

How Virtual Reality Can Help Bankers Become More Empathetic – And More Ethical

*Claire A. HILL**

La réalité virtuelle peut-elle aider les banquiers à devenir plus empathiques – et plus éthiques?

Cómo puede la realidad virtual ayudar a los banqueros a ser más empáticos –y más éticos

A realidade virtual pode ajudar os banqueiros a se tornarem mais empáticos – e mais éticos?

虚拟现实如何帮助银行业者变得更有人情味且更有道德?

Résumé

Le droit n'a pas été en mesure de mettre un terme aux scandales qui se sont succédé dans le secteur financier et y ont engendré d'immenses pertes, touchant plusieurs publics et ternissant durablement l'image des établissements bancaires.

La culture professionnelle des banques – et des banquiers – est en large part responsable de cette triste situation. À aucun moment de la carrière des cadres du secteur – qu'il s'agisse de recrutement ou de licenciement, de formation ou de promotion – n'est prise en compte l'idée

Abstract

The scandals in the financial industry have thus far been beyond the law's power to prevent. Many constituencies have suffered significant harm, including those dealing with financial institutions, and many others. Indeed, the institutions themselves have also been adversely affected.

Bank culture is apparently in significant part to blame. Banks hire, and promote and otherwise incentivize, train, and discipline and fire, employees in ways that encourage them to be heedless of the

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que les actes ont des conséquences concrètes sur les personnes, et aussi sur les institutions.

Les banquiers évoluent au cœur d'un environnement qui loue l'ingéniosité de ceux capables d'inventer formules et produits sophistiqués, se jouant dans les faits de l'esprit de la loi tout en respectant formellement la lettre. Agissant au sein d'entités juridiques qui ne les engagent pas personnellement, les banquiers peuvent prendre quasiment tous les risques sans avoir à en subir les conséquences s'ils échouent.

Dans leur monde clos, où les communautés de travail se jaugent et se comparent, les financiers les plus capables accumulent admiration des pairs et orgueil professionnel, qui se traduisent concrètement par de confortables primes et de belles promotions. Pour autant, sont-ils désireux, ou simplement en mesure, de faire l'effort consistant à s'interroger sur l'impact de leurs actions? Le plus souvent non, par manque absolu d'empathie cognitive (quelles sont les réactions de ceux touchés par mes actes?) comme d'empathie affective (pourquoi me soucieraient-ils de leurs réactions?)

Cet article propose au lecteur de s'engager dans un exercice mental: le recours à la réalité virtuelle ne pourrait-il pas aider les banquiers à devenir plus conscients des conséquences de leurs actes?

Resumen

El derecho no ha podido poner fin a los escándalos que se han desencadenado en el sector financiero generándole grandes pérdidas, afectando diversos públicos y empañando la imagen de los establecimientos bancarios.

consequences of their actions – to third parties and sometimes, even to the banks themselves. The craft of gaming financial rules, formulas, and covenants is lauded, as are other activities that violate the spirit of the law while honoring its letter. The corporate form allows bankers and banks to get the benefits of risk-taking while limiting their exposure to the associated costs. The result is predictable, and becomes embedded in the banks' ethos.

Bankers readily experience the proximate results of what they do – the bonuses and promotions, the admiration of their peers and the camaraderie of their workgroups engaged in a collective task, and their own internal pride – but may not be willing or even able to make the imaginative leap to the less proximate effects. Lack of cognitive and affective empathy (the former meaning not knowing about others' reactions, and the latter meaning not caring) may be a big reason why.

This piece asks the reader to engage in a thought experiment: What if bankers could be made more aware of the consequences of their actions by the use of virtual reality?

Resumo

O direito não foi capaz de prevenir os escândalos que se sucedem no setor financeiro e causam enormes perdas, afetando variados públicos e comprometendo seriamente a imagem dos estabelecimentos bancários.

La cultura profesional de los bancos – y de los banqueros– es en gran parte responsable de esta triste situación. En ningún momento de la carrera profesional de los ejecutivos de este sector de la industria –se trate de contratación o despido, de capacitación o promoción– se tiene en cuenta que los actos tienen consecuencias concretas en los individuos, y también en las instituciones.

Estos actúan dentro de un entorno que elogia el ingenio de aquellos capaces de inventar fórmulas y productos sofisticados, que juegan con el espíritu de la ley aunque respetando formalmente la letra. Actuando en el seno de entidades jurídicas que no los involucra personalmente, los banqueros pueden tomar prácticamente cualquier riesgo sin sufrir las consecuencias si fracasan.

En ese mundo cerrado, donde las comunidades de trabajo se evalúan y se comparan, los financieros más capaces acumulan admiración de sus colegas y orgullo profesional, lo que se traduce concretamente en interesantes bonificaciones y grandes promociones. Sin embargo, los banqueros parecen no estar dispuestos o incluso no ser capaces de imaginarse el impacto de sus acciones. La falta absoluta de empatía cognitiva como emocional (primero por no conocer cuáles son las reacciones de las personas afectadas, y segundo por no importarles o preocuparles) puede ser una razón importante de ello.

Este artículo sugiere al lector emprender un ejercicio mental: ¿el recurso a la realidad virtual podría ayudar a los banqueros a volverse más conscientes de las consecuencias de sus actos?

A cultura bancária parece carregar boa parte da culpa. Muitos bancos contratam, promovem e incentivam, treinam, disciplinam e demitem empregados de maneiras que os encorajam a serem desatentos às consequências de suas ações – para terceiros e, às vezes, até para os próprios bancos. A arte de jogar com as regras financeiras, fórmulas e contratos é elogiada, assim como são outras atividades que violam o espírito das leis mas honram sua letra. A forma corporativa permite aos banqueiros e bancos receber o benefício de assumir riscos ao mesmo tempo que limitam sua exposição aos custos associados. O resultado é previsível e se internaliza no *ethos* dos bancos.

Os banqueiros experimentam facilmente os resultados imediatos do que fazem – os bônus e as promoções, a admiração de seus pares e a camaradagem de seus grupos de trabalho engajados numa tarefa coletiva, e seu próprio orgulho profissional – mas talvez não estejam dispostos ou sejam mesmo capazes de fazer o salto imaginativo para os efeitos mais distantes. Pode ser uma grande razão do porquê a falta de empatia cognitiva e afetiva, significando a primeira não saber a reação dos outros, e a segunda não se importar.

