Student: Kurt Williams
Instructor: Dr. Alice Q. Fox
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Corporate Social Responsibility Case Analysis: Why the Equifax Breach Stings so Bad and Contractarianism

There are three credit reporting agencies in the United States that gather financial data on millions of private individuals every day: Equifax, Experian, and TransUnion. This data is used to create credit reports using specialized algorithms that determine whether someone has a high or low credit rating. Whenever a private individual needs to borrow money from a bank or credit union, the financial institution will ask the credit reporting agencies to provide a credit report on the potential borrower. Financial institutions request these credit reports to decide whether to lend money to a private individual. The better one's credit score, the more likely they are to get approved for a loan as well as more favorable interest rates and loan terms. These loans or lines of credit can be used to start a small business, help someone pay for college, or allow a young couple to purchase their first home. The agreement between all the parties involved in this cycle between creditors, borrowers, and the credit agencies is that the system and its contents remain confidential, are reported with integrity, and remain accessible only to those who need to know this information. Unfortunately, one of the big three credit reporting agencies, Equifax, severely failed to live up to their part of this social contract when Equifax's databases were breached and the private financial data of over 150 million people was leaked for cybercriminals and identity thieves to exploit. Ron Leiber wrote on the shock, anger, fear, and hopelessness many of the borrowers felt in the wake of this data breach in the 2017 New York Times article *Why the Equifax Breach Stings so Bad*. In Leiber's article, not only did many private individuals express their disdain at how poorly Equifax had secured their data, but also outright helplessness at the thought of their financial future being held in the hands of a major credit reporting agency that seemingly didn't even care what happened to their data. A person's credit score has become one of the major determinants in a person's life, and Leiber's article perfectly describes how many felt when Equifax acted so callously with such a major part of their lives. Per Leiber's article, many people worked their whole lives to build up their credit scores to a respectable level. Retirees such as Brian Schill described the sense of betrayal and the sudden realization that they were now at the mercy of cybercriminals who may use their leaked identities to fraudulently take out loans in someone else's name. In this Case Analysis I will argue that contractarianism shows us that the Equifax breach harmed creditors, borrowers, and credit reporting agencies by using inadequate data security protocols and inefficient credit freezing system that this was morally bad.

According to Milton Friedman in his article, *The Social Responsibility of Business is to Increase its Profits*, maximizing profits on behalf of shareholders is the only social responsibility of business managers. Any other consideration, such as social welfare or religious beliefs, are relegated to being the personal convictions of the business managers in their role as a private individual. By their very nature, Friedman argues that the personal beliefs of a business manager are not aligned with maximizing profits for shareholders. Furthermore, these personal beliefs should not override the business manager's responsibility to the shareholders. In concluding this article, Friedman quoted himself from his book *Capitalism and Freedom*, "there is one and only social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud." The Equifax Data Breach of 2017 is a clearcut case where the managers at Equifax failed to protect their product (consumer data used to generate credit reports), and therefore did not take the necessary steps to maximize their profits. As Ron Leiber quoted Cristi Page in his article *Why the Equifax Breach Stings so Bad*, "they're [Equifax] either unethical or incompetent. Neither of those inspire much confidence."

Contractarianism centers on the concept that people are self-interested, and as rational agents they will pick the best strategies that maximize their own self-interest. Because there are other self-interested people in this society who also want to maximize their own interests, overall, this will cause people to act morally (morals being dictated by the shared interests that maximize everyone's standing society) and consent to an overarching authority governing the society. Using contractarianism, specifically John Rawls' thought experiment the "veil of ignorance", we can examine how Equifax could have avoided their unethical and immoral behavior. The "veil of ignorance" experiment asks the participant, a person or entity such as Equifax, to consider how they would implement a social contract that is the fairest to all members of that society, regardless of their position in the society. We can imagine a society inspired by Milton Friedman where maximizing corporate profits is the only goal of managers at corporations such as Equifax. For the purposes of this thought experiment, we'll assume society is still based on capitalism as Milton Friedman would describe it. In this society there are consumers who borrow from lenders to purchase goods and services, and there is a market demand for things such as credit cards, mortgages, and car loans. Furthermore, just as Leiber points out in his article, in this society Equifax's credit scores are used by employers and landlords when evaluating applicants, who often require these applicants to have a minimum credit score to be considered for employment or lease a property. The lenders such as banking institutions, being agents that want to maximize their profits, need a way to determine who is a "bad" investment that will default on their 30-year fixed interest mortgage in three years. The lenders also need to identify who is a "good" investment that will keep buying a new car every five years and reliably pays off their loan each time. Perhaps these lenders realize that it would be too cost-inefficient to maintain their own internal consumer tracking database for several reasons (it takes too much time, not enough specialized personnel to operate the system, and the data would only contain information on consumers who have already borrowed from the lender).

This is where a credit rating agency such as Equifax comes into play. Not only does Equifax have the correct algorithms to rate consumers to implement how the lenders need them ranked, but they've also got the personnel and infrastructure in place to make sure all this data is properly inventoried and secure whenever it needs to be accessed (and at a reasonable price). Equifax would not doubt understand that protecting the integrity of their product (consumer data used to generate credit reports) from bad actors is certainly one of the duties of any manager. In this society, maximizing profits includes implementing protections for the corporation's internal holdings so that competitors or criminals cannot access that information and compromise it. Not only that, but Equifax's managers would realize that data breaches containing data on hundreds of millions of consumers could include information on their own employees, their family members, and the managers themselves. The company's lax security put their own managers and employees at risk just as much as their product. Furthermore, if there is a data breach, Equifax would want to have in place a system that maximizes the protection of the consumers' data (the product), such as implementing holds or freezes on new credit applications for individuals who have had their information leaked. They'd also probably want to put in place a system that notifies their customers as soon as a data breach occurs to ensure there is minimal time for identity thieves to corrupt the data in their system. Not only would these freezes protect consumers, but also lenders from doling out fraudulent loans to identity thieves. Leiber's article points out that Equifax went so far as to charge the victims of the data breach to implement these types of holds and credit freezes, at least at first until public backlash forced them to cease this practice. These types of practices could not only protect the consumers' data (Equifax's product) and the lenders (Equifax's customers), but also Equifax's reputation as a reliable credit reporting agency. Afterall, in this society Equifax would no doubt realize that a free-market society based on Friedman's idea of capitalism means that such a serious breach of security would likely mean the financial ruin of the company and bring the ire of the governing authority down on their heads. This would of course lead to the managers failing in their one responsibility to maximize profits. Maximizing their profits through increased data security and consumer protections would also help prevent competitors such as TransUnion or Experian shutting Equifax out of the market.

Based on Melvin Anshen's views on Corporate Responsibility from the article *Changing the Social Contract: A Role for Business,* Equifax's lack of data security violated the social contract made between lenders and consumers. Both consumers and lenders were under the belief that Equifax's data holdings were maintained in good faith and secure from identity thieves. However, as Lieber points out, this belief was shattered by Equifax's actions and failings. Anshen argues that managers and businesses in general need to develop a new social contract with the people they conduct business with. The drive for increased profits can still determine how a company wants to allocate their resources, but there should be additional considerations such as how their allocation of resources will affect society. For example, environmental protection to make sure toxic waste doesn't get dumped into a river that contaminates a customer's drinking water supply. The reactions in Leiber's article clearly show that society is getting pushed to the point of demanding credit reporting agencies like Equifax get shut out of the business completely, or at the very least get the US government to step in and impose severe financial penalties on the company and its managers. Anshen writes that corporations need to dedicate some of their expertise and resources into studying how best to rewrite the social contract with the public in the coming decades, to avoid a revolution that tears down the capitalistic structure such as those that occurred in the Soviet Union or the People's Republic of China. "If nations are to have constructive adaptation rather than destructive revolution, it will be important to identify and think creatively about the emerging demands for revision of the contract." Revision rather than revolution is the preferred method of attaining this new social contract according to Anshen. Corporations need to find out how to make profits while also implementing protections for the environment and the society living in it.

Again, using the "veil of ignorance" thought experiment of contractarianism and Anshen's views on Corporate Responsibility, we can identify several reasons why Equifax's actions were morally bad. Let's compare Equifax actions in real life to what they could have done in a "veil of

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ignorance" society that aligns with Anshen's argument for corporate responsibility. Just as with the society imagined using Friedman's views, this society based on Anshen's views is still capitalistic. There remain consumers who borrow from lenders to purchase goods and services, and there is a market demand for things like small business loans. However, rather than a strict adherence to "maximizing profits being the only social responsibility of managers", there can be other considerations in this society. Perhaps Equifax could have considered implementing a society that allows people to an opt-in or opt-out of the credit reporting system depending on what stage in their life they're in. Leiber's article mentions how many of the people who wrote to him about their problems with the Equifax breach felt as if they had "no recourse and no ability to opt out". Rather than declaring bankruptcy or just outright refusing to participate in any financial transaction in the 21st century being the only alternative, maybe in this society Equifax could have implemented a system that allows deferment periods on tracking consumer activity for those who wish to apply free of charge. The consumer's data could still be retained for use in data analytics and market research, but no new loans will be taken out until they're ready to resume this activity. As Leiber quoted Sarah Bloom Raskin in his article, "It's going to dawn on people that we are defined by these descriptors, markers and measures, but we have no meaningful informational rights to them or over them." To avoid such a pessimistic view on how powerless people felt in the wake of the data breach, Equifax could have also considered how they would want people in this society to react when there is a breach of their database. Their lack of data security clearly affected their consumers (product) and their lenders (customers) to the tune of hundreds of millions of dollars in potential damages. Would Equifax as a company want people in this society to lose faith in the system when it makes mistakes? Would Equifax have wanted their customers to learn to fear the kind of power that a company like Equifax holds over them? I doubt that's the kind of society they would want to implement for themselves or their customers. At the very least after considering how they'd want people to react, Equifax could have deployed a much more robust information assurance plan and consumer protections to minimize the damage while maximizing the possibility of recovery. Equifax could have also considered Leiber's own question from the article, "In what sort of company would Mr. Information Systems and Mr. Money not be in the loop on a problem like this?" This question really strikes home how poorly Equifax performed in trying to prevent a data breach like this from happening. In reforming the social contract in their new society, Equifax could also look to how they interact with their employees and consumers on a more personal and transparent level. Again, using the "veil of ignorance" for this society I doubt that Equifax would be comfortable with their employees or any company's employees having to tell their customers they "had no databases of information about what had happened or even any internet access to look simple things up", as Lieber recalls when one of the people interviewed for his article attempted to contact Equifax. In addition, Equifax could consider how to prevent morally bad actions like those of their managers in the immediate aftermath of the data breach. In one of the more egregious actions that took place at Equifax, Lieber points out "that the president of Equifax's information solutions unit in the United States and its chief financial officer sold stock after the breach was discovered but before it was made public. If they knew about the break-in, they violated insider trading laws." Equifax as a company would almost certainly want to prevent this from happening in the new society and would more than likely want to make sure no company was allowed to get

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away with insider trading without serious legal and/or financial penalties. They could start by fostering a corporate culture that prioritizes managers who will strive to protect the company's assets and profits when things go wrong, and not hire cowards who will only look after themselves when things do fail. Ultimately, these practices could help Equifax maintain their profits while also maintaining the public's faith in their role in society.

Considering either Friedman's view that corporations only have one social responsibility (maximize profit), or Anshen's view that corporations need to start thinking about how they affect society outside of purely economic terms (revision before revolution), we can use the contractarian "veil of ignorance" to identify how Equifax's actions were morally bad. Equifax's actions in a society driven only by maximizing profits would have filled Friedman with outrage at the lack of corporate expertise in their managers. As Leiber writes, the lack of coordination between "Mr. Information Systems and Mr. Money" to make sure the databases containing their consumer data (product) were safeguarded would have irked Friedman to no end. The fact that the president of Equifax's information solutions unit in the United States and its chief financial officer sold stock before the breach became public knowledge also runs afoul of Friedman's belief that any corporation looking to maximize profit "stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud". Using Anshen as a model, we can see much more clearly see the negative effects on a society when a corporation like Equifax acts the way it did to both before, during, and after the data breach. The sense of hopelessness and powerlessness that many consumers felt from the data breach brings into sharp focus how much these types of actions can lead people to demand tearing down the whole system. If Equifax were a model for how a company conducts business in this type of society, such as ignoring the complaints of consumers, withholding vital information on the status of people's data, and charging people fees to implement credit freezes when they weren't at fault, then surely Anshan would be correct to predict that this society would want to tear up the social contract and rise up in revolution. Perhaps the biggest counter to this argument is that society has not risen in violent revolution against the credit reporting agencies. However, we have seen several social movements focused on redoing how we as a society want our economy to operate over the last two decades. The Occupy Movement of 2011 predates the Equifax data breach of 2017, but much of the frustration and demands from the Occupy Movement directed at corporations and financial institutions linger today. Rising inflation, stagnant wages, and concerns over housing affordability are just a few of the issues today that may reach a boiling point if corporations do not learn from the mistakes of Equifax. Owning a home in the US is becoming a fleeting prospect for many people in the Millennial and Zoomer generations, and there is ongoing uncertainty about how fair the system is for young people who have no credit history, no generational wealth to fall back on, and no idea why they can pay $1600/month to rent a one bedroom studio apartment but can't get approved for a $1400/month mortgage for a three bedroom home. Hopefully, corporations do take the steps needed to reform the social contract with society while still being profitable.