the property. Thus, this version of the unfairness argument has limited scope. It cannot show that it is always wrong, either legally or morally, for insiders to trade on material, non-public information, but only that it is wrong in the absence of bona fide agreements to allow insider trading. As it stands, the argument fails to find anything inherently wrong with insider trading.

But the argument might be strengthened by showing the impossibility of bona fide agreements to engage in insider trading. There are many examples of agreements that neither society nor the courts will accept as bona fide. No matter how lucrative, we would not recognize contracts that require a person to enter slavery, even with an apparently benign slaveholder. Less extreme, we do not accept agreements in which employees trade their most basic legal rights, for example the right to enter into whatever contracts they wish? This much seems clear: slavery contracts, like all abusive labor contracts, make the slave unconscionably vulnerable to the choices of the slaveholder; they set up the slave for wrongful treatment; they create an exploitative relationship. An agreement for slavery can work only through society’s participation as the ultimate sanction for and enforcer of the agreement. We as a society have the right to choose not to facilitate an agreement that makes a party so vulnerable to abuse, even if we think it likely that the slave would somehow come out ahead through the agreement.

There is a lesson here for insider trading. Even if we do not know that insider trading is harmful, we know that it makes people vulnerable to financial calamity.
The prospect of insider trading gives corporate insiders a reason to manipulate stock prices, creating short-term gains in corporate profits that will allow insiders to sell their own stock at a large profit but harm the firm, other shareholders, and the public in the long term. We do not know, as a matter of fact, how much market manipulation would occur under an insider trading regime, or whether its costs would be economically “outweighed” by its benefits. We do know, however, that if we as a society sanction the practice of insider trading, it will give corporate insiders new and powerful reasons to engage in market manipulation, an unacceptably exploitative practice that can devastate its victims. The problem with allowing insider trading, then, is not simply in the harm it might cause, but in the exploitative relations it fosters. We as a society have no more reason to facilitate the exploitative relations in insider trading than to facilitate exploitative labor practices, even if some people are willing to gamble that they will prosper under exploitation. Insider trading is wrong as a matter of principle.

Notes: This article is excerpted, with some changes, from Alan Strudler, “The Moral Problem in Insider Trading,” The Oxford Handbook of Business Ethics, George G. Brenkert and Tom L. Beauchamp. eds. (in press). © Oxford University Press.


What Is Charity?

Judith Lichtenberg

The extent of global poverty, and of human suffering more generally, boggles the mind. And so the mind of a person not overburdened by poverty or pain can hardly fail to wonder: should I do something to better the situation of those suffering these ills? How much should I do? Is charity a duty? A virtue that is “above and beyond the call of duty”? Or is helping others perhaps something less good than it appears to be? Simply naming the phenomenon of interest is fraught. The word “charity,” as well as all its synonyms and cousins—aid, assistance, help, philanthropy, rescue, giving, humanitarianism, beneficence—is morally and politically loaded.

The word “charity” comes from the Latin caritas, which means love; “philanthropy” means love of humankind. Since we ordinarily think of love as a feeling or emotion, the suggestion is that Good Samaritans act “out of the goodness of their hearts.” This emphasis on people’s inner states—their motives, intentions, dispositions—reflects one strand in our beliefs about charity. Yet in thinking about the alleviation of poverty and suffering, it seems we are primarily concerned with actions and outcomes, rather than motives and disposi-