Este artigo pede ao leitor para se engajar numa experiência de pensamento: e se pudéssemos fazer os banqueiros mais conscientes de suas ações usando a realidade virtual?

摘要

金融业的丑闻已经超出了法律的预防能力。公众因此遭受了重大损害，包括与机构交易的人。事实上，机构本身也是受害者。

这在很大程度上要归咎于银行文化。银行招募、提拔、激励、培训、惩戒、开除员工的方式实际是在鼓励他们忽视自己行为对第三人——有时甚至是对银行——的后果。不把金融规则、公示和契约放在眼中的做法受到褒扬，只遵守字面上的法律，却违背法律的精神。公司制在控制银行业者和银行冒险成本的同时，让他们从冒险中得利。结果不出所料，并形成了银行业的风气。

银行业者乐意体验行为的直接后果：奖金、晋升、同行的钦慕、参与集体任务的工作小组团队情谊、以及自己内心的骄傲感。但他们不愿甚至不能去想象不那么直接的后果。缺乏同理心的认知和情感（缺乏认知是指不了解他人的反应，缺乏情感是指不关心他人的反应）可能是一个重要的原因。

本文邀请读者参加一项思想实验：要是银行业者可以通过虚拟现实变得更加关心他们的行为后果，则会怎样？

CONFIDENTIAL
Letterhead of Laissard Pères

Professor X
Law School and Business School
Department of Social Neuroscience (courtesy appointment)
Springfield University

Dear Professor X:

We write to you in hopes that you will be willing to assist us with a new initiative.

As you know, owing to quite a few well-publicized scandals, the banking industry in general,¹ and our firm in particular, has come under increasing pressure and scrutiny from regulators and the public.² We have had to pay large amounts in legal fines, penalties and settlements, and have significant (and largely unwelcome) regulatory involvement in our business.³ Moreover, many people, including policymakers and members of the media and the public, seem to believe that our firm and indeed, the industry generally, single-mindedly pursues profits, taking risks heedless of the consequences to both our customers and to the broader society.⁴

¹ “The financial services industry has the lowest reputation of any industry” 24/7 Wall St., “Companies with the Best (and Worst) Reputations”, *MarketWatch.com* (May 12, 2016), online: <<https://www.marketwatch.com/story/companies-with-the-best-and-worst-reputations-2016-05-12>>. “[O]nly 30% of the general public trusts financial services companies”, *Reputation Institute, Calculating a Return on Reputation Intelligence*, online: <<https://www.reputationinstitute.com/why-reputation-institute/financial-services-expertise>>.

² The framing of the problem, and the proposed solution, builds on Claire A. Hill & Richard W. Painter, *Better Bankers, Better Banks: Promoting Good Business through Contractual Commitment* (Chicago: The University of Chicago Press, 2015).

³ On the aggregate amount of fines, see BOSTON CONSULTING GROUP, “Digitization Emerging as the Key to Survival in Banking”, March 26, 2019, online: <<https://www.bcg.com/d/press/26march2019-digitization-emerging-as-the-Key-to-survival-in-banking-217072>> (as of March 26, 2019 \$ 372 billion).

⁴ See generally Hill & Painter, *supra* note 2.

Wishing to be proactive about combating this state of affairs, we engaged Consultant Y, who prepared a report.⁵ As discussed below, we wish to hire you to help us follow through on some of the recommendations in the report, specifically, to design and put in place a program that would enhance our bankers' awareness of the consequences of their actions.

Consultant Y's charge was to tell us how we could minimize the possibility of future scandals and illegal behavior, and, frankly, improve our image. Among the report's recommendations was that we look closely at our hiring, promotion, retention, and termination policies.⁶ The report noted that our policies, focusing as they do on technical, leadership, and marketing skills relevant to bottom-line results, might have selected people whose focus on tangible indicia of performance, such as "alignable attributes"⁷ by which their results can be measured and compared with others' results,⁸ crowds out sufficient consideration of possible effects on third parties and more broadly, effects beyond those expressly sought.⁹ In preparing its report and coming to its conclusions, Consultant Y studied the empathy quotient of our employees¹⁰ by setting up an anonymized testing

⁵ We note that some other financial institutions have done so. See, e.g., Anthony Salz & Russell Collins, *The Salz Review: An Independent Review of Barclays' Business Practices*, April 2013, online: <<https://online.wsj.com/public/resources/documents/SalzReview04032013.pdf>>.

⁶ See generally *id.* and Hill & Painter, *supra* note 2.

⁷ This concept is discussed in several articles by Arthur Markman and co-authors, including in Arthur B. Markman & Dedre Gentner, "Commonalities and Differences in Similarity Comparisons" (1996) 24 *Memory & Cognition* 235, online: <<http://groups.psych.northwestern.edu/gentner/papers/MarkmanGentner96.pdf>>; Arthur B. Markman & Douglas L. Medin, "Similarity and Alignment in Choice" (1995) 63 *Organizational Behav. & Hum. Decision Processes* 117, online: <<http://dx.doi.org/10.1006/obhd.1995.1067>>; Dedre Gentner & Arthur B. Markman, "Structural Alignment in Comparison: No Difference Without Similarity" (1994) 5 *Psych. Sci.* 152, online: <<https://doi.org/10.1111/j.1467-9280.1994.tb00652.x>>; Dedre Gentner & Arthur B. Markman, "Structural Alignment in Analogy and Similarity" (1997) 52 *Am. Psychologist* 45.

⁸ The report discussed at some length the intricacies of goal setting, and how destructive individualism and competitiveness can be fostered by an excessive use of performance goals. Among the research cited in the report is Lisa D. Ordóñez et al., "Goals Gone Wild: The Systematic Side Effects of Overprescribing Goal Setting" (2009) 23 *Acad. Mgmt. Persp.* 6, online: <<https://journals.aom.org/doi/10.5465/amp.2009.37007999>>.

⁹ See Hill & Painter, *supra* note 2, 114-117.

¹⁰ See Autism Research Centre, "Downloadable Tests, Empathy Quotient (EQ) for Adults, Empathy Quotient (EQ 60)", online: <https://www.autismresearchcentre.com/arc_tests>; <<https://psychology-tools.com/test/empathy-quotient>>. The tests are based on

program and providing significant incentives for employees to take the test. (The incentives were sufficiently effective that employee participation was quite high.) Employees were required to provide information about which department they worked in, and Consultant Y's findings included that in particular departments, the average and median empathy quotients were quite low. Consultant Y also studied risk-taking propensities, using a similar methodology, with a test it had developed; the report's findings were similar, with, again, results from some departments suggesting that those departments might contain a significant number of people particularly attracted to risk-taking.¹¹ The report discussed some preliminary research suggesting a link between low empathy and high risk-taking.¹² What makes risk-taking particularly relevant in this context is that neither employees nor their companies bear the full downside of their actions. Thus, an employee taking an enormous risk on behalf of his company may inflict significant costs on others, as occurred as a result of banks' activities leading up to the 2008 financial crisis. A lack of empathy, manifested in a *caveat emptor* worldview that people are responsible for looking after themselves,

the work of neuroscientist Simon Baron-Cohen, and were developed by Prof. Baron-Cohen. See generally Simon Baron-Cohen, *The Science of Evil: On Empathy and the Origins of Cruelty* (New York: Basic Books, 2011). Empathy is both cognitive and affective. In a January 23, 2018 tweet (available here: <<https://twitter.com/sbaroncohen/status/956061933907664896?lang=en>>), Professor Baron-Cohen defined cognitive empathy as "imagining other's state of mind" and affective empathy as "feeling an appropriate emotion triggered by another's state of mind/if they hear someone is upset, it upsets them." Patrizia Thoma & Christian Bellebaum, "Your Error's Got Me Feeling – How Empathy Relates to the Electrophysiological Correlates of Performance Monitoring" (2012) 6 *Frontiers Hum. Neurosci.* 1, online: <<https://doi.org/10.3389/fnhum.2012.00135>> at 1-2 defines empathy as follows: "Empathy broadly refers to the capacity to respond to the emotional experiences of someone else. It is thought of as a multi-dimensional construct involving at least a *cognitive component* enabling an individual to understand another person's emotional perspective and an *affective component* based on the ability to affectively share and respond to the emotional experiences of others." See also Fetzer Institute, "Interpersonal Reactivity Index (IRI)", online: <<https://backend.fetzer.org/sites/default/files/images/stories/pdf/selfmeasures/EMPATHY-InterpersonalReactivityIndex.pdf>>.

¹¹ See generally Hill & Painter, *supra* note 2, 108-124. Consultant Y's report acknowledged that there would be selection bias given that the tests were only administered to people who chose to take them. However, the report used standard techniques in an attempt to correct for that bias, and concluded, especially given that many employees, in many different departments of Laissard, took the test, that the results were at least suggestive.

¹² See Thoma & Bellebaum, *supra* note 10, and sources cited therein.

as well as a motivation to prevail over others, combined with high risk-taking, is, the report noted, a recipe for a potentially disastrous outcome.

Consultant Y's report also noted that our corporate culture may have encouraged this selective and very strong focus among our employees. Stressing that our culture was not unique among financial institutions,¹³ the report noted that intense work hours and pressures in situations where colleagues and computers were close and others – customers, and even family – were more distant may have created a hothouse atmosphere where concerns other than achieving the stated goal were crowded out.¹⁴ The report also noted that the credo of meritocracy may itself have allowed and encouraged a *caveat emptor* worldview, in which bankers might believe that anyone hurt by their activities should have done a better job looking out for himself.¹⁵ As cultures became more dominated by a risk-taking ethos, risk-taking would increase, including through contagion effects.¹⁶ Finally, and perhaps most ominously, the report described situations in which taking advantage of third parties and even customers became a source of community among bankers, as did illegal activities such as rate-fixing.¹⁷

¹³ See generally Hill & Painter, *supra* note 2, 108-124, and Salz & Collins, *supra* note 5.

¹⁴ Hill & Painter, *supra* note 2, 114-117. Recent work suggests that the sleep deprivation common among junior bankers given their workload may itself contribute to unethical behavior. One mechanism is “depletion” – energy is used up just trying to function, leaving less left to resist “the negative influence of others.” See David T. Welsh et al., “Building a Self-Regulatory Model of Sleep Deprivation and Deception: The Role of Caffeine and Social Influence” (2014) 99 *J. Applied Psych.* 1268, online: <<http://dx.doi.org/10.1037/a0036202>>; David T. Welsh et al., “Overcoming the Effects of Sleep Deprivation on Unethical Behavior: An Extension of Integrated Self-Control Theory” (2018) 76 *J. Experimental Soc. Psych.* 142, online: <<https://doi.org/10.1016/j.jesp.2018.01.007>>.

¹⁵ Hill & Painter, *supra* note 2, 108-124.

¹⁶ The *Salz Review* discusses the extent to which the trader ethos, itself very risk oriented, came to have the force it did at Barclays: Salz & Collins, *supra* note 5. See also the following, on the contagion of risk-taking: “Is Risk-Taking Behavior Contagious?” *Neurosci. News* (Apr. 7, 2016), online: <<https://neurosciencenews.com/behavioral-neuroscience-risk-taking-3993/>>. See also Hill & Painter, *supra* note 2, 108-124, discussing the broader change in ethos from safer to riskier banks and bankers.

¹⁷ One example given in Hill & Painter, *supra* note 2, 113 is the well-known “Grandma Millie” example in which Enron traders rejoiced at the high energy prices their illegal market manipulation had caused for a hypothetical “Grandma Millie.” The expletive-laden exchange was captured on tape: “Enron Traders Talking about Grandma Millie”, *Youtube.com* (March 17, 2009), online: <<https://www.youtube.com/watch?v=DOLNW F5QMxY>>. On rate fixing, see generally David Enrich, *The Spider Network: The Wild*

The report discussed as well broader shifts in business and in society generally that contributed to the problems financial institutions have had, including a highly individualistic and competitive ethos in which doing better than others is an end to be lauded and pursued whatever the means requires.

The report gave a few detailed examples of the kinds of behavior at issue, some involving our bank and some involving others. The examples included financial innovations designed to do end-runs around regulations or covenants. These were in grey areas from a legal perspective, going 'up to' the line and, sometimes, over it. Some were strategies that honored the letter of the law while violating its spirit, such as targeting customers who were nominally sophisticated but known to be too credulous.¹⁸ Some, as described in the book *The Spider Network*, involved networks of people who did illegal "favors" for each other.¹⁹

The problems we face have both legal and operational components. The two are distinct but related: what hurts us legally hurts us reputationally, and what hurts us reputationally may come to hurt us legally.²⁰ Our compliance efforts are informed by the American Law Institute's forthcoming *Principles of the Law, Compliance, Risk Management, and Enforcement*.²¹ Consistent with what seems to be the prevailing practice, compliance and risk management efforts encompass a penumbra beyond what law requires. A blog post by one of the associate reporters on the project, summarizing her article on a related topic, argued that "there is...an economy of scope in selecting for empathy and moderation in risk-taking in hiring and promotion, and encouraging a corporate culture promoting those traits; admittedly, there may be some cost to profits in doing so, but there

Story of a Math Genius, a Gang of Backstabbing Bankers, and One of the Greatest Scams in Financial History (New York: Custom House, 2017).

¹⁸ Hill & Painter, *supra* note 2, 108-124.

¹⁹ Enrich, *supra* note 17.

²⁰ Claire A. Hill, "Caremark as Soft Law" (2018) 90 Temp. L. Rev. 681. See also Claire A. Hill, "Marshalling Reputation to Minimize Problematic Corporate Conduct" (2019) 99 B.U. L. Rev. 1193, summarizing recent literature on companies' views of the importance of their reputations.

²¹ American Law Institute, "Principles of the Law, Compliance, Risk Management, and Enforcement" (forthcoming), online: <<https://www.ali.org/projects/show/compliance-enforcement-and-risk-management-corporations-nonprofits-and-other-organizations/>>.

are associated benefits as well, not just in avoiding law-breaking but also for reasons of reputation and regulatory favor.²²

Having carefully reviewed Consultant Y's report, we believe that our bank can do more to ensure that it appropriately and sufficiently, consistent with our profit-making mission, takes into account possible adverse consequences of what it does. We also believe that doing so would be desirable, helping us reduce future penalties, fines and settlements; we believe as well that regulators and the broader public will look very favorably on our efforts.

We are writing to ask if you would be willing to study, propose, and test a program for use at our bank that could enhance bankers' ability to envision and take into consideration the broader effects of their actions, helping to broaden their focus beyond the immediate task at hand. Consultant Y's report made considerable use of your research. Moreover, you come highly recommended, and your combination of academic appointments, including a courtesy appointment in a neuroscience department, as well as your recent much-viewed TEDx talk on banker identity, make you ideal for the task.

Please let us know at your earliest convenience whether you are inclined to accept our proposal and if so, on what terms, and what you envision as to the trajectory of your work. Our interest in this project is keen, and we are willing to devote significant resources to it.

We look forward to your response, very much hoping it is an expression of interest.

/s/ Chief Compliance Officer, Laissard Pères

²² Claire Hill, "Caremark as Soft Law", *OBLB (Oxford Business Law Blog)* (Oct. 5, 2018), online: <<https://www.law.ox.ac.uk/business-law-blog/blog/2018/10/caremark-soft-law>> summarizing Hill, Caremark as Soft Law, *supra* note 20.

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Letterhead of Professor X Law School and Business School Springfield University

Laissard Pères
New York, New York

To the Chief Compliance Officer:

I am delighted to accept your bank's proposal. I commend the initiative, and very much look forward to being part of it. Adding to my delight, while I have done considerable research in "the real world," I have not thus far had an opportunity to do anything nearly as ambitious or forward-looking as this. My terms are simple: you buy out my university teaching and administrative duties for two years, provide funding for testing and research, and contribute 10% of the amount you in good faith conclude your lessened costs and enhanced reputation are worth (an assessment I will not second-guess) to a charity I designate that focuses on enhancing professional responsibility among businesspeople.

After reading your letter, I gave some serious thought to how I would proceed, and have preliminarily concluded that what might be particularly promising is perspective-taking done using virtual reality technology. The benefits would include showcasing your technological sophistication in tandem with your concern for the broader society.

I will begin by restating the challenge as I understand it. Bankers are not sufficiently mindful of the broader consequences of what they do and, unfortunately, they can do significant harm. Many examples can be given. Some notable such examples include techniques to help companies and governments report lower debt levels than they actually have. These make them look less indebted so they can borrow on better terms, appear to abide by debt covenants, and meet tests requiring them to have certain debt levels. Other examples include directing sales pitches for complex risky securities, including some believed by the bank to be "dogs," and some carrying very high above-market fees, to nominally sophisticated investors, including institutions and governments, whose decision-makers are

known to actually be unsophisticated; giving bribes to get business; rigging rates, and more.²³

The explanation that ‘bad apples’ were responsible for the behaviors at issue is not tenable. Rather, many “good” people got caught up in doing things that did real damage. They were heedless of the potential consequences of their actions. They could be heedless because of a relatively recent development, that banks are now organized as corporations. Corporations’ owners enjoy limited liability; they can take profits, but needn’t fund losses. Their managers needn’t fund losses either. But until the 1970s, banks were partnerships, managed by their owners — who bore full financial responsibility for losses.²⁴

I agree with Consultant Y that Laissard Pères’ hiring, promotion, punishment and firing policies should be carefully reviewed and, if appropriate, changed. But I also think that much can be done with “training” — or whatever word one might use to describe the technique that I am considering. The training would be directed at individuals, but have the potential to change the institution’s culture. I expect Consultant Y would agree that people vary in how much they are mindful of consequences, and that it’s critical to have a balance. In every bank (and indeed, in any large or even mid-sized organization), there are probably at least a few employees who are very mindful, some perhaps even paralyzingly so, and others more apt to act first and consider later, but also, many in the middle, who will be influenced towards one side or the other²⁵ depending on the institution’s culture, as well as the influence of their peers. The aim is for institutions to stay comfortably away from the extreme of acting heedless of the consequences, and to not allow silos where such an ethos could nevertheless flourish.

²³ See generally Hill & Painter, *supra* note 2, 19-70.

²⁴ *Id.*, 78-80.

²⁵ As Hill & Painter, *id.*, 108-124, and Claire A. Hill, “A Personality Theory of White Collar Criminals, Near-Criminals, and Others Involved in Bad Corporate Action (And What Law Should Do About It)” (2017) 11 *L. & Fin. Mkts. Rev.* 75, online: <<http://dx.doi.org/10.1080/17521440.2017.1353209>>, and sources cited therein explain, this is one of many continua that, for this purpose, are roughly getting at the same thing: at one end, caution/other regardingness/empathy, and at the other, risk-taking/competitiveness/individualism.

With this as backdrop, I now turn to my thoughts on how to proceed. As I mentioned above, what I think is called for is perspective-taking done using virtual reality technology. Perspective-taking of course has a colloquial meaning;²⁶ my use of the term is to techniques referred to as “perspective-taking” in academic literature and used in experiments in fields such as psychology.

Perspective-taking is not new; it has been used for quite some time.²⁷ Perspective-taking has a reasonable track record,²⁸ but it is far from a panacea.²⁹ It sometimes has good effects (such as improving people's ability to

²⁶ Indeed, the famous Dale Carnegie book *How to Win Friends and Influence People* (New York: Simon & Schuster, 1936) talked about the concept. An article, critical of perspective-taking, quotes Carnegie as follows: “Try honestly to see things from the other person's point of view.” Carnegie suggested this was the most important principle in the entire book: “If out of reading this book you get just one thing – an increased tendency to think always in terms of other people's point of view, and see things from their angle ... it may easily prove to be one of the building blocks of your career.” Tal Eyal, Mary Steffel, & Nichols Epley, “Research: Perspective-Taking Doesn't Help You Understand What Others Want”, *Harv. Bus. Rev.* (Oct. 9, 2018), online: <<https://hbr.org/2018/10/research-perspective-taking-doesnt-help-you-understand-what-others-want>>. The HBR article summarizes research described in the authors' paper “Perspective Mistaking: Accurately Understanding The Mind of Another Requires Getting Perspective Not Taking Perspective” (2018) 114 *J. Pers. & Soc. Psych.* 547

²⁷ “Perspective-taking”, *Wikipedia*, online: <<https://en.wikipedia.org/wiki/Perspective-taking>>. As I discuss in the text at note 40, the term sometimes is used to refer to cognitive empathy, insofar as what that term means is ‘taking the other's perspective.’ Here, I use the term in one common usage, that of techniques to make people see others' perspectives in various experimental and real-world contexts. See, e.g., Inga J. Hoever et al., “Fostering Team Creativity: Perspective Taking as Key to Unlocking Diversity's Potential” (2012) 97 *J. Applied Psych.* 982, online: <<https://pdfs.semanticscholar.org/3f6e/94afa316e3b261fa002f072a2ecae3445829.pdf>>.

²⁸ See Hoever et al., *supra* note 27; Gillian Ku, Cynthia S. Wang, & Adam D. Galinsky, “Perception through a Perspective-Taking Lens: Differential Effects on Judgment and Behavior” (2010) 46 *J. Experimental Soc. Psych.* 792, online: <http://spears.okstate.edu/scwang/files/2010_PT_JESP.pdf>.

²⁹ See, e.g., Hunter Gehlbach et al., “Many Ways to Walk a Mile in Another's Moccasins: Type of Social Perspective Taking and its Effect on Negotiation Outcomes” (2015) 52 *Computers in Hum. Behav.* 523, online: <<https://doi.org/10.1016/j.chb.2014.12.035>>; Claus Lamm et al., “Perspective Taking Is Associated with Specific Facial Responses During Empathy for Pain” (2008) 1227 *Brain Res.* 153, online: <<https://doi.org/10.1016/j.brainres.2008.06.066>>; Eyal, Steffel, & Epley, *supra* note 26. See also Debra Gilin et al., “When to Use Your Head and When to Use Your Heart: The Differential Value of

work in diverse teams,³⁰ or reducing stereotypes³¹); it also sometimes has negative effects, such as enhancing aggressiveness and competitiveness.³² It also may not be particularly effective where the ostensible perspective-taker doesn't have much of a basis for being able to imagine someone else's perspective, and has good alternatives (such as asking!) available.³³

Perspective-Taking Versus Empathy in Competitive Interactions" (2013) 39 *Personality & Soc. Psych. Bull.* 3, online: <<https://doi.org/10.1177/0146167212465320>>; Cynthia S. Wang, "The Cultural Boundaries of Perspective-Taking: When and Why Perspective-Taking Reduces Stereotyping" (2018) 44 *Personality & Soc. Psych. Bull.* 928, online: <<https://doi.org/10.1177/0146167218757453>>.

³⁰ See Hoever et al., *supra* note 27.

³¹ Eyal, Steffel, & Epley, *supra* note 26. See also neuroscientist Lasana T. Harris's research regarding the formation of negative stereotypes concerning the homeless and other marginalized communities, e.g., Lasana T. Harris & Susan T. Fiske, "Social Groups that Elicit Disgust Are Differentially Processed in mPFC" (2007) 2 *Soc. Cognitive & Affective Neurosci.* 45, online: <<https://doi.org/10.1093/scan/nsl037>>; Lasana T. Harris & Susan T. Fiske, "Dehumanizing the Lowest of the Low: Neuro-Imaging Responses to Extreme Outgroups" (2006) 17 *Psych. Sci.* 847, online: <<https://doi.org/10.1111/j.1467-9280.2006.01793.x>>; Dorothy Allen-Pickard, Noah Payne-Frank, & Jess Gormley, "The Bystander Effect: Neuroscientist Shows How Our Brains Dehumanise Homeless People – Video", *The Guardian* (Jan. 2, 2019), online: <<https://www.theguardian.com/society/video/2018/dec/30/the-bystander-effect-neuroscientist-shows-how-our-brains-dehumanise-the-homeless-video>>.

³² See, e.g., Gillian Ku & Kathy Brewis, "The Power of Perspective-Taking: Being Able to Step into Somebody Else's Shoes Is an Important Skill for Any Leader – Including the President of the US, Says Gillian Ku", *London Bus. School Rev.* (Feb. 1, 2017), online: <<https://www.london.edu/faculty-and-research/lbsr/power-of-perspective-taking>>; Gillian Ku, Cynthia S. Wang, & Adam D. Galinsky, "The Promise and Perversity of Perspective-Taking in Organizations" (2015) 35 *Res. in Org. Behav.* 79, online: <<https://doi.org/10.1016/j.riob.2015.07.003>>; Cynthia S. Wang et al., "Perspective-Taking Increases Willingness to Engage in Intergroup Contact" (2014) 9 *PLoS ONE* e85681, online: <<https://doi.org/10.1371/journal.pone.0085681>>; Cynthia S. Wang et al., "Stupid Doctors and Smart Construction Workers: Perspective-Taking Reduces Stereotyping of Both Negative and Positive Targets" (2014) 5 *Soc. Psych. & Personality Sci.* 430, online: <<https://doi.org/10.1177/1948550613504968>>; Ku, Wang, & Galinsky, *supra* note 28.

³³ Eyal, Steffel, & Epley, *supra* note 26. "Social psychological research has demonstrated many benefits of perspective-taking – increased altruism, decreased stereotyping, and a stronger social bond with another person. But here's the thing: Almost no research has investigated whether trying to take the perspective of another person actually increases your insight into what they truly think, feel, or want." The authors investigate this and conclude that: "Perspective-taking may indeed work some wonders, but increasing insight into another's mind does not seem to be among them." The alternative the article discusses is to ask people what they want – the article seems to be directed towards business people seeking to figure out, especially, what a customer might

Perspective-taking as a technique has an obvious and intuitive appeal. Many people are in the 'get people to behave differently' business – regulators, policymakers, employers, co-workers, coaches, and teachers are obvious examples. Most salespeople are too – if people did not need to be 'sold' on buying whatever it is the salesperson is selling, salespeople would have far less to do. Getting people to behave in particular ways requires us to know something about why they behave as they do – in effect, to see things from their perspectives. (And, as to many things, one can't simply ask, or one can't trust the answers one would get.)

Obvious generalizations will get us quite far. Money motivates, more money motivates more than less money, promotions motivate, fines and being fired are disincentives, etc. But a model that gives pride of place to these instrumental materially-oriented rewards and punishments leaves many gaps. At some point, more money is worth very little. There are things people regard as 'priceless' – things they wouldn't do or sell for any price or conversely, where the term is used metaphorically, would pay astronomical amounts for. And people are motivated by many other things.³⁴

Perspective-taking necessarily used to be done in a low-tech way: people were, for instance, given vignettes and then asked questions or given certain tasks to do. This can be quite enlightening and successful. Indeed, as a law professor, I have had some success getting my students, who, typically reflexively and unconsciously, identify with employees, tenants, buyers, and shareholders, to conjure up the perspective of employers, landlords, sellers, and corporate managers. But in my view, low-tech approaches have certain limitations – limitations that high-tech approaches, notably virtual reality, might not have, or at least, might not have as much. The limitations relate to ability and willingness to take another perspective. What "ability" means is obvious. To start with some fanciful examples: I cannot imagine looking forward to a horror movie or to a meal consisting of salami and pepperoni. And of course failures of the imagination are particularly acute as to core attributes and attitudes. Someone who comes from a community that has never experienced material deprivation may be

want. The project we are envisioning here would be directed at something different. The imaginative exercise would in a sense be the easy part; the summoning up of the associated emotions would be as or more important.

³⁴ See generally Hill & Painter, *supra* note 2, 108-124; Lynn Stout, *Cultivating Conscience: How Good Laws Make Good People* (Princeton: Princeton University Press, 2010).

hard pressed to conjure up the perspective of someone who has experienced it frequently. Someone whose peer group has been treated very badly by law enforcement may find it hard to imagine viewing police as a protector.

The problem is not just a failure of the imagination (that is, a failure of ability). There is also a failure of will. The intuition is conjured up by the famous Upton Sinclair quote: “It is difficult to get a man to understand something, when his salary depends on his not understanding it.”³⁵ People helping design financial techniques that enable a country or company to conceal part of its debt have an incentive to think of themselves as good people, earning a living through their intelligence and hard work, or at least not think of themselves as bad people, helping their clients fool others in ways that could cause serious damage. They may not naturally think of the consequences of their actions; indeed, Hill & Painter argue that they do not, due to what they call logistical and moral crowding out.³⁶ And the forces limiting their ability and will to conjure up the consequences from another’s perspective might be stronger than could be countered via low-tech perspective taking. Stated differently, when we are asked to imagine someone else’s situation, we will generally process it through our own ‘lens.’ More formally, we are, I believe, ‘cognitive misers’ who seek to save psychic energy; often, we use ‘simulation’ (of our own responses) when asked to take another’s perspective.³⁷ Compounding the problem,

³⁵ “Upton Sinclair: Quotes: Quotable Quotes”, *Goodreads*, online: <<https://www.goodreads.com/quotes/21810-it-is-difficult-to-get-a-man-to-understand-something>>. Many terms, related to one another, in the literature, conjure up the intuition. These include confirmation bias, status quo bias, and cognitive dissonance; all these help people to preserve their pre-existing world views. See generally Nicholas Epley & Thomas Gilovich, “The Mechanics of Motivated Reasoning” (2016) 30 *J. Econ. Persps.* 133, online: <<https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.30.3.133>> (on motivated reasoning). See also Claire A. Hill, “Cheap Sentiment” (2018) 81 *Law & Contemp. Probs.* 67, discussing motivated reasoning, confirmation bias, and cognitive dissonance.

³⁶ Hill & Painter, *supra* note 2, 114-117.

³⁷ On cognitive misers, see “cognitive miser” definition in Andrew M. Colman, *A Dictionary of Psychology* (3d. ed. 2008), online: <<http://www.oxfordreference.com/view/10.1093/acref/9780199534067.001.0001/acref-9780199534067-e-1614>>. On simulation, see Shogo Tanaka, “Simulation Theory vs Theory Theory”, *Embodied Approach (blog)* (Feb. 19, 2011), online: <<http://embodiedknowledge.blogspot.com/2011/02/simulation-theory-vs-theory-theory.html>>.

we think we are far better at imagining others' perspectives than we really are.³⁸

Before proceeding to consider perspective-taking done via virtual reality, it is worth emphasizing an important point. While the foregoing speaks in terms of perspective-taking, perspective-taking and empathy are sometimes treated as synonyms.³⁹ More specifically, researchers distinguish between cognitive and affective empathy, the former being sometimes referred to as perspective-taking and the latter relating to feeling another's emotions and sensations. Both types of empathy typically co-exist, but one can exist without the other.

Notwithstanding the supposed identification of perspective-taking as cognitive empathy, the literature implicitly assumes co-existence. Perspective-taking is desirable if the person taking the other's perspective does something good on account of having done so; it is neutral if one does nothing, and it is bad if one takes advantage, the latter being a characteristic of psychopaths, who have cognitive empathy but not affective empathy.⁴⁰

³⁸ See generally Emily Pronin, "The Introspection Illusion", in Mark P. Zaan, ed., *Advances in Experimental Social Psychology* (New York: Academic Press, 2009) 1; Emily Pronin, "How We See Ourselves and How We See Others" (2008) 320 *Sci.* 1177, online: <<https://pdfs.semanticscholar.org/57f5/d4d7dd4a94cfde7d9f8aa7c567bd623889a6.pdf>>. See also Heidi L. Maibom, "Limits of Perspective Taking" (2013) 97 *Procedia – Soc. & Behav. Scis.* 511, online: <<https://doi.org/10.1016/j.sbspro.2013.10.266>>; Nicholas Epley, "Be Mindwise: Perspective Taking vs. Perspective Getting", *Behav. Scientist* (Apr. 16, 2014), online: <<http://behavioralscientist.org/be-mindwise-perspective-taking-vs-perspective-getting/>>; Claire A. Hill, "Reducing the Social Costs of (Some) Priors", Minnesota Legal Studies Research Paper, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2729509>.

³⁹ "Contemporary researchers often differentiate between two types of empathy: 'Affective empathy' refers to the sensations and feelings we get in response to others' emotions; this can include mirroring what that person is feeling, or just feeling stressed when we detect another's fear or anxiety. 'Cognitive empathy,' sometimes called 'perspective taking,' refers to our ability to identify and understand other people's emotions." "What Is Empathy?", *Greater Good Mag.*, online: <<https://greatergood.berkeley.edu/topic/empathy/definition>>.

⁴⁰ See Baron-Cohen, *supra* note 10. There are also people who have affective empathy but not cognitive empathy; this confluence is seen in people with autism. See generally Simon Baron-Cohen, "Empathy Deficits in Autism and Psychopaths: Mirror Opposites?" in Mahzarin R. Banaji & Susan A. Gelman, eds., *Navigating the Social World: What Infants, Children, and Other Species Can Teach Us* (Oxford: Oxford University Press, 2013) 212, online: <http://docs.autismresearchcentre.com/papers/2013_SBC_

For purposes of this project, both types of empathy are necessary. The motivating theory of my work is that bankers are not (sufficiently) aware of the potential negative consequences of their actions now, and could be made aware in a way that would motivate them to minimize those consequences, the former implicating cognitive empathy and the latter implicating affective empathy. Thus, in what follows, as I discuss the specifics of perspective-taking done using virtual reality, I will consider affective empathy in tandem with cognitive empathy.

I now turn to considering virtual reality. Virtual reality is increasingly being used in both educational and work settings.⁴¹ Law scholarship increasingly discusses virtual reality,⁴² as does scholarship in other spheres. And of course it has captured the popular imagination.⁴³

Empathy-deficits-in-autism.pdf>. Lack of empathy, especially affective empathy, is a well-known characteristic of psychopaths. There is some evidence that psychopaths are overrepresented relative to the general population in top executive roles. See Jonathan Pearlman, “1 in 5 CEOs Are Psychopaths, Study Finds”, *Telegraph* (Sept. 13, 2016), online: <<https://www.telegraph.co.uk/news/2016/09/13/1-in-5-ceos-are-psychopaths-australian-study-finds/>>. See also Kali Holloway, “10 Careers with the Most Psychopaths Per Capita”, *Salon.com* (June 23, 2015): <https://www.salon.com/2015/06/23/10_careers_with_the_most_psychopaths_per_capita_partner/>. Could interventions help psychopaths to be more empathetic? The existing research does not provide much reason for optimism, but perhaps new technologies can succeed or at least make some inroads where other methods have failed. And of course the bulk of the people we are interested in are not psychopaths; overrepresentation is still a small number, and most bankers are clearly not psychopaths.

⁴¹ Anna Stolley Persky, “How Are Law Schools Using Virtual Reality Tools in Classrooms?” *ABA J.* (Jan. 2019), online: <http://www.abajournal.com/magazine/article/virtual_reality_augments_law_school_curricula/>. See also Robb Lindgren, “Generating a Learning Stance through Perspective-Taking in a Virtual Environment” (2012) 28 *Computers in Hum. Behav.* 1130, online: <doi: 10.1016/j.compedu.2016.01.001>; Kate Bloch, “Harnessing Virtual Reality to Prevent Prosecutorial Misconduct” (2019) *Geo. J. Legal Ethics* (forthcoming), online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3300360>; Alyssa Walker, “B Schools Use VR to Teach Leadership”, *MBAStudies.com* (Apr. 11, 2018), online: <<https://www.mbastudies.com/news/b-schools-use-vr-to-teach-leadership-2556/>>; Ian Wylie, “Virtual Reality Prepares Students for Digital Leadership”, *Financial Times* (Mar. 4, 2018), online: <<https://www.ft.com/content/da636018-02bc-11e8-9e12-af73e8db3c71>>.

⁴² A search on Westlaw for “virtual reality” in the Law Reviews and Journals database on January 24, 2019, yielded 1,591 hits. This surely overstates the number, insofar as the term is sometimes used more colloquially to modify “reality,” rather than to refer to “virtual reality.” Still, many are on point.

⁴³ Many uses of virtual reality are not relevant, or not wholly relevant, for our purposes. Data visualization provides an example, as does what one might call logistical uses,

Some of these uses involve perspective-taking and empathy.⁴⁴ Indeed, there is considerable interest in the use of virtual reality as an empathy-creating (and enhancing) technique.⁴⁵ In my view, the results thus far suggest that the approach, while not a panacea, may have considerable promise.⁴⁶ Among the limitations of low-tech perspective-taking are that the effects might not last; virtual reality, by contrast, would seem to offer

such as helping someone see how an article of clothing he proposes to buy would look on him. See, e.g., Bram Nawijn, "9 Applications of VR in the Financial Industry", *TJIP.com* (Mar. 23, 2018), online: <<https://www.tjip.com/en/publications/9-applications-of-ar-vr-in-the-financial-industry>>; Prakash Arunachalam, "How VR and AR Are Changing the Dynamics of CX in Banking and Real Estate", *Forbes* (Mar. 19, 2018), online: <<https://www.forbes.com/sites/forbestechcouncil/2018/03/19/how-vr-and-ar-are-changing-the-dynamics-of-cx-in-banking-and-real-estate/#3784a5ae50f3>>; Jeffry Pilcher, "10 Ways Banks and Credit Unions Are Using Virtual Reality", *TheFinancialBrand.com*, online: <<https://thefinancialbrand.com/68593/banks-credit-unions-finances-virtual-reality/>>.

⁴⁴ See, e.g., Kim P. C. Kuypers, "Context-Dependent Emotional Empathy in Virtual Reality (Empathy in Virtual Reality)" (2018) 5 *Advances in Soc. Sci. Res. J.* 379, online: <https://www.researchgate.net/profile/Kim_Kuypers/publication/325049841_Context-dependent_emotional_empathy_in_virtual_reality_Empathy_in_virtual_reality/links/5af34a62aca2720af9c3ae1a/Context-dependent-emotional-empathy-in-virtual-reality-Empathy-in-virtual-reality.pdf?origin=publication_detail>. See also Austin van Loon et al., "Virtual Reality Perspective-Taking Increases Cognitive Empathy for Specific Others", *PlosONE* (Aug. 30, 2018), online: <<https://doi.org/10.1371/journal.pone.0202442>>.

⁴⁵ A search for virtual reality empathy on Google on January 25, 2019 yields 7,870,000 results, some arguing for the promise of virtual reality to yield empathy, and others being much more skeptical.

⁴⁶ According to a recent article, Fernanda Herrera et al., "Building Long-Term Empathy: A Large-Scale Comparison of Traditional and Virtual Reality Perspective-Taking", *PlosOne* (Oct. 17, 2018), online: <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0204494#sec033>>: "over the course of eight weeks, participants who completed a VR perspective-taking task had more positive attitudes and signed a petition supporting helpful initiatives toward the homeless at significantly higher rates than the participants who just imagined what it would be like to become homeless or performed a less immersive perspective-taking task. The investigation also found that narrative-based and mediated perspective-taking interventions, regardless of immersion level, are more effective at increasing self-reported empathy than interventions without any perspective-taking tasks. The results of this investigation provide evidence suggesting that VR perspective-taking tasks may be more effective at improving attitudes toward specific social targets and motivating prosocial behaviors in the form of signed petitions in support of helpful initiatives than traditional and less immersive perspective-taking tasks."

perspectives that, once seen, would be hard to unsee. Moreover, a limitation of low-tech perspective-taking is how stylized it is: necessarily, certain aspects of the perspective are highlighted, with no mechanism to conjure up the residual aspects. Virtual reality might be able to do a better job in this respect as well, including by engaging more of a person's senses – vision and sense of smell, for example – and sensations, such as fear or humiliation.

Work in this area is being done regularly, and I expect that by the time I begin, there will be a great deal more research to draw on. For present purposes, I will briefly articulate the promise of the approach, but also some of its challenges.

The promise is straightforward. As discussed in Hill & Painter,⁴⁷ bankers, for many reasons, do not sufficiently consider the effects of what they do, especially on more remote third parties. The book discusses, among other things, the crowding out that occurs when bankers work in a hot-house environment with one another and have one another as their relevant peer group, and when they get so caught up with the technical difficulty of a task – the ‘how’ – that they do not reach the ‘whether’ question: should this particular technique be developed and used?⁴⁸ Social dynamics, societal glamorization of greed and its rewards, and other factors, may have contributed as well.⁴⁹ The promise is to conjure up, in individualized settings and in very salient ways, the effects that may not be being sufficiently attended to.⁵⁰ Of course, the challenge is considerable. What consequences would be conjured up and how? The range is enormous: do we show “Grandma Millie” in the dark because she can't pay her energy bill? Do we show people in interminable lines in Greece, in front of grocery stores or ATMs that have rapidly dwindling amounts of what the people are in line for (that is, groceries and money)? Do we show nearly-abandoned communities where most properties were lost to foreclosure? Even if we could figure out what to show, to whom would we show it and how often? Informing how these issues are to be worked out, the aim is not to counter insufficient empathy with excessive empathy. Too much empathy can be paralyzing. One of my colleagues finds giving low grades so distressing that she has

⁴⁷ Hill & Painter, *supra* note 2, 108-124.

⁴⁸ *Id.* See also: Hill, *A Personality Theory of White Collar Criminals*, *supra* note 25.

⁴⁹ Hill & Painter, *supra* note 2.

⁵⁰ Maibom, *supra*, note 38.

significant physical symptoms, such as insomnia, for several days during and immediately following the grading process. A business will, of course, produce winners and losers. People who have “excess” empathy may be ill-suited to business, and certainly, a business should not seek to instill “excess” empathy. Calibration is key. Another challenge relates to what I characterized previously as ‘failure of will.’ Underlying the theory that virtual reality could work in this context is the idea that bankers’ imaginations are limited, but that they are willing and open to seeing what they do not presently see. Returning to the Upton Sinclair quote, how strong of a stake might bankers have in not seeing what we want them to see? Psychologists have documented many mechanisms people can employ to keep their pre-existing worldviews in the face of challenge.⁵¹ Such considerations would very much inform the design of any virtual reality program; if the bank were to take Consultant Y’s recommendations into account in changing hiring, firing, and other employment practices, the challenge these considerations pose might be limited, insofar as Consultant Y’s recommendations should yield a workforce whose identities depend less on maintaining these ‘failures of the imagination.’⁵² The ultimate hope is a change in the individual bankers – and in the culture of banking.

Let me close by telling you how much I have enjoyed thinking about this project thus far, and how enthusiastic I am about attempting to develop a virtual reality program for Laissard Pères. I note that you have world-class engineers on your staff, who I gather would be made available to me to design and craft prototypes of the device and the program. I very much look forward to moving forward!

With great enthusiasm,
Professor X

⁵¹ See, on motivated reasoning and confirmation bias: Epley & Gilovich, *supra* note 35; Hill, “Cheap Sentiment”, *supra* note 35.

⁵² Indeed, in this regard, I note with approval the use by Consultant Y in its report of Alain Cohn, Ernst Fehr & Michel André Maréchal, “Business Culture and Dishonesty in the Banking Industry” (2014) 516 *Nature* 86, online: <<https://www.nature.com/articles/nature13977>> (arguing that when their identity as bankers is made salient to bankers, they are more apt to be unethical